

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO RICHLAND COUNTY
The Honorable Robert E. Hood, Circuit Court Judge

Lower Court Case No. 2013-CP-40-2293
Appellate Case No. 2015-000424

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S.C. Supreme Court

DAVID CARMICHAEL

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

APPENDIX

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victim 3

- 1 Q. His hand was on your thigh.
- 2 A. Yes. I was scared so obviously I was trying to do
- 3 something for him to stop.
- 4 Q. And then -- but this lasted as you said for ten
- 5 minutes, that's your testimony, right?
- 6 A. Yes.
- 7 Q. From what you remember for ten minutes he had his hand
- 8 plucking at your clothes.
- 9 A. Yes.
- 10 Q. Not five, not 15, but ten minutes is what your
- 11 testimony is.
- 12 A. Yes.
- 13 Q. And then you all get off the interstate because
- 14 Mr. Robinson needed to get gas; is that right?
- 15 A. Yes.
- 16 Q. Did he get a phone call from Jamise before that or
- 17 after that?
- 18 A. I don't remember.
- 19 Q. Okay. Did he tell you all that he was going to the gas
- 20 station to get gas first?
- 21 A. I saw him just pull up to the gas station.
- 22 Q. And then he went and got gas, right?
- 23 A. Yes, sir.
- 24 Q. You and Mr. Carmichael stayed in the car, correct?
- 25 A. Yes, sir.

victim 3

- 1 Q. Was Mr. Carmichael touching you then?
- 2 A. No, sir.
- 3 Q. When -- and then you all got back on the interstate,
- 4 correct?
- 5 A. Up the road. The first gas station was down the road
- 6 from the other.
- 7 Q. Okay. You didn't get back on the interstate, you just
- 8 went from one gas station to the next.
- 9 A. Yes, sir.
- 10 Q. And the second one was the Spinx.
- 11 A. Yes, sir.
- 12 Q. And that's where your dad got food.
- 13 A. Yes, sir.
- 14 Q. Actually Mr. Carmichael paid for it, correct?
- 15 A. Yes, sir.
- 16 Q. He offered to loan, give, whatever, money to
- 17 Mr. Robinson to pay for Jamise's food, correct?
- 18 A. Yes, sir.
- 19 Q. He also offered for you to get something, correct?
- 20 A. Yes, sir.
- 21 Q. He asked you did you want something.
- 22 A. Yes, sir.
- 23 Q. And at first you said no, didn't you?
- 24 A. Yes, sir.
- 25 Q. You weren't hungry or wasn't thirsty at first, I guess.

victim 3

- 1 A. No, sir.
- 2 Q. But then later on you changed and then said you did
3 want something.
- 4 A. Yes, sir.
- 5 Q. And then all three of y'all went into the gas station
6 at that point, right?
- 7 A. Yes, sir.
- 8 Q. Now, did he get some food?
- 9 A. Junior?
- 10 Q. Yes.
- 11 A. I believe so, I don't recall.
- 12 Q. But when y'all were going inside you held Junior's
13 hand, didn't you?
- 14 A. No, I didn't.
- 15 Q. You never held his hand when y'all went into the gas
16 station.
- 17 A. No.
- 18 Q. And so when you -- after you left Spinx after you got
19 food and after you dropped Mr. Carmichael home you didn't do
20 anything from the Spinx to his house, correct?
- 21 A. No, sir.
- 22 Q. As far as touching you?
- 23 A. No, sir.
- 24 Q. Once you were alone with your stepfather I know you
25 told him what Junior done, right?

victim 3

- 1 A. No, sir.
- 2 Q. Well, I know you definitely told your mom when you got
3 home because she was home, right?
- 4 A. Yes, sir.
- 5 Q. Did you tell her?
- 6 A. No, sir.
- 7 Q. Well, I know that you told Jamise who you shared a room
8 with, correct?
- 9 A. No, sir.
- 10 Q. Don't you believe that you could tell your family
11 anything?
- 12 A. Yes, sir.
- 13 Q. And then you went to sleep, right, or back to sleep?
- 14 A. Yes, sir.
- 15 Q. And then you woke up and got ready for church.
- 16 A. Yes, sir.
- 17 Q. This was another opportunity for you to tell any of
18 those folks what happened, correct?
- 19 A. Correct.
- 20 Q. But you did not.
- 21 A. No, sir.
- 22 Q. It was only when you saw Junior at the church
23 ministering, right, he was ministering, that you began to
24 cry and went outside.
- 25 A. Yes, sir.

victim 3

1 MS. SIMPSON: Beg the Court's indulgence.

2 THE COURT: Redirect?

3 MR. SHADD: No, sir. Just beg the Court's indulgence.

4 THE COURT: Okay.

5 (Break in proceedings.)

6 MR. SHADD: Your Honor, we are done.

7 THE COURT: Okay. Redirect?

8 MS. CAMPBELL: Just briefly.

9 THE COURT: Okay.

10 REDIRECT EXAMINATION

11 BY MS. CAMPBELL:

12 Q.

victim 3

, just a couple of questions. His hand is
13 first on your thigh?

14 A. Yes, ma'am.

15 Q. And it was trying to get in your pants.

16 A. Yes.

17 Q. And it was rubbing, it wasn't just sitting there.

18 A. Yes.

19 Q. And he rubbed and pulled at your clothing the entire
20 time he had his hand on it.

21 A. Yes, ma'am.

22 MS. CAMPBELL: Thank you.

23 THE COURT: Recross?

24 MR. SHADD: Nothing.

25 THE COURT: All right, ma'am, you may step down. Thank

ROBIN JEFFERSON

1 you very much. State may call its next witness.

2 MS. SIMPSON: The State calls Robin Jefferson.

3 The witness, ROBIN JEFFERSON, was first duly

4 sworn and testified as follows:

5 THE COURT: Once you're seated, ma'am, I would ask that
6 you state your name, please.

7 THE WITNESS: My name is Robin Jefferson.

8 MR. SHADD: Ms. Simpson, your witness.

9 MS. SIMPSON: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. SIMPSON:

12 Q. Good afternoon, Ms. Jefferson.

13 A. Good afternoon.

14 Q. How old are you?

15 A. I'm 46. I had to think about that a second.

16 Q. And are you married?

17 A. No, I'm divorced.

18 Q. And do you know the defendant in this case?

19 A. I do.

20 Q. How do you know him?

21 A. He was at one time a minister at our church and also a
22 member.

23 Q. And what church do you go to?

24 A. This is Grace Christian Church here in Columbia.

25 Q. Are you pretty active in the church?

ROBIN JEFFERSON

1 A. Yes.

2 Q. You actually work in the church.

3 A. Yes, I do.

4 Q. What do you do there?

5 A. Well, for the church I serve as a minister over the
6 youth and children's ministries and then I also work for the
7 church as director of preschool.

8 Q. Do you do any work outside the church or does it take
9 up most of your time?

10 A. Yeah, that takes up most of my time.

11 Q. Do you also know the victim in this case, **victim 3** ?
12 **victim 3** ?

13 A. I do.

14 Q. And her family?

15 A. I do.

16 Q. And how do you know them?

17 A. Well, being over the youth or children's ministry the
18 children or youth at the church are my direct concern.

19 Q. And how long have you actually been with Grace
20 Christian?

21 A. Well, the founder of the ministry is my father, so
22 pretty much most of my life.

23 Q. And how would you describe your relationship with David
24 Carmichael?

25 A. I would say pretty much professional because we were

ROBIN JEFFERSON

1 trained as ministers together but not anything really
2 personal. He would be a fellow member of the church, a
3 fellow minister. And I consider ministry a business, in
4 other words it's a commitment that you made and so there are
5 guidelines. It's sort of like a -- it's a vocation so I
6 would say on a vocational level. In other words, if we were
7 working in a, I don't know, maybe a clothing store he would
8 be a colleague. Does that make sense? In other words, I've
9 never had like a personal time with him or a personal
10 relationship, but if something happened to his family or
11 something to that affect then I would --

12 Q. You would be there.

13 A. Right. I would pray.

14 Q. And with respect to any social gatherings, would those
15 have been related to the church or some church function that
16 you would have been at?

17 A. Right. They would have been related to the church.

18 Q. And what about victim 3 and her family, how would you
19 describe your relationship with them?

20 A. I would say just about the same. If there was a need
21 then I would address that need or just pretty much the same
22 as a fellow church member.

23 Q. And I want to turn your attention to August 29th of
24 2011. Do you recall that day?

25 A. Yes.

ROBIN JEFFERSON

1 Q. Can you tell the jury what happened?

2 A. I was in the lobby of the church that morning. I
3 navigate our bookstore and so I was in the lobby preparing
4 material for worshipers after service, and I typically do
5 that during praise and worship time because the lobby is
6 quieter for various reasons. And so I noticed [victim 3] and
7 another young lady come out of the sanctuary and they
8 were -- [victim 3] was crying, she seemed like she was very
9 upset, so I thought well maybe she -- maybe this is a
10 menstrual cycle time or she's uncomfortable, maybe she needs
11 an aspirin or whatever, I just didn't know but I knew I
12 needed to find out. So they came into the lobby and rushed
13 immediately into the restroom and the ladies restroom had a
14 lounge, so when you walked into the restroom they were
15 seated in the lounge and [victim 3] was crying. And so I
16 started asking questions, I don't remember the exact wording
17 but it was probably something about what's going on or is
18 everything okay. And neither of them gave me a direct
19 response other than [victim 3] kept saying, "I want to talk to
20 my mother. Please get my mother. Can someone get my mom or
21 get my mother?" It was just that sort of repetitive
22 conversation. And so I don't completely -- I don't remember
23 leaving to get her mother, I think I sent a designee.

24 Q. Where was her mother at this time?

25 A. She was in the sanctuary.

ROBIN JEFFERSON

1 Q. And that's where everybody had been including **victim 3**
2 and her friends?

3 A. Right. There was almost no one -- I don't recall
4 anyone being in the lobby, we do that for -- a lot of times
5 for security reasons just to make sure no one is in the
6 lobby. But at that time when her mother came into the
7 lounge I kind of -- I guess I just wanted to give them some
8 privacy because I felt like that was -- for whatever reason
9 I had fulfilled my need or had done what I needed to do
10 which was to get her parent and if they needed me more then
11 I would be there. And so as I walked out of the lounge I
12 overheard **victim 3** say -- by then she had stopped crying --

13 Q. And don't go in to what she actually disclosed, but she
14 said something, correct?

15 A. She said something, right.

16 Q. Regarding why she was crying.

17 A. Right.

18 Q. And what did you do after that?

19 A. Well, when she said that I knew that I didn't need to
20 be in that conversation at the time so I left the room, or I
21 was leaving the room and just continued to leave. And the
22 bookstore is positioned -- at that time it was positioned
23 pretty much as a counter or a desk in the lobby, it wasn't a
24 natural structure.

25 Q. So you could actually see the, I guess, entrance to the

ROBIN JEFFERSON

1 lounge or the restroom.

2 A. Right. But there is a door, there's a door to the
3 restroom/lobby.

4 Q. So the door is blocking but the counter areas allows
5 you to see --

6 A. Right, there is a counter.

7 Q. And so what happened next?

8 A. I was about to continue preparing materials and that's
9 when I saw victim 3 mother come out of the restroom and
10 she was running into the sanctuary.

11 Q. What were you thinking at this point?

12 MR. SHADD: Objection.

13 Q. What did you feel you needed to do?

14 THE COURT: The objection is?

15 MR. SHADD: The relevance about what this witness was
16 thinking when she saw the mom run into the church, the
17 relevancy to this case.

18 THE COURT: Do you want to rephrase the question?

19 MS. CAMPBELL: Yes, Your Honor.

20 THE COURT: Please do.

21 Q. What did you feel you needed to do at that point?

22 A. Well, she was yelling and she seemed to be very upset
23 and she made a statement something like, "I'm going to get
24 him," or something like that, and I saw her running to the
25 door and so I tried to restrain her from going into the

ROBIN JEFFERSON

1 sanctuary.

2 Q. And in the sanctuary -- was David actually there that
3 day?

4 A. Yes, he was.

5 Q. Do you remember what he was doing in the sanctuary?

6 A. He was leading or participating in praise and worship.
7 He was at the time one of our ministerial members on the
8 praise team or the worship team.

9 Q. So he would have been in the sanctuary along with
10 everybody else.

11 A. Right.

12 Q. So once you tried to restrain her what happened next?

13 A. If I recall correctly the ushers started seeing --
14 because it was a physical struggle I think they saw what was
15 going on, and I don't know how they were notified but from
16 there I recall that -- I think someone went and started
17 getting -- like I said, I don't know how they were notified,
18 but all I knew was in five minutes or a very short period of
19 time there were several deacons and ministers and other
20 people in the lobby trying to figure out what was going on,
21 what was the commotion or what was going on.

22 Q. And so everything else is still going on in the
23 sanctuary area too, but then you have this commotion
24 outside.

25 A. That's correct.

ROBIN JEFFERSON

1 Q. What do you remember happening next once the deacons
2 and everybody was out there, what did you do?

3 A. Well, I remember trying to continue to stay with her
4 mother. And so I took her back -- we have another area
5 within the building that is behind the sanctuary but it's a
6 part of the main building and so I took her to that area and
7 tried to calm her down. And about that time I think Patrick
8 came out, the stepdad, and the two of them started talking.
9 Like I said, I wanted to -- I wanted them to have as much
10 privacy as possible but I guess out of respect for the
11 service I felt like I needed to stay there.

12 Q. And at some point do you remember everybody kind of
13 moving outside? I guess was there an attempt to get the
14 commotion outside?

15 A. Yes, ma'am. In my mind there was so much going on I
16 don't really recall how much we got outside. But by the
17 time we got outside I do remember that our pastor had come
18 outside and I think he asked me what happened and I said, "I
19 don't know, I can't -- I don't really want to go into it. I
20 just want to tell you that Cynthia is upset and she was
21 trying to come into the sanctuary." I was just trying to
22 give the facts, I didn't want to go in to anything else.

23 Q. And did you ever see the defendant outside while
24 everyone was there, or what do you remember seeing?

25 A. I remember seeing him outside.

ROBIN JEFFERSON

1 Q. Was there a lot going on, a lot of people?

2 A. There really was. Because I remember **victim 3** she was
3 still upset, they had brought her outside, there was a lot
4 of crying. So, I mean, it was such an emotional time, it
5 just -- there was so much going on at the same time.

6 Q. And at some point, I guess, did things settle down?

7 A. I guess so. I just recall that eventually the
8 Robinsons getting in their car and deciding to go home.

9 Q. So they actually left.

10 A. Right.

11 Q. And the service continued and things went on.

12 A. Right, the service continued.

13 Q. And is that all that you know of this incident?

14 A. That was all that was given to me. I just -- it was
15 not my position to question them or -- unless I had been
16 designated to do so.

17 Q. And your, I guess, reasoning going into the bathroom is
18 you observed **victim 3** crying and upset.

19 A. Right. And I was the only adult at the time present so
20 I sort of felt like, okay, if she's in pain or anything of
21 that sort I wouldn't leave the child there, right, I would
22 definitely try to see what was wrong as much as I could find
23 out.

24 MS. SIMPSON: Thank you, Ms. Jefferson, nothing
25 further.

SUSAN LUBEROFF

1 THE COURT: Mr. Shadd, your witness.

2 MR. SHADD: Ms. Jefferson, thank you for being with us
3 today. I have no questions of this witness, Your Honor.

4 THE COURT: You may step down. The State may call its
5 next witness.

6 MS. SIMPSON: The State calls Dr. Susan Luberoff.

7 The witness, SUSAN LUBEROFF, M.D., was first
8 duly sworn and testified as follows:

9 THE COURT: Come forward please. Once you are seated
10 ma'am, please state your name.

11 THE WITNESS: I am Susan Luberoff, L-u-b-e-r-o-f-f.

12 THE COURT: Thank you. Your witness, Ms. Simpson.

13 MS. SIMPSON: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. SIMPSON:

16 Q. Dr. Luberoff, where do you work?

17 A. I work at The Assessment and Resource Center.

18 Q. And what do you do for The Assessment and Resource
19 Center?

20 A. I'm the pediatrician who does the medical part of
21 evaluations of children who come through for concerns about
22 abuse or neglect.

23 Q. And is The Assessment Resource Center, is it commonly
24 referred to as The ARC?

25 A. Yes, it is.

SUSAN LUBEROFF

1 Q. And how long have you been with ARC?

2 A. I actually was part of the founding of The ARC back in
3 about 1990 or so, and I was with the ARC for several years,
4 took a break to work with the handicapped for about nine
5 years and I've been back now for about six and a half years.

6 Q. Okay. So you were actually the founder or part of the
7 founding of the agency or facility.

8 A. Of the clinic.

9 Q. What exactly does The ARC do?

10 A. Children are referred to us for concerns of physical
11 abuse or sexual abuse or neglect and some other concerns and
12 we have a team that assists in those evaluation. An
13 important part of the team is the forensic interviewer who
14 is the person that talks with the child and tries to get
15 information about what may have happened or not happened
16 with regard to that child. I do the medical portion of the
17 evaluation, so I do the physical exam. If the history
18 sounds like any sort of lab testing needs to be done I do
19 that part.

20 Q. And can you tell the jury a little bit about your
21 educational background and training within your field?

22 A. Sure. I graduated from the third class of the
23 University of South Carolina School of Medicine to graduate
24 in 1983, and then I finished a three year pediatric
25 residency at what at that time was called Children's

SUSAN LUBEROFF

1 Hospital at Richland Memorial. And since then I've been
2 affiliated with the hospital and been in Columbia as a
3 pediatrician. I'm currently employed by the University of
4 South Carolina School of Medicine and I'm stationed at The
5 ARC under my employment. I am an Associate Professor of
6 Clinical Pediatrics for the USC School of Medicine, and most
7 of the work that I do is with The Assessment and Resource
8 Center and child abuse evaluations. I am responsible for
9 helping with consultations on children who are admitted to
10 Children's Hospital with concerns of abuse, so that if a
11 child comes in, for example, with a head injury or something
12 like that where the staff might be worried about abuse I do
13 consultations in that setting. I've had specific training
14 about child abuse in several different settings, one of the
15 most important one to me was a period of time that I spent I
16 believe in 1990 in Denver at the National Center on Child
17 Abuse -- the Camp National Center of Child Abuse as a
18 scholar and resident, it's kind of like a mini-fellowship.
19 I'm also board certified by the American Academy of
20 Pediatrics. I'm a board certified pediatrician and I'm
21 board specified in the subspecialty of child abuse and
22 pediatrics as well.

23 Q. And during your years of experience how many of those
24 child sexual assault medical exams would you say you
25 performed?

SUSAN LUBEROFF

1 A. Thousands.

2 Q. And have you ever been qualified as an expert before?

3 A. Yes, I have.

4 Q. About how many times?

5 A. Over 100.

6 Q. And what area of the anatomy are you examining during
7 your examination?

8 A. Actually we -- for any child that comes in through our
9 clinic no matter what type of abuse the concern is about we
10 examine for any kind of abuse, so children get just about
11 the same examination no matter what the reason is that they
12 come in. So I do a very careful exam on all of the child's
13 skin, look for any kind of injuries. I do parts of the exam
14 that children just expect to have happen like looking in
15 your ears and listening to their hearts. I look in the
16 mouth for evidence of neglect of their dental health. I
17 spend a good deal of time looking at the genital area and do
18 a detailed exam of that area for any kind of injury or signs
19 of infection. And I have an instrument called a colposcope,
20 that's essentially a pair of binoculars that magnifies and
21 has a very strong light so that I can see down in that area
22 very well, it's kind of -- the genital area of the female is
23 sort of a recessed area and I have to have a good source to
24 see that. So really my exam entails a very comprehensive
25 head to toe physical examination, and usually when I'm

SUSAN LUBEROFF

1 examining children in our Clinic the child is usually
2 actually prepared for the exam before I even meet the child
3 by another professional child life specialist or sometimes
4 the nurse who orients the child in advance to what he or she
5 is going to be going through in the exam so that the child
6 has a chance to see the room, hear any noises that might
7 happen. Like if I think I might need to open a Q-tip swab
8 we're going to tear that and let them hear that sound.
9 We're going to turn on the colposcope and let them hear the
10 fan for it and let them see the light so none of that will
11 be startling to the child. And the child life specialist or
12 the nurse, usually the child life specialist, instructs the
13 child in the positions that I may need her to be in so by
14 the time I come in to see the child we want the child to
15 already be comfortable about that exam or not be frightened
16 or worried about what's going to happen. When I do the exam
17 I usually kind of do the genital part of it in the middle of
18 the exam, so I will look at hands, feet, legs and stomach
19 and then do the genital part whether it's a boy or a girl.
20 And then I still have a lot of exam to do. I look at the
21 back, eyes, heart, mouth and that helps children who might
22 be embarrassed by the genital portion of the exam to sort of
23 get over that by the time they leave the room and go back to
24 join their family that's in the waiting room for them.

25 MS. SIMPSON: Your Honor, at this time I would like to

SUSAN LUBEROFF

1 qualify Dr. Luberoff as an expert in child sexual assault
2 examination.

3 THE COURT: Any objection to the designation from the
4 defense?

5 MR. SHADD: No, Your Honor.

6 THE COURT: All right. You will be qualified as such.
7 I have explained to the jury the meaning of that designation
8 and you may proceed.

9 Q. I'm backing up just a little bit. What is the age
10 range of children that you typically -- what is the age
11 range that you will examine?

12 A. We see children from zero to 21 but we also see adults
13 who are functioning on a level below 21 years old, so
14 developmentally delayed adults we will also see through The
15 ARC.

16 Q. And in cases where -- as only allegations of fondling
17 and not anal, vaginal or oral penetration, do you still
18 conduct the same exam?

19 A. Yes, I do.

20 Q. And what's the reason for that?

21 A. Well, the reason is to look for any kind of abuse and
22 also children may not be willing to tell everything that has
23 happened to them when they first make a disclosure or
24 they're first interviewed so we do a comprehensive exam just
25 to look and make sure that there aren't any injuries that we

SUSAN LUBEROFF

1 need to know about, that there aren't any signs of infection
2 or there aren't any signs of any other abuse that maybe
3 wasn't a part of the original intake information.

4 Q. And going to, I guess, your exam where you examine the
5 hymen and the vaginal area, can you tell the jury a little
6 bit about the vagina versus the vulva area and how that may
7 be confusing with respect to penetration issues?

8 A. Well, the vulva generally refers to the outside part of
9 the genitalia so that will be like the labia or the lips of
10 the vagina, and then the vagina is the internal part, the
11 area that leads up to the uterus. Near the beginning of the
12 vagina is a piece of tissue called the hymen that surrounds
13 a part of the beginning of the vagina, it's recessed up
14 inside the body, it's not on the outside and it's protected
15 by the labia or the lips on the outside.

16 Q. And did you have the opportunity to conduct I believe
17 actually two medical exams with respect to this case?

18 A. Yes, I did.

19 Q. And who were those victims?

20 A. I examined victim 3 [REDACTED] and victim 1 [REDACTED]

21 Q. And let's start with I guess the earlier examination,
22 victim 1 [REDACTED] When did you examine err?

23 A. I examined her in 2006, it was November 16th of 2006.

24 Q. November 16th of 2006?

25 A. Yes.

SUSAN LUBEROFF

1 Q. And when you conducted medical examinations I know you
2 may gain some information about disclosures but is it
3 actually your job to interview the child?

4 A. No, I don't do the interview. When I'm in the course
5 of the exam for example if I see a scar on a child's arm
6 I'll ask about how did that happen or that sort of thing.
7 But as far as details about abuse or about sexual abuse
8 disclosures, that is in the realm of the interviewers.

9 Q. What type of exam did you actually perform on **victim 1**
10 in this case?

11 A. **victim 1** I did the exam that I described, a head to toe.
12 careful exam of her skin, an examination of her genitalia
13 and anal area, and then general health examination of her
14 ears and heart and throat and so on.

15 Q. And did you make any findings with respect to her exam?

16 A. **victim 1** was beginning to enter puberty, she had had a
17 small amount of pubertal development. Her hymen, the piece
18 of tissue near the beginning of the vagina had not yet
19 started to show puberty yet, just a tiny bit. She by her
20 medical history had not started having periods yet and that
21 fit with what I saw in her exam. And her exam was normal, I
22 didn't see any injuries or anything concerning about any
23 part of her body on my exam.

24 Q. And with respect to the allegations that were made of
25 the fondling, would that be consistent?

SUSAN LUBEROFF

1 A. Yes. I would not expect to see injury from fondling.

2 Q. Did you also have occasion to conduct an examination of

3 victim 3

4 A. I did.

5 Q. And what date was that?

6 A. victim 3's exam was on September 15th of 2011, so it
7 was about five years later.

8 Q. And how did she present to you?

9 A. She was referred by the Richland County Sheriff's
10 Department.

11 Q. And did you have some initial -- I guess you had some
12 initial information about the assault, correct?

13 A. Yes, I did. I had some initial intake information that
14 was given from the sheriff's department to our intake
15 coordinator.

16 Q. And her exam was conducted several years later after

17 victim 1 Can you tell us about her exam?

18 A. Yes. Her exam was basically the same procedure as

19 victim 1 exam, and her exam also was normal except she was
20 further into puberty than victim 1 was.

21 Q. And how old was she at the time of this exam?

22 A. She was 13 at the time of the exam.

23 Q. And even if there were allegations of penetration be it
24 vaginally or anally, would you necessary expect to find
25 evidence of injury?

SUSAN LUBEROFF

1 A. Even if there is penetration in children who have
2 reached puberty there is very rarely any injury to the
3 genital area even with penetration, and certainly with
4 fondling we almost never see injury.

5 Q. And as far as where there are no allegations I guess,
6 or the time period for allegations -- I guess let me back
7 up. In what cases would you actually perform a rape kit?

8 A. The rape kit is a particular procedure that's done --
9 in this area it's done in the emergency room, and that is
10 actually the collection of DNA off of a child's body. So
11 the circumstance where a child gets a rape kit done is if
12 they present to the emergency room within just a matter of
13 hours, at most 72 hours of the assault that they're
14 alleging. We have actually narrowed that time frame down
15 within the last year or two so that with children now if
16 they present within 24 hours we'll do a rape kit, but after
17 24 hours the chance of finding any DNA from the other
18 person, that child's genitalia on that body is so low that
19 in prepubertal children we don't do a rape kit after 24
20 hours, and then the pubertal cutoff in our hospital is
21 still -- I believe it's still 72 hours. And that's not
22 actually the same thing as the exam that we do at The ARC,
23 that is the nurse that performs that evidence collection
24 does do a careful look at the child's skin and genitals
25 also, but the focus of that is to document any fresh acute

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1 injury and to use a Q-tip to collect anything that looks
2 like it could be foreign DNA. In our exam at The ARC we're
3 looking in more depth at the anatomy and structure of things
4 and looking for old injuries as well.

5 Q. Okay. So in cases of where the allegations involved
6 are touching you wouldn't -- a rape kit wouldn't necessarily
7 be performed and you wouldn't expect to find, I guess, DNA
8 from semen or things of that nature, correct?

9 A. Correct.

10 Q. And was that the extent of your involvement with this
11 case?

12 A. Yes, it was.

13 MS. SIMPSON: Thank you, Dr. Luberoff.

14 THE COURT: Mr. Shadd, your witness.

15 CROSS EXAMINATION

16 BY MR. SHADD:

17 Q. Hello again, Dr. Luberoff, it's good to see you again.

18 A. It's good to see you, too.

19 Q. You performed the physical examination at ARC of

20 victim 1 | [REDACTED]

21 A. I did.

22 Q. And it's my understanding that regardless of what the
23 allegation is a physical exam is still conducted; is that
24 correct?

25 A. In most cases. We might not do a physical exam if the

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1 child is there just as a witness, for example, to a homicide
2 or something like that we might not do an exam. But if the
3 reason for coming has something to do with that child's body
4 then we try to always do a physical exam, sometimes not on
5 the same day as the interview depending on the scheduling
6 but our goal is to do a physical exam in these cases.

7 Q. And that is whether the disclosure is vaginal, anal,
8 penal or digital, correct?

9 A. That's correct. We would want to do an exam in any of
10 those cases.

11 Q. As well as fondle.

12 A. That's correct.

13 Q. You know this is a fondling case, correct?

14 A. I do.

15 Q. With regard to **victim 1** **[REDACTED]** no allegation of
16 digital, vaginal or anal, is that your understanding?

17 A. That is my understanding.

18 Q. With **victim 3** **[REDACTED]**, no allegation of digital,
19 vaginal, anal; is that correct?

20 A. That's my understanding, yes.

21 Q. But yet you still examined them physically --

22 A. Yes.

23 Q. -- just to make sure because perhaps there may be some
24 injury to the vaginal area or to the anal area; is that
25 right?

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1 A. That's correct, or some sign of infection.

2 Q. That's right, also for infection. Let me ask you this:

3 The order, is there a -- because I understand that **victim 1**

4 underwent a forensic interview with your

5 colleague, Heather Smith.

6 A. Yes.

7 Q. And do you know if that occurred before or after you

8 did your physical examination?

9 A. Both of those were done on the same day when **victim 1**
10 came but I do not recall which one happened first.

11 Q. Oh, it doesn't matter the order; if the interview
12 occurs and then the physical examination or the physical
13 examination and then the interview, it doesn't matter.

14 A. If we have time in our schedule to do it the way we
15 want to we try to get the interview done first. Sometimes
16 the interview will give me information about the need to
17 collect specimens or things like that. And our order
18 generally is the opposite in physical abuse cases, I wish to
19 do the exam first because I may see injuries first that I
20 need the interviewer to ask about in the interview, so
21 sometimes we don't have the luxury of doing them in the
22 exact order that we need to. But in this case we did them
23 on the exact day and Ms. Smith and I would have wrapped
24 up -- had a joint feedback session to the caregiver about
25 the results of our assessment that day.

SUSAN LUBEROFF

1 Q. You're familiar with The Assessment and Resource Center
2 forensic interview report.

3 A. I'm sorry, forensic interview report? Yes, I am.

4 Q. Are you a part of helping to report that or is that
5 created and then you would refer to it as part of your
6 examination?

7 A. That is not -- I have nothing to do with creating that,
8 and it's not written before I do my exam if I do my exam
9 that day. But we do discuss with each other, the
10 interviewer and I discuss with each other as we are working
11 that day the results of the interviews and results of the
12 medical exams.

13 Q. And you're also checking not only for sexual evidence
14 but also any physical evidence; is that correct?

15 A. Correct.

16 Q. With regard to victim 3 did you become aware
17 at least during that time that she may have been exposed to
18 some prior domestic violence?

19 A. Can I refresh my memory about that?

20 MS. SIMPSON: Objection, Your Honor.

21 THE COURT: The objection?

22 MS. SIMPSON: As to relevance.

23 THE COURT: Relevance?

24 MR. SHADD: Well, for one on direct they talked about
25 what they --

SUSAN LUBEROFF

1 MS. SIMPSON: Your Honor, may we approach?

2 THE COURT: You may.

3 (A bench conference was held.)

4 THE COURT: Ladies and gentlemen, I will ask you to
5 retire to the jury room for just a moment, don't begin your
6 discussions until I have asked you to do so. Thank you very
7 much.

8 (The jury left the courtroom.)

9 THE COURT: You may state your objection, Ms. Simpson,
10 please.

11 MS. SIMPSON: Your Honor, my initial objection was to
12 relevance of this testimony. I believe Mr. Shadd was asking
13 about whether **victim 3** presented and the witness' awareness
14 of her exposure to criminal domestic violence. It's
15 completely irrelevant in this case and the implications that
16 it has regarding -- we know nothing about whether she was a
17 witness to it, a victim of it or had heard about it, we have
18 no idea what that means or its relevance and I'm not exactly
19 sure how Mr. Shadd is going to make it relevant.

20 THE COURT: Well, I will hear from you.

21 MR. SHADD: Thank you, Your Honor. First of all the
22 State provided this information to me, this forensic
23 interview report that ARC has regarding **victim 3**
24 It's not my fault that the State does not know what this
25 domestic violence that occurred, this prior history, that's

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1 not my job to tell them of that. It's their job to
2 explore --

3 THE COURT: But it is your job is to explain to the
4 Court the relevance of it.

5 MR. SHADD: Yes, Your Honor. If you recall I asked
6 **victim 3** **[REDACTED]** if she had witnessed her mother physically
7 getting on her older sister and she said in the affirmative
8 that that occurred and whether that had any bearing on David
9 Carmichael telling her about boys, the same scenario about
10 the older sister talking to boys, **victim 3** talking to boys
11 and whether she witnessed, and I'm trying to explore through
12 this witness --

13 THE COURT: I'm going to allow you out of the presence
14 of the jury to ask this witness what her knowledge might be
15 of that report and then we'll be able perhaps to determine
16 the relevance.

17 MR. SHADD: Yes, sir.

18 THE COURT: You may proceed.

19 MR. SHADD: Thank you.

20 Q. Dr. Luberoff, you were going into that you are familiar
21 with the forensic interview report, correct?

22 A. Yes.

23 Q. And were you familiar with it with regard to **victim 3**
24 **[REDACTED]**?

25 A. I don't know that I've actually read the report. That

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1 day when the interview was done the interviewer and I would
2 have spoken about the outcome of the interview and I may
3 have watched a part of it myself. We're talking about

4 **victim 3**

5 Q. Yes.

6 A. I actually did watch part of the interview myself but I
7 don't know if I actually read the entire forensic interview
8 report.

9 Q. Okay. Do you have it in front of you?

10 A. No. Oh, this is my medical.

11 Q. This is your medical?

12 A. Yes.

13 Q. So you already have it?

14 A. Yes, I do.

15 Q. Well, I'm looking at page three of 13.

16 A. Yes, you are.

17 Q. So who checks these boxes?

18 A. I check these boxes.

19 Q. Where do you get your information from from the -- in
20 this case would it have been **victim 3** or her mom or who, or
21 law enforcement or who?

22 A. In this case I got the information from the mother who
23 fills out the questionnaire that asks that question, has the
24 child the actual wording of the question is --

25 Q. And as you're looking is that part of this report, the

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1 question that's asked of the mom?

2 A. It should be attached. It doesn't have a page number
3 on it, it is part of the thing called ARC Medical
4 Questionnaire. So this is the form that was filled out by
5 the mother on the second page at the bottom, number three of
6 family history it says has your child ever been around
7 domestic violence, and the mother checked yes.

8 Q. Okay. So the mother checked yes that, of course, this
9 child being **victim 3** **[REDACTED]** was around domestic violence.

10 A. That's what the mother indicated. I didn't ask for any
11 detail about that question.

12 Q. But based on that question then the page that I was
13 referring to, did you check off that there has been prior
14 history involvement or report of child abuse and/or neglect
15 and you checked off exposure of child to domestic violence;
16 is that correct?

17 A. Yes, I did.

18 Q. That doesn't necessarily mean that the child was the
19 victim of domestic violence, it could be that or it could be
20 that the child witnessed domestic violence; is that right?

21 A. It could be either, yes.

22 Q. Okay. All right. But you did not go at least with --
23 you didn't follow-up with Ms. Cynthia **[REDACTED]** as to what
24 were the circumstances surrounding that domestic violence
25 that the child was exposed to.

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1 A. I did not.

2 THE COURT: All right. Now if you want to argue the
3 relevance I will be happy to hear you.

4 MR. SHADD: Well, Your Honor --

5 MS. SIMPSON: Your Honor, actually with respect to this
6 issue it's already out there if he wants to pursue this line
7 of questioning so be it.

8 THE COURT: So they're withdrawing their objection.
9 All right. I will ask counsel to approach for just a
10 moment.

11 (A bench conference was held.)

12 THE COURT: Brings the jury in.

13 (The jury returned to the courtroom.)

14 THE COURT: The State has withdrawn its previous
15 objection to the line of questioning, you may proceed,
16 Mr. Shadd.

17 MR. SHADD: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 Q. Dr. Luberoff.

20 A. Yes.

21 MR. SHADD: I don't have any other questions for you.

22 THE COURT: Does the State wish to ask any questions on
23 redirect?

24 MS. SIMPSON: No, Your Honor.

25 THE COURT: Okay. You may step down, thank you very

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1 much. Now, ladies and gentlemen of the jury, we are going
2 to break for the evening at this point in time and I will
3 give you the same instructions I have given you every time
4 we have left the courthouse, you could probably tell me but
5 I will tell you again, don't attempt to gather any
6 information on your own, don't watch, listen to or read
7 media reports, don't discuss the case with anyone, don't
8 allow anyone to discuss it with you and should anyone try to
9 do that please report that upon your return. We are going
10 to try to start at 9:00 again in the morning. I promise
11 that I will head down the road as quick as I can and we hope
12 I don't have a wreck, but 9:00 back in the jury room.
13 Everybody have a good evening. Thank you very much.

14 (The jury left the courtroom)

15 THE COURT: The defendant will remain in custody, we
16 will resume at 9:00.

17 (Court recessed for the evening and resumed at
18 9:00 a.m. on October 11, 2012.)

19 THE COURT: All right. Is the State ready to proceed
20 at this time?

21 MS. CAMPBELL: Yes, Your Honor. One quick matter. In
22 the last two days I've ridden up in the elevator with one of
23 the jurors, a couple of times they say hello and they look
24 at me and I don't respond, I don't want them to think I'm a
25 horribly rude person. I just don't want them to think,

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1 though, that I am just not nice, maybe I am. But anyway, I
2 didn't know, if you could just give a quick instruction that
3 we aren't allowed to --

4 THE COURT: I would be glad to inform the jury that
5 you're not allowed to talk with them during the trial,
6 neither am I. Is that okay, Mr. Shadd?

7 MS. SIMPSON: Yes, sir, Your Honor. And I would agree
8 with that, I've had that same experience.

9 THE COURT: All right. I'll mention that to them.
10 Anything from the defense before we bring the jury?

11 MR. SHADD: No, sir.

12 THE COURT: All right, sir. Bring the jury.

13 (The returned to the courtroom.)

14 THE COURT: Thank you. I hope you had a good evening.
15 At this time I will inquire if any of you had any difficulty
16 complying with my instructions outside of the courtroom.
17 Please stand if that's true. It appears that everyone has
18 been able to comply with my instructions. One thing I will
19 mention to you, as you move around the courthouse you may
20 see people that are involved in the trial of this case and
21 they're instructed, as am I, not to talk to you unless we're
22 in the courtroom so please don't feel that their being rude
23 in any fashion. There's some case law in South Carolina
24 that indicates that participants in trials should not talk
25 to jurors except in the courtroom during official business,

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1 so I'll just make you aware of that. As you move around the
2 courthouse if you see someone involved in the trial they're
3 going to act stuck-up this week. Now, when you take that
4 badge off next week if you came back I'm sure they would be
5 glad to talk to you, that's just the way we operate here and
6 there's reasons for that, that's the way it works. When we
7 broke yesterday the State was in the process of presenting
8 its evidence in the case. You may call your next witness.

9 MS. SIMPSON: The State calls Ray Olszewski.

10 THE COURT: Come forward, please and sworn.

11 The witness, RAYMOND OLSZEWSKI, was first duly
12 sworn and testified as follows:

13 THE COURT: Once you're seated, sir, state your name
14 spell your last name, please.

15 THE WITNESS: First name is Raymond Olszewski,
16 O-l-s-z-e-w-s-k-i.

17 THE COURT: Ms. Simpson, your witness.

18 DIRECT EXAMINATION

19 BY MS. SIMPSON:

20 Q Mr. Olszewski, where are you employed?

21 A I'm employed at The Assessment and Resource Center here
22 in Columbia.

23 Q And what do you do there?

24 A I'm a forensic interviewer.

25 Q And how long have you been with -- is The Assessment

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1 Resource Center commonly referred to as The ARC?

2 A That's right, The ARC.

3 Q How long have you been with The ARC?

4 A Over 12 years now.

5 Q Can you tell the jury a little bit about your
6 educational background and training?

7 A I have a bachelor's degree in Psychology, I have a
8 master's degree in Social Work from the University of South
9 Carolina here in Columbia. I have a diplomate in forensic
10 social work, which is a postgraduate certification and
11 speciality area. Then I have many, many hours of training
12 in the interviewing of children, child abuse.

13 Q And you have specialized training with respect to
14 forensic interviews?

15 A That's correct.

16 Q Can you tell us about that?

17 A Yeah. The more significant trainings were a 40 hour
18 one week course called Finding Words was the original name
19 of the course where I initially learned the RATAC protocol
20 that I see up there on the flip chart, that was back in
21 2000, I believe. I took an advanced interviewing course at
22 a place called Corner House in Minneapolis. Corner House
23 was partly responsible for developing the RATAC protocol.
24 Numerous other day long work shops, various types through
25 the years. I also teach now what we call the South Carolina

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1 First Course which is basically the Finding Words course
2 where we teach this protocol in South Carolina to frontline
3 child abuse professionals, law enforcement investigators,
4 DSS investigators, caseworkers, other forensic interviewers
5 so I'm on the faculty for that course. We teach that course
6 three, sometimes four times a year here in Columbia to folks
7 all around the state.

8 Q And how many forensic interviews would you say you've
9 conducted over the years?

10 A I don't have an exact number, but it would be over
11 1,000.

12 Q Have you been qualified as an expert before?

13 A I have.

14 Q About how many times?

15 A Again, I don't have an exact number with me, it would
16 be over 20 times.

17 MS. SIMPSON: Your Honor, at this time the State would
18 qualify Mr. Olszewski in forensic interviewing and child
19 abuse assessment.

20 THE COURT: Any objection from the defense?

21 MR. SHADD: No objection, Your Honor.

22 THE COURT: Without objection he's going to be
23 designated as an expert in those fields, I've explained that
24 designation to the jury and you may proceed.

25 Q Can you describe for us the difference between a

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1 forensic interview versus other types of the interviews?

2 A Sure. A forensic interview is a fact-finding
3 investigative type interview. We're trying to simply
4 determine whether or not something happened, and if it did,
5 get as many details as we can about that event. You
6 contrast this with like a clinical type interview in the
7 mental health field where you're trying to determine whether
8 or not the patient -- what symptoms, does the patient have
9 any kind of diagnosis, does the patient need additional
10 treatment, further intervention and that type of thing. You
11 know, the word forensic, our product is ultimately going to
12 wind up as part of an investigation perhaps in a courtroom,
13 whether it's a family court or criminal court. In a
14 clinical mental health type interview that's not usually the
15 case, so you're working with a client to try to figure out
16 if there's an issue or problem that needs to be addressed
17 and how to treat that problem. So a very different type of
18 setting.

19 Q And where do you conduct your interviews?

20 A The ARC is located physically right here in Columbia on
21 the State Hospital campus over on Bull Street across from
22 William S. Hall Psychiatric Institute. We call it a child
23 friendly facility and we have three dedicated forensic
24 interview rooms, they're small rooms, they're simply
25 furnished with a couple chairs, some flip chart paper much

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1 like that, some markers, paper, anatomically correct dolls.
2 There are no toys or other things in the interview room
3 because we don't want the children to be distracted by toys,
4 we don't want to invite fantasy or pretend play, we want it
5 to be a reality type based experience. Does that answer
6 your question?

7 Q It does. Do you have guidelines for the interview with
8 respect -- certain guidelines that are related to the child?

9 A Well, if I understand your -- I'll try to answer your
10 question. When we get a child and initially bring them into
11 the room we introduce ourselves, we do record all the
12 interviews and we tell the child about that, that they're
13 being audio and video recorded. Depending on the
14 circumstances and the age of the child we explain the sort
15 of expectation of truth telling in the interviews. We
16 explain to the child where this is a place where we want to
17 talk about things that are real and true and ask the child
18 if they'll agree to that. Other than that we follow a
19 protocol as part of our interview. We don't explain the
20 protocol to the child but we use the protocol as we do the
21 interview.

22 Q And we've heard a little bit about the RATAC protocol.
23 Describe for us what you do.

24 A Well, I follow that protocol as laid out here on the
25 flip chart. There's a rapport building stage, there is an

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1 identification, touch inquiry, abuse scenario and closure.

2 I don't know if that's been explained already in the trial.

3 Q It has been.

4 A Okay.

5 Q Fairly extensively.

6 A I will say that there is flexibility in this protocol,

7 so depending on the age of the child and other factors the

8 protocol may look different depending on the circumstances.

9 With an older child we may not do an anatomy identification

10 or we may do it later if we need clarification on something

11 the child has said, mainly the body parts or something like

12 that. So the protocol can look different, the letters can

13 be rearranged or missing here or there depending on the

14 circumstances.

15 Q Did you have an occasion to conduct a forensic

16 interview in this case?

17 A I did.

18 Q When was that and who did you interview?

19 A I interviewed [victim 3] on September 15th, 2011.

20 Q And how old was [victim 3] at the time of the interview?

21 A She was 13.

22 Q And can you tell us about the mental health that you

23 used in interviewing [victim 3]

24 A Well, you know, we always use the RATAC protocol.

25 Again, I would have introduced myself to her. Generally in

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1 the beginning of an interview we spend some time talking to
2 the child about their family, their living situation, who
3 they lived with and this is part of rapport, getting to know
4 the child, trying to make the child feel comfortable. Also
5 assessing what type of child it is, is she cooperative, does
6 she give good narrative answers, responses to my questions,
7 that type of thing.

8 Q And did you have some initial information about why
9 **victim 3** was referred to you prior to conducting the
10 interview?

11 A Right. When the child comes to us we have intake
12 information or referral information from a referral source.
13 In this case we had referral information from Investigator
14 Richard Carter at the Richland County Sheriff's Department.

15 Q And within that interview did **victim 3** tell you about
16 what happened?

17 A She did.

18 Q And did you document your interview with her in some
19 form?

20 A Yes. There is a DVD of the interview, video and also I
21 do a written report.

22 MS. SIMPSON: I have nothing further. Thank you.

23 THE COURT: You're witness, Mr. Shadd.

24 MR. SHADD: No questions, Your Honor.

25 THE COURT: Sir, you may step down. Thank you very

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1 much.

2 THE WITNESS: Okay.

3 THE COURT: Do you wish to have the witness excused?

4 MS. SIMPSON: Yes, sir.

5 THE COURT: Any objection?

6 MR. SHADD: No objection.

7 THE COURT: You're free to go. Thank you very much.

8 The State may have call its next witness.

9 MS. CAMPBELL: The State would call Cynthia [REDACTED]

10 THE COURT: Come forward and be sworn, please.

11 The witness, CYNTHIA [REDACTED] was first duly

12 sworn and testified as follows:

13 THE COURT: Ma'am, once you're seated, please state
14 your name.

15 THE WITNESS: Cynthia [REDACTED]

16 THE COURT: Thank you. You're witness, Ms. Campbell.

17 BY MS. CAMPBELL

18 Q Ms. [REDACTED] how old are you?

19 A 37.

20 Q And where do you currently live?

21 A [REDACTED] in Columbia.

22 Q In Columbia?

23 A Uh-huh.

24 Q And how long have you been living at that address?

25 A Eleven months -- ten months.

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- 1 Q Ten months?
- 2 A Yes.
- 3 Q And prior to living there where did you live?
- 4 A [REDACTED] [REDACTED] [REDACTED] off of [REDACTED] [REDACTED]
- 5 Q Off [REDACTED] [REDACTED]
- 6 A Yes.
- 7 Q Here in Richland County?
- 8 A Yes.
- 9 Q And back then when you were living there who all was
- 10 living there with you?
- 11 A Me, Patrick and my three kids.
- 12 Q And who is Patrick?
- 13 A My husband.
- 14 Q And you said that you have three children?
- 15 A Yes, I do.
- 16 Q And who are your children?
- 17 A [REDACTED] victim 3 [REDACTED] Fredrick [REDACTED] S [REDACTED] and Jamise Sanders.
- 18 Q Who is the oldest and who is the youngest?
- 19 A Jamise is the oldest and [REDACTED] victim 3 [REDACTED] is the youngest.
- 20 Q And how old is Jamise?
- 21 A Jamise is 19.
- 22 Q And then your son is in between --
- 23 A Yes.
- 24 Q -- the two girls?
- 25 A Yes.

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- 1 Q How old is your daughter now?
- 2 A [victim 3] or Jamise.
- 3 Q [victim 3] I'm sorry.
- 4 A [victim 3] is 14.
- 5 Q And where does [victim 3] go to school?
- 6 A She goes to Blythewood High.
- 7 Q Now that you've moved out towards the Blythewood area,
- 8 who all is currently in your household?
- 9 A Me, Patrick, [victim 3] Fredrick, and my sister's two
- 10 daughters, Kierra [J] and Jada [v] (phonetically.)
- 11 Q And your older daughter is where?
- 12 A She is in Maryland, she's in the Air Force.
- 13 Q And you mentioned that you got your sister's children.
- 14 A Yes, I do.
- 15 Q And how old are they?
- 16 A Fifteen and 11.
- 17 Q And they're girls as well?
- 18 A Girls as well.
- 19 Q Why are they currently staying with you?
- 20 A My sister had to go overseas to serve her country.
- 21 Q She's in the military?
- 22 A She's in the military.
- 23 Q How long are you taking care of her children?
- 24 A She will be back in December, the end of December.
- 25 Q You're currently married to Patrick Robinson.

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- 1 A Yes, I am.
- 2 Q And when did y'all get married?
- 3 A July 2009.
- 4 Q 2009?
- 5 A Yes.
- 6 Q And were you married before?
- 7 A Yes, I was.
- 8 Q And who were you married to before?
- 9 A [REDACTED] s father.
- 10 Q And what years were you married to him?
- 11 A June 1999.
- 12 Q You married him in June of 1999?
- 13 A Yes.
- 14 Q And how long did you actually stay with him before
- 15 leaving him?
- 16 A We'd been together for about six years.
- 17 Q You were together about six years?
- 18 A Yes.
- 19 Q So that would make it about 2005 when you left?
- 20 A Yes.
- 21 Q And what were the circumstances under which you left
- 22 him?
- 23 A Domestic violence.
- 24 Q So that would be the domestic violence exposure
- 25 [REDACTED] has had in her past?

RAYMOND OLSZEWSKI

- 1 A Yes.
- 2 Q And that would have been prior to 2005?
- 3 A Yes.
- 4 Q And your first husband, is he deceased?
- 5 A He is deceased.
- 6 Q Are you from the Columbia area?
- 7 A No, I'm not, I'm from Georgetown.
- 8 Q When did you move to Columbia?
- 9 A In 2007.
- 10 Q Once you moved to Columbia after moving here with your
11 children did you become employed?
- 12 A Yes.
- 13 Q And where did you find a job?
- 14 A The Hampton Inn on Clemson Frontage Road.
- 15 Q Initially who was your job there?
- 16 A Executive housekeeping.
- 17 Q And currently where are you working?
- 18 A I'm still employed there.
- 19 Q And you have been for the last four-and-a-half, five
20 years?
- 21 A Yes.
- 22 Q And what is your position with them?
- 23 A Executive housekeeper.
- 24 Q And as executive housekeeper what are your duties
25 include?

RAYMOND OLSZEWSKI

- 1 A I manage the housekeeping department, supervise at
2 least 15 to 20 people.
- 3 Q Do you know the Carmichael family?
- 4 A I know -- yeah. I know David but I don't know his
5 whole entire family.
- 6 Q And how did you get to know David Carmichael?
- 7 A Through Patrick.
- 8 Q Patrick was friends with him?
- 9 A Yes.
- 10 Q And did you know him by a nickname?
- 11 A At first, no. He was introduced to me as --
- 12 Q David?
- 13 A David, yeah.
- 14 Q And did you come to know anybody else refer to him as a
15 nickname?
- 16 A Patrick called him Junior.
- 17 Q And what was Junior's or Patrick -- excuse me, David's
18 relationship with Patrick?
- 19 A I believe they went to church together at another
20 church.
- 21 Q At another church?
- 22 A Yeah.
- 23 Q And what church do you currently attend?
- 24 A I attend Grace Christian Church on 5010 Monticello
25 Road.

RAYMOND OLSZEWSKI

- 1 Q And how long have you been attending that church with
2 your family?
- 3 A About two years.
- 4 Q Two years?
- 5 A Yes.
- 6 Q And are you and your husband active in that church?
- 7 A Yes, we are.
- 8 Q And what are your roles in that church?
- 9 A I'm one of the ushers.
- 10 Q You're one of the ushers?
- 11 A Yes.
- 12 Q And what is your husband's role in the church?
- 13 A He's over the children's ministry and he also plays
14 percussion in the band.
- 15 Q And was David also active in that church?
- 16 A Yes, he was.
- 17 Q And what was his role in the church?
- 18 A I believe he was music ministry.
- 19 Q The minister of music?
- 20 A Yeah.
- 21 Q And does music play a vital role in your church?
- 22 A Yes.
- 23 Q And do your children attend church?
- 24 A Yes, they do.
- 25 Q Did you know David's sister, Davetta?

RAYMOND OLSZEWSKI

- 1 A No. I know of her, I don't know her like that.
- 2 Q Okay. Was David -- being that he was good friends with
- 3 Patrick, was he a frequent visitor in your home?
- 4 A Yes, he was.
- 5 Q And how did you consider him as far as your
- 6 relationship or your family's relationship with David?
- 7 A He was very friendly, I had no problem with him.
- 8 Q Was he welcome in your home?
- 9 A Yes, he was welcome in my home.
- 10 Q And would he be around your children?
- 11 A Yes.
- 12 Q And at times would he do things with your children?
- 13 A Yes.
- 14 Q Did you ever have any reason prior to this happening to
- 15 fear him based on your interaction with him?
- 16 A No.
- 17 Q Did you trust him?
- 18 A Yes.
- 19 Q What kind of car did you drive back last year?
- 20 A We had a 2006 Impala and a 2006 Dodge Durango.
- 21 Q And this Impala, what type of car -- is it a sedan?
- 22 A It's a sedan, four door.
- 23 Q And in the front is there a break between the two
- 24 seats?
- 25 A Yes.

RAYMOND OLSZEWSKI

1 Q I want to turn your attention back to the end of
2 August. Was there an occasion where your husband took a
3 trip up to North Carolina to see his parents?

4 A Yes.

5 Q And were you -- did you actually go on that trip?

6 A No, I did not.

7 Q Why didn't you go that day?

8 A I was at work and I wouldn't have got off in time to go
9 because it would have been later.

10 Q Were you aware of who actually went on that trip that
11 day?

12 A Yes.

13 Q And who all went on the trip that day?

14 A [victim 3] Patrick and David.

15 Q And was that unusual for David to participate say in a
16 family function?

17 A No.

18 Q Did you -- were you aware of which car they took that
19 day?

20 A Yes.

21 Q Which car was it?

22 A The Impala.

23 Q And the only one of your children that went with him
24 that day was [victim 3]

25 A Yes.

RAYMOND OLSZEWSKI

1 Q Were you aware of what time of day it was when they
2 left approximately?

3 A No, I can't recall.

4 Q Okay. That evening when they got back in, it was late.

5 A Yes, it was.

6 Q And were you up at that point?

7 A No. When Patrick walked into the room I awoke and
8 asked him, "See y'all made it in and safe," and went back to
9 sleep.

10 Q So you never had any contact with your daughter that
11 night?

12 A No, I did not.

13 Q The next morning, tell the jury panel what you did that
14 Sunday morning.

15 A I got up to get the kids up to go to church and I went
16 into the girls' room, **victim 3** was still in bed covered up,
17 I told her to get up, she said, "Mom, I don't want to go to
18 church today." I said. "No. You have to get up and go to
19 church today, you have to go, we're going, everybody get
20 up." So everybody got up, got dressed.

21 Q And you said you went into the girls' room, who were
22 the girls in that room at that time?

23 A Jamise and **victim 3**

24 Q And once you got her up and told her she had to go to
25 church that morning, did y'all then get ready and go?

RAYMOND OLSZEWSKI

- 1 A Yes, we did.
- 2 Q And approximately what time was it when you got to
- 3 church, do you remember?
- 4 A It was about 10:45, try to get there at least 10:45,
- 5 10:50.
- 6 Q So you try to get there a few minutes early?
- 7 A Yes.
- 8 Q And why is that?
- 9 A Because Patrick has to be there at a certain time to
- 10 set up and everything.
- 11 Q What is he setting up?
- 12 A His instruments and they do prayer before they start
- 13 the program, the church.
- 14 Q And what time does the church program actually start?
- 15 A I think 11:00.
- 16 Q 11:00?
- 17 A Yeah.
- 18 Q And that day when you went to church, who all went with
- 19 you?
- 20 A Me, [victim 3] Fredrick and Patrick.
- 21 Q [victim 3] Fredrick -- did your oldest daughter go?
- 22 A And Jamise, I'm sorry.
- 23 Q So it would be your three children.
- 24 A Yeah.
- 25 Q So at that point your sister's children weren't living

RAYMOND OLSZEWSKI

- 1 with you.
- 2 A No.
- 3 Q Once you got to church where did everybody go?
- 4 A [victim 3] usually goes to the founders hall, the kids
- 5 would meet over there sometimes.
- 6 Q In the what hall?
- 7 A The founder's hall.
- 8 Q The founders hall?
- 9 A Yes.
- 10 Q And at that point did she go off to be with her
- 11 friends?
- 12 A Yeah.
- 13 Q Okay. And where did you go?
- 14 A I went into the sanctuary with Jamise and Fredrick and
- 15 we sat down.
- 16 Q So were y'all sitting separately from [victim 3] that
- 17 day?
- 18 A Yes, we was.
- 19 Q And your older two children were actually sitting with
- 20 you?
- 21 A Yes.
- 22 Q And in your church is it unusual for [victim 3] to sit
- 23 with the group of children that is sitting in there?
- 24 A No.
- 25 Q And that was typically done?

RAYMOND OLSZEWSKI

- 1 A Yes.
- 2 Q But it's still in the same worship hall?
- 3 A Same worship hall.
- 4 Q Did you have any duties at the church that day?
- 5 A No, it was not my Sunday to usher.
- 6 Q It was not your Sunday to usher?
- 7 A No.
- 8 Q So your participation in the service that day was to
- 9 worship?
- 10 A Yes.
- 11 Q During the course of the service was there a certain
- 12 part where David Carmichael actually led the congregation or
- 13 was before the congregation?
- 14 A It was the first part, he got up and did praise and
- 15 worship.
- 16 Q And what is praise and worship?
- 17 A When everybody stands and they sing like at least two
- 18 songs before the pastor comes in and the scriptures are
- 19 read.
- 20 Q And Mr. Carmichael was the one leading that phase of
- 21 the service?
- 22 A Yes, he was.
- 23 Q And where would he have been when he did that?
- 24 A He was up in the pulpit.
- 25 Q He was up at the podium?

RAYMOND OLSZEWSKI

1 A Yes.

2 Q During the praise and worship what if anything did you
3 notice that caught your attention?

4 A I looked over to my right and I saw [victim 3] sitting
5 there with her other friends, and then, you know, I went
6 back to listening, paying attention to the songs and again I
7 looked again and she was gone. The next thing I know her
8 little friend, Christy [K] (phonetically) came in and
9 touched me on the shoulder and said, "Ms. [redacted] [victim 3]
10 is crying. [victim 3] needs you in the bathroom."

11 Q And at this point are you still in the praise and
12 worship or have you gone on to the next phase of the
13 service, do you remember?

14 A He was still in praise and worship.

15 Q Once her friend came and told you that your daughter
16 needed you, she was crying, what did you do?

17 A I got up immediately and went into the bathroom.

18 Q Once you were in the bathroom what did you observe?

19 A When I walked in [victim 3] was crying and Ms. Robin
20 Jefferson and Larissa Thompson was in the bathroom with her
21 and Christy went in also. There was another little girl. I
22 don't know who she was. I went to her and I asked her, I
23 said, "[victim 3] what's wrong? Why are you crying like
24 this?" I said, "Did you mess you're clothes up while you're
25 on your cycle?" And she was like, "No mommy, no mommy, I'm

RAYMOND OLSZEWSKI

- 1 so sorry, I'm so sorry." I said, "What are you sorry for?
2 What's happened, what's wrong?" And she said that David
3 touched her on the way back from North Carolina. I just --
4 I went numb. I just stood there and I started crying,
5 screaming and the next thing I know I was I out of my -- I
6 came out of my shoes somehow and I ran out of the bathrooms
7 and Ms. Robin and Larissa caught me.
- 8 Q Where did you go when you ran out of the bathroom?
- 9 A I was trying to get into the sanctuary to David
10 Carmichael.
- 11 Q And why did you want to get to David Carmichael at that
12 point?
- 13 A To rip him to pieces for what he did to my child.
- 14 Q [victim 3] when you went in the bathroom, she was upset
15 and crying?
- 16 A She was crying.
- 17 Q Was that unusual for her?
- 18 A No.
- 19 Q And when you observed her crying, did you know
20 something was wrong?
- 21 A Yes. Because it was a different cry, you know, it was
22 a cry -- she was crying, she was hurt.
- 23 Q And as she was upset and talking to you, she told you,
24 "I'm sorry."
- 25 A She said, "Mommy, I'm sorry."

RAYMOND OLSZEWSKI

1 Q And then she told you who had touched her?

2 A She said, "Junior touched me, was touching me on the
3 way back last night."

4 Q Once you got out of the bathroom and ran towards the
5 sanctuary, did anyone stop you?

6 A Ms. Robin and Larissa Thompson grabbed me.

7 Q Did you actually ever make contact with David
8 Carmichael at that point?

9 A Not physically, but he did come out of the church
10 several times into the vestibule where everybody was and he
11 kept coming asking, "What's wrong? What's going on? What's
12 wrong?" Everybody was trying to tell him go back in. "Go
13 back in, why are you out here? Just go back in." He went
14 back in the sanctuary and he came back out again. You know,
15 he would never look at me, he never looked me in my face.

16 Q Was that unusual?

17 A No.

18 Q It was normal that he wouldn't look you in the face?

19 A He would look at me.

20 Q Normally.

21 A Yeah.

22 Q But that day he wouldn't.

23 A No.

24 Q You never actually had a conversation with him that
25 morning after you found out what happened?

RAYMOND OLSZEWSKI

1 A No.

2 Q Once you had been restrained where was your daughter
3 when you left the bathroom?

4 A I believe someone took her outside.

5 Q And what happened next?

6 A Somehow I ended in the back -- another part of the
7 church. I remember Ms. Latasha Saggins (phonetically) and
8 Danny Bishop had me back there trying to calm me down.

9 Q And where was Patrick when all of this was going on?

10 A I believe he was still in the church.

11 Q So he didn't know what was going on at this point.

12 A (Indicating in the negative.)

13 Q And then what happened?

14 A I was trying to get them to let me go because I wanted
15 to get to my child and I just wanted to leave, you know,
16 leave from there because [victim 3] told me what had happened
17 and I did not want to be in the same space with David.

18 Q And then what happened?

19 A They walked me out of the -- out of the room that I was
20 in and they walked me up to the front and I walked. I went
21 to get my purse and my other two kids that was still in the
22 sanctuary and I went in and I got them and I came back out
23 of the church.

24 Q And then where did you go?

25 A Outside. I got [victim 3] and David decided he wanted to

RAYMOND OLSZEWSKI

1 come back out there, out of the church and outside after
2 they told him not to come out and he wanted to know what's
3 going on again, "What's wrong?"

4 Q Did you ever speak to him?

5 A No, I just looked at him.

6 Q Did you get your children and leave that day?

7 A I got my kids and went home.

8 Q Where was Patrick?

9 A He was outside the church.

10 Q And do you know -- when you got your children and left
11 was he with you or did he stay?

12 A Patrick -- yeah, he stayed.

13 Q And later were you able to tell Patrick what had gone
14 on?

15 A Yeah. And I believe somebody had already told him at
16 the church, I'm not sure.

17 Q Once you got home with your three children what did you
18 do?

19 A I dialed 911.

20 Q Did you call the police?

21 A I sure did.

22 Q Did the police respond?

23 A Yes, they did.

24 Q And did they take a report?

25 A Yes, they did.

RAYMOND OLSZEWSKI

1 Q Later did you meet or have contact with Investigator
2 Carter in this case?

3 A Yes.

4 Q And were certain appointments set up for [victim 3] to be
5 interviewed and examined and things of that nature?

6 A Yes.

7 Q And you took her to those?

8 A Yes, I did.

9 Q And did you also get [victim 3] some counseling?

10 A Yes.

11 Q And why did you need to get [victim 3] some counseling as
12 a result of this?

13 A She was having problems. I noticed a change in her
14 attitude. She was coming home, changing her clothes, which
15 she didn't used to do until after all this happened to her,
16 and it was also recommended by The ARC.

17 Q All right. So you followed up on those as well?

18 A Yes.

19 Q Did you ever after [victim 3] told you what happened have
20 any conversations with David Carmichael yourself?

21 A No.

22 Q After this happened did you continue to attend Grace
23 Christian Church?

24 A Yes.

25 Q Was Mr. Carmichael still welcome there?

RAYMOND OLSZEWSKI

1 A I believe he was asked to leave, to step down but he --

2 MS. SIMPSON: Objection, Your Honor, hearsay.

3 THE COURT: I'm going to instruct the witness not to
4 quote anyone --

5 THE WITNESS: Okay.

6 THE COURT: -- directly.

7 A No, he wasn't there.

8 Q He wasn't there anymore?

9 A No, he left.

10 Q Okay. Did Mr. Carmichael ever come to you and report
11 anything about **victim 3** talking to some boys?

12 A He never said anything to me. When his attorney made
13 his opening statement that was the first time I ever heard
14 of that.

15 Q And even if **victim 3** had been talking to some boys is
16 she allowed to talk to boys?

17 A I don't see nothing wrong with that.

18 Q The person, David Carmichael, the person that you
19 trusted with your child, do you see him here in the
20 courtroom?

21 A Yes, I do.

22 Q Can you point him out for the jury?

23 A Sitting over there in the blue jacket and white shirt.

24 MS. CAMPBELL: Your Honor, may the record reflect she
25 has identified the defendant.

RAYMOND OLSZEWSKI

1 THE COURT: The record will so reflect, you may
2 proceed.

3 MS. CAMPBELL: I don't have anything else.

4 MR. SHADD: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY MR. SHADD:

8 Q Ms. [REDACTED] you have how many children?

9 A I have three children.

10 Q Two girls and a boy?

11 A Yes.

12 Q And your oldest daughter, what's her name?

13 A Jamise Sanders, she's 19.

14 Q And she is serving our country right now?

15 A Yes, she is.

16 Q And how old was she when [REDACTED] victim 3 was born?

17 A I don't know.

18 Q Okay. How many times have you been married?

19 A Twice.

20 Q Okay. So you weren't married to Jamise's father.

21 A No. I was not married to her father, only [REDACTED] victim 3 s
22 father.

23 Q So you were a single parent at some point.

24 A Yes.

25 Q And I believe you testified earlier that you were a

RAYMOND OLSZEWSKI

1 victim of domestic violence with [victim 3] father.

2 A Yes.

3 Q And [victim 3] witnessed that domestic violence?

4 A It wasn't so much as she witnessed it, she was in the
5 household with me, she never saw her father hit me.

6 Q Okay. So she didn't get any counseling for that either
7 then.

8 A No. I left.

9 Q Okay. And did you receive any counseling for it?

10 A No.

11 Q I had a conversation with [victim 3] yesterday and I'm
12 sure you were here when we talked about you disciplining
13 Jamise, do you recall that?

14 A Yes.

15 Q And that she had witnessed you disciplining Jamise and
16 the subject was about boys, do you recall that?

17 A Yes.

18 Q Is that true?

19 A Yes.

20 Q How old was Jamise then?

21 A Jamise was 16.

22 Q What was the circumstances surrounding that?

23 A It's wasn't solely on boys.

24 Q Okay.

25 A There were other issues dealing with that so I

RAYMOND OLSZEWSKI

- 1 disciplined her on that.
- 2 Q How did you discipline her?
- 3 A I spanked her.
- 4 Q How did you spank her?
- 5 A With her clothes on and with a belt.
- 6 Q Did she have marks?
- 7 A No, she did not.
- 8 Q Okay. But [victim 3] saw this.
- 9 A No, [victim 3] did not see me spanking Jamise.
- 10 Q Was she home?
- 11 A Jamise was in another room when I was disciplining her.
- 12 Q But she heard it?
- 13 A Who?
- 14 Q [victim 3].
- 15 A Was she hurting?
- 16 Q She heard, I'm sorry. She heard. She heard you
- 17 spanking your 16-year-old daughter about boys and other
- 18 matters.
- 19 A She probably did.
- 20 Q Okay.
- 21 A I mean, she was in the house.
- 22 Q Was David Carmichael aware that you had disciplined
- 23 your 16 year old about boys and other matters if you know?
- 24 A I don't know.
- 25 Q Okay. Now, Ms. [REDACTED] you said -- Ms. Campbell asked

RAYMOND OLSZEWSKI

1 you as she said before this there was never any reason to
2 fear having your children around David Carmichael. Do you
3 remember she asked you that?

4 A Yes.

5 Q And you said that there wasn't, right?

6 A Yes.

7 Q Is that correct?

8 A Yes.

9 Q And you had been married to Patrick Robinson at least
10 since July 2009; is that right?

11 A Yes.

12 Q And Patrick Robinson and Mr. Carmichael were extremely
13 close friends, correct?

14 A I don't know that they were extremely close friends. I
15 met David through Patrick. I just know they used to go to
16 church together.

17 Q At Bible Way Piedmont.

18 A Yes.

19 Q And were you aware or did Mr. Robinson ever make you
20 aware that there were allegations with two girls at Bible
21 Way Piedmont involving David Carmichael?

22 A Yes. And David Carmichael also told me himself.

23 Q That there were allegations.

24 A Yes. And he swore up and down it wasn't true, he
25 denied it all.

RAYMOND OLSZEWSKI

1 Q And you believed him?

2 A I did, yeah. He said the charges were dropped against
3 him, so --

4 Q But despite the allegations that he had touched two
5 young girls you still had no fear of him being around your
6 two girls; is that correct?

7 A I had fear, I didn't let my guard down. I never left
8 my kids alone with him.

9 Q You had fear over allegations?

10 A I had fear, I didn't fear him.

11 Q Yes, ma'am.

12 A I did not let my guard down, knowing what I know and he
13 is saying that he did not do it I still had my guard up
14 against him.

15 Q Would you agree that Patrick Robinson did not have any
16 fear either?

17 A I don't think he did.

18 Q Okay. Because, in fact, David Carmichael went on
19 family trips with you all, correct?

20 A Correct.

21 Q Where had you all gone?

22 A We went down to Myrtle Beach and we had a Christmas
23 gathering at the Hampton Inn.

24 Q Was that overnight?

25 A Yes, it was a weekend.

RAYMOND OLSZEWSKI

- 1 Q Where else?
- 2 A He went on several trips with us to -- I think it
- 3 was -- yeah, one of my family reunions, and he went with us
- 4 to one of Patrick's family reunions.
- 5 Q So y'all were pretty close?
- 6 A Yeah.
- 7 Q Okay. Y'all trusted him, he trusted you, right?
- 8 A Uh-huh.
- 9 Q Is that yes?
- 10 A Yes.
- 11 Q Okay. Ms. [REDACTED] would you say that you have a short
- 12 temper?
- 13 A It depends on what the situation is, yeah.
- 14 Q What caused you to quote/unquote "go off?"
- 15 A Yeah. If somebody hurt my kids or tried to hurt me,
- 16 yes.
- 17 Q If you found out that someone hurt your kids or if
- 18 you're told that someone hurt your kids you would?
- 19 A Yes. And if I witnessed it, yeah.
- 20 Q Of course if you witnessed it.
- 21 A Uh-huh.
- 22 Q How about if you are upset with your child about
- 23 something that they did wrong, would your temper get riled
- 24 up then?
- 25 A No.

RAYMOND OLSZEWSKI

1 Q Okay. When it comes to your children, I'm sure you
2 tell them at a very early age if they are being touched by
3 someone regardless of who it is you want them to tell you,
4 right?

5 A I tell all my kids that no matter who it is.

6 Q At what age did you start telling them that?

7 A I think when they was about between four and five.

8 Q Okay. You think that's an appropriate age to tell them
9 that, right?

10 A Yes.

11 Q And you would expect them to do that, wouldn't you?

12 A Yes.

13 Q You would definitely expect them not try to protect
14 that person who did that, correct?

15 A Correct.

16 Q Regardless of how close of a relationship they have
17 with that person, correct?

18 A Correct.

19 Q Even if they were afraid of that person you want them
20 to tell you, correct?

21 A Correct.

22 Q Tell anyone.

23 A Correct.

24 Q That is in your mind proper parenting, right?

25 A Right.

RAYMOND OLSZEWSKI

1 Q We are to protect our children at all times, correct?

2 A Correct.

3 Q We are not, however, to believe everything that our
4 children tell us, correct?

5 A Correct.

6 Q But when your daughter tells you that she was touched
7 by David your immediate reaction, especially since he is
8 there, is to rip him apart; is that right?

9 A That's right.

10 Q You don't go and question her about it, specifics, in
11 what way. All she said was, "David touched me on the way
12 home," and you took off. Actually you came out of your
13 shoes and took off.

14 A That's right.

15 Q And when you did that you were held back by Ms. Robin
16 you testified and another lady, the two people that held you
17 back, right?

18 A Yes.

19 Q Did they move you out of the church at that point or
20 were you still in the lobby area?

21 A I was still in the lobby area.

22 Q Okay. And then David Carmichael -- obviously there is
23 a commotion, there is noise, I'm sure you're not quiet,
24 right?

25 A No.

RAYMOND OLSZEWSKI

1 Q Do you remember some of the language that you used in
2 church?

3 A Ain't no telling.

4 Q Possibly, "What the hell?"

5 A No, "I'm going to kill him."

6 Q Okay. You didn't say who him was, you just said, "I'm
7 going to kill him."

8 A Yeah.

9 Q Did you ask for your husband?

10 A I don't know, I can't remember.

11 Q Okay. But David Carmichael comes in the lobby area or
12 -- when did you first see him? Were you outside or --

13 A They moved me to the other side because there's an
14 opening here and then there's a hallway on the other side,
15 there's a door out front where the choir is at, he came out
16 of the door at the back and came down the hall but I was all
17 the way out front with Ms. Robin, Angela and Larissa, and he
18 was coming down the hall towards us, and they was telling
19 him to, "go back, go back, don't come."

20 Q Okay. But you didn't obviously hear him saying,
21 "What's going on?"

22 A Yes.

23 Q Did you hear him say, "What's wrong with Little Mama?"

24 A I can't recall.

25 Q Okay. Who is Little Mama?

RAYMOND OLSZEWSKI

- 1 A That's what the pastor calls me.
- 2 Q That's your nickname?
- 3 A Yeah.
- 4 Q That's what David calls you, too.
- 5 A I believe so, yes.
- 6 Q Other people called you Little Mama, right?
- 7 A No. That's just what Patrick calls me, he decided he
- 8 wanted to call me that.
- 9 Q Did you tell him not to call you that?
- 10 A No.
- 11 Q Okay. So David Carmichael is not running away from
- 12 you, right?
- 13 A No, he's not.
- 14 Q He's actually walking toward you all, right?
- 15 A Yes.
- 16 Q You are visibly upset, right?
- 17 A Yes.
- 18 Q And he has a concern for you, correct?
- 19 A He probably had a concern for himself because he knew
- 20 what was going on.
- 21 Q Did he have a concern for you?
- 22 A No, I don't think he did.
- 23 Q You say he had a concern for himself. He didn't leave,
- 24 right?
- 25 A No.

RAYMOND OLSZEWSKI

1 Q He didn't fail to come to church that next morning,
2 right?

3 A But he failed to look me in my face when he saw me that
4 morning.

5 Q Now, about that. You have Ms. Robin by you, you have
6 some other lady by you, you're trying to get to him, you're
7 making comments that you're going to kill him and you
8 remember that he did not look you in your eye?

9 A This is before all of this happened. I was in the
10 church, he was in the church, he was coming towards me to
11 walk to the back when we was in the church and I smiled at
12 him, he refused to look me in my face, he looked straight
13 ahead. He never spoke to me that morning. I tried to get
14 his attention and he did not speak to me.

15 Q You don't know what was going on with him that morning,
16 do you?

17 A Hey, he would do it any other time. I just saw him
18 like a day later.

19 Q A day earlier? Yes, ma'am.

20 A Yeah.

21 Q Was he interacting with Patrick at that time? I know
22 they were doing music.

23 A I can't recall.

24 Q So you don't know if he looked Patrick in the eye --

25 A No.

RAYMOND OLSZEWSKI

- 1 Q -- that he had been riding with all day the day before.
- 2 A No.
- 3 Q And you said he came out several times, right?
- 4 A Yes.
- 5 Q Despite people telling him, "Just stay back. Just stay
- 6 back."
- 7 A Yes.
- 8 Q But he didn't look at you in the eye all day, all
- 9 morning, I mean.
- 10 A No.
- 11 Q Now, you would -- you said the first time you heard that
- 12 your daughter had been talking to some boys was when I said
- 13 that to the jury on the first day of trial.
- 14 A Yes.
- 15 Q So your daughter had not told you she had been talking
- 16 to boys.
- 17 A No.
- 18 Q And obviously David had not told you she had been
- 19 talking to boys.
- 20 A No, he did not.
- 21 Q But you heard her admit that on yesterday, correct?
- 22 A Yes.
- 23 Q Where she talked to some boys?
- 24 A Yes.
- 25 Q And according to her they were 15 years old.

RAYMOND OLSZEWSKI

1 A Correct.

2 Q Okay. You don't have a problem with her talking to
3 15-year-old boys at 13?

4 A No. I mean, I don't see no problem with that.

5 Q Do you have a problem with her talking to 18 and
6 19-year-old men?

7 A Yes.

8 MR. SHADD: Thank you, that's all I have.

9 THE COURT: Anymore redirect?

10 MS. CAMPBELL: No, sir.

11 THE COURT: You may step down, thank you, ma'am. The
12 State may call its next witness.

13 MS. SIMPSON: The State calls Patrick Robinson.

14 The witness, PATRICK ROBINSON, was first duly
15 sworn, testified as follows:

16 THE COURT: Sir, once you're seated please state your
17 name.

18 THE WITNESS: My name is Patrick Robinson, Sr.

19 THE COURT: Ms. Simpson, you're witness.

20 MS. SIMPSON: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. SIMPSON:

23 Q Mr. Robinson, how old are you?

24 A I'm forty-eight.

25 Q And we just heard Cynthia is your wife.

PATRICK ROBINSON

- 1 A Yes.
- 2 Q Do you have any other children?
- 3 A Yes. I have three kids by my first wife, I have two
- 4 girls and a son.
- 5 Q And are you from Columbia?
- 6 A No, I am not.
- 7 Q Where are you from?
- 8 A I am originally from Winston-Salem, North Carolina.
- 9 Q And how long have you been living in Columbia?
- 10 A I moved here in 1991.
- 11 Q So for awhile.
- 12 A For awhile.
- 13 Q Are you working?
- 14 A Yes, I am.
- 15 Q What are you doing?
- 16 A I am a professional driver, I drive for Daimler
- 17 Chrysler.
- 18 Q And you're actually **victim 3** stepfather, correct?
- 19 A Yes, I am.
- 20 Q How long have you known **victim 3**
- 21 A I met **victim 3** mother in 2007, the early part of 2007
- 22 and we began to form a relationship.
- 23 Q And can you describe a little bit for the jury her
- 24 personality.
- 25 A **victim 3**

PATRICK ROBINSON

1 Q Uh-huh.

2 A [victim 3] is a -- [victim 3] is a good child. Like any
3 other child, she has her moments, you know, she gets lazy,
4 you have to get on her sometimes for this, that and the
5 other. Overall she is a good child and she's honest.

6 Q Does she do pretty well in school?

7 A Yes, she does well in school. We've had no discipline
8 problems with her as far as school is concerned. We never
9 had to go to school for anything negative about her at all
10 at school.

11 Q So just positive stuff.

12 A Yes, just positive.

13 Q And do you all attend church?

14 A Yes, we do.

15 Q Where?

16 A We currently go to Grace Christian Church.

17 Q How long have you been a member of Grace Christian?

18 A I started going there 2009. I started playing
19 percussions there periodically twice a month and then I
20 gradually started playing more and then my family started
21 coming and we finally joined. We joined in 2009, I would
22 say in the middle part of 2009, maybe.

23 Q And were you attending church before Grace Christian?

24 A Yes, I was. I was going to Zion Chapel, I was playing
25 at Zion Chapel.

PATRICK ROBINSON

1 Q So you have been pretty involved in music at the
2 church.

3 A Pretty much most of my life, yes.

4 Q Do you know David? Or tell us how you know David.

5 A I know David -- I started going to Bible Way through a
6 friend named Ben Cooper. Ben Cooper and I were friends and
7 he was a member of this church and he invited me to come and
8 I started going and eventually I ended up joining there.

9 Q And how long were you a member there?

10 A I think to 2006. I want to say from 2002 probably to
11 2006.

12 Q And that's where you met David?

13 A Yes, that's where I met David.

14 Q What did you call him?

15 A Once I -- what I eventually and everybody called him
16 was Junior. I was introduced to him as David but I
17 eventually started calling him Junior.

18 Q And I guess your friendship progressed, right?

19 A Yes. I became a member of Bible Way, got involved with
20 the choir, which he was an assistant director at that time
21 and he was heavily involved in the choir because he taught
22 parts, he was real good at teaching parts and we became
23 friends.

24 Q And closer I guess to 2010, 2011, would y'all hang out
25 pretty frequently?

PATRICK ROBINSON

1 A Yes. I had lost contact with him prior to leaving
2 Bible Way and I started going to Zion Chapel and so I didn't
3 see him during that period of time. But somehow we met, I
4 forgot where we met, and he told me he was going to Grace
5 Christian Church and that he was going to be over the music
6 there and he was trying to put a band together and asked me
7 if I wanted to play percussions. I was like, "Well, I'm
8 already obligated at Zion Chapel but I'll tell you what I'll
9 do, I just will start off playing one or two Sundays a
10 month." He said, "Okay. No problem." So that's what I
11 started doing.

12 Q So he kind of lead you to Grace Christian.

13 A Well, he introduced me there, yeah.

14 Q Okay.

15 A The fellowship that I felt there I felt like this was
16 home for me at that church.

17 Q And you met Cynthia around that same time, correct?

18 A 2007.

19 Q How often would you all do things outside the church?

20 A You mean David and I?

21 Q Yes.

22 A Once my family started going David would come over to
23 our house I would say almost twice a month for dinner. My
24 wife loves to cook and he loves to eat obviously, so she
25 would always cook enough for everybody, almost cook more

PATRICK ROBINSON

1 than enough so he would come over for dinner. He started
2 coming over for dinner and getting acquainted with Cynthia
3 and her kids.

4 Q So he would actually hang out with your whole family,
5 not just you?

6 A Pretty much, yeah.

7 Q And you were comfortable having him around your family.

8 A Yes.

9 Q Would you leave him alone with your children?

10 A He would -- if he was alone, if we had went to a store
11 or we didn't go -- let's put it this way, he was never there
12 a long period of time as like baby-sitting.

13 Q Okay.

14 A Her oldest sister would be there, and she had an older
15 brother there as well.

16 Q So the older kids would be there as well.

17 A Yes.

18 Q And on these vacations, would your family be around the
19 same kind of deal, the other kids would be there or you
20 would be present?

21 A Yes.

22 Q Do you know some of the other members of his family?

23 A Yes, I do. I got acquainted with -- because he had
24 quite a few family members going to Bible Way when I was
25 attending there, he had several aunts, uncles, sister, his

PATRICK ROBINSON

1 mother, cousins, I took it that they grew up in the church.
2 It was a family oriented church so it was a lot of family
3 there at Bible Way.

4 Q I want to turn your attention to August 27th/28th or
5 the 27th, the day you went to North Carolina. Can you just
6 tell us about that?

7 A Okay. I worked -- my shift ends in the a.m. hours, so
8 I go to work in the evening and my shift goes over to the
9 third shift, early a.m. hours, sometimes like 4:00 or 5:00
10 in the morning. And my father lives in Denver, North
11 Carolina, his wife's family has what they called a tent
12 meeting, it's something they do every year.

13 Q Tent meeting?

14 A Tent meeting.

15 Q Tent meeting.

16 A It's dated back over 100 years. It's tradition where
17 the sharecroppers used to come in and have a celebration for
18 the earnings that they made for the year so it's a
19 tradition. Anyway, I know it was going on that Saturday,
20 had a big fish fry, so Cynthia couldn't go because she was
21 working and I asked her brother, Tye, to go with me and he
22 was like -- well, he couldn't go either. So I called Junior
23 I said, "Hey man, what are you doing?" He said, "I ain't
24 doing nothing." I said, "Why don't you ride up with me to
25 North Carolina?" I said, "What I really need you to do is

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1 drive for me because I'm tired but I'll drive back." He
2 said. "Okay. Cool, no problem." So **victim 3** she's my
3 little rider partner, she always wants to go with me, she
4 said, "I want to go," the other kids never wanted to go. I
5 said, "Okay, no problem." I guess we left around 3:00,
6 2:00. Somewhere between 2:00 and 3:00 I went over there and
7 picked Junior up.

8 Q What were you driving?

9 A We was driving my wife's car, it's a 2008 Impala. She
10 said six but it's actually a 2008 Chevy Impala.

11 Q And so once you picked Junior up it was you, the
12 defendant and **victim 3**

13 A Yes.

14 Q Where was everybody in the car?

15 A Junior drove, I was in the passenger's seat and
16 **victim 3** was in the back seat.

17 Q And then y'all just left straight to North Carolina?

18 A Went straight to North Carolina.

19 Q Once you got there what did you do?

20 A We went to my -- parked at my father's house and walked
21 to his brother-in-law's house which is a few houses down the
22 street and we had the main cookout there. We stayed there a
23 little while and we ate, then we left and went to the
24 campground, that's where all of the tents are, they call
25 them tents. And we, you know, was sharing with Junior

PATRICK ROBINSON

1 giving him the history of it, he was like, "Man, this is
2 really nice," just how they all come together, something
3 that they have done for years. We went to certain people's
4 tents and we're fellowshiping and just having a good time.

5 Q And so there weren't any problems.

6 A No, no problems.

7 Q Y'all were having a great time.

8 A We was having a great time. And the hour started
9 getting late, I guess it's about 10:00, I told my dad, I was
10 like, "Look, Man, we've got to go, I got to get on down the
11 road, we've got church and I'm tired." So as we proceeded
12 to go Junior said, "Do you want me to drive?" I said, "No,
13 I got it, Man. I told you I would drive back, I'm good."
14 He said, "Are you sure?" I said, "I'm positive, I got it."
15 So I got in the driver's seat, Junior got in the passenger's
16 seat, victim 3 got in the backseat and we proceeded -- you
17 have to go down Highway 16 before you get to 77 which is
18 approximately about 30 miles.

19 Q So off the main interstate.

20 A Right. So by the time I got to 77, which is right in
21 Charlotte, Junior said, "Are you good?" And I said, "I'm
22 good, I got some music so I'm good." So everybody was still
23 awake at that time.

24 Q So everybody is awake.

25 A Yes.

PATRICK ROBINSON

1 Q Music is on.

2 A Yes.

3 Q Was it cold outside? How was the weather? Did you
4 have --

5 A It was in August, it wasn't real cold. [victim 3] -- I
6 had the window down and [victim 3] she said she was cold so I
7 rolled up all the windows. I had mine cranked just a little
8 bit so I can have the air. And so I proceeded down 77 and
9 everybody got quiet and I looked over there and Junior had
10 the seat leaning back like this, you know, had his eyes
11 closed.

12 Q And this was after Charlotte kind of --

13 A Yes.

14 Q Past Charlotte on the way in to Columbia?

15 A Yes. I was on 77 then.

16 Q Uh-huh.

17 A As a matter of fact I had crossed over into South
18 Carolina. And so, you know, it's late, my windows are
19 tinted, of course it's dark in my car so everybody is quiet.
20 So I'm just trying to keep, you know, keep concentrating on
21 driving because, you know, I'm tired, try not to get sleepy.

22 Q And just the music keeps you up.

23 A Yeah. And I didn't have no conversation going so I
24 just had the music going.

25 Q Did you observe anything that you thought out of the

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1 ordinary or odd during that trip?

2 A No, nothing out of the ordinary? Periodically I'd look
3 over there at Junior and he just had his seat laid back and
4 had his head back, had his eyes closed, so I assumed he was
5 sleeping.

6 Q So he wasn't talking to you.

7 A No.

8 Q There was no conversation.

9 A No.

10 Q Once he found out that you were okay he said, I'm going
11 to bed.

12 A Yeah.

13 Q This was almost I guess a year ago now, let me do the
14 math. Is he the same size as he was back then?

15 A No.

16 Q Not as far as --

17 A He has lost some weight.

18 Q He has lost some weight. So he was a litter bigger
19 back then?

20 A Yeah, he's lost weight since then.

21 Q Tell us about your car. Was it a big car or --

22 A No, it's not -- the design of the new Impala is
23 smaller, the interior is smaller, it's not as big. I have
24 an '02 Impala as well. The '02 Impala, the interior, the
25 inside, it's a lot -- there's more leg room. But the '08

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1 they got a more European style so it's not a lot of room on
2 the inside, it's not real roomy on the inside and there's
3 not much leg room in the back.

4 Q So when he leans his seat back it's one of those cars
5 where you're almost in the back.

6 MR. SHADD: Objection, leading, Your Honor.

7 MS. SIMPSON: I'll rephrase it.

8 THE COURT: I'll allow her to do so.

9 Q How is the seat in the car?

10 A The seats are very close together. If you lean the
11 seat back you could practically be in the back seat.

12 Q And as y'all get closer to Columbia, what happens next?

13 A I'm driving, like I said, everybody is quiet. I look
14 over at Junior periodically and he appears to be asleep. As
15 I get closer to the Decker -- I guess the Decker exit he
16 appears to wake up.

17 Q Okay. So this is Decker Boulevard in Columbia?

18 A Yes, Decker Boulevard in Columbia. I'm getting off the
19 Decker exit to go to Percival because I live off of Decker,
20 so he appears to wake up once I'm getting off the exit.

21 Q Okay. But not before then?

22 A Not before then.

23 Q Where did you go once you got off the exit?

24 A I went to the Shell service station right there on
25 Percival Road, I got some gas, I got gas. I don't recall

PATRICK ROBINSON

1 anybody getting out of the car but me at that station.

2 Q And about how late is it at this point?

3 A Oh, I looked at the clock, I think it was about 12:15.

4 Because it takes about -- that ride is about this two hours
5 or two hours and 15 minutes tops, it's only about two hours
6 and 15 minutes depending on how you drive.

7 Q Depends on the speed limit you go?

8 A No, it's not that far. It's only 30 miles north of
9 Charlotte on Highway 16.

10 Q And where did you go after the Shell?

11 A We stopped at the Spinx. I can't remember if Jamise
12 called me or **victim 3** I know we had to get an Arizona
13 because Jamise likes Arizona like I do. So we stopped at
14 the Spinx because David wanted to get him something to eat,
15 so him and I got out of the car, **victim 3** was still in the
16 car, him and I got out of the car first and **victim 3** came in
17 the store. I didn't purchase anything, David did, he got
18 some food and whatever **victim 3** got.

19 Q And he just took care of it all?

20 A Yes.

21 Q And at this point there is nothing odd or did you
22 observe anything?

23 A No, nothing out of the ordinary. **victim 3** didn't say
24 much, she wasn't talkative, she didn't say much at all. But
25 when we left she got in the front seat and he got in the

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1 back. So our apartment we was living in was right around
2 the corner so I took her home. I don't know if he had left
3 some things -- no, he didn't have anything at the house, I
4 took her home. I told her mama, "Okay, she's back. I'm
5 taking David home."

6 Q So at this point David doesn't stay with you --

7 A No, I took him home.

8 Q -- he goes to his house.

9 A Yeah.

10 Q Where was he living at the time?

11 A Some apartments off of Covenant Road.

12 Q Okay. But you were driving and you dropped him off.

13 A Yes.

14 Q Did you go home after you dropped him off?

15 A Yes, I went home.

16 Q Okay. And what happened the next day?

17 A The next day -- I got a text from David that morning
18 saying, "I don't want to hear nothing about no hangover," or
19 something like that.

20 Q Okay. Y'all had been drinking a little bit?

21 A Yeah, we had a beer.

22 Q Okay.

23 A Yeah, we did. I was like, "LOL, please," something
24 like that, "I'll see you at church." So we went to church.
25 They went ahead -- I drove -- we drove separate cars.

PATRICK ROBINSON

1 Q Okay.

2 A We drove separate cars that morning.

3 Q And you said we, who was with you?

4 A I went to church by myself in my car.

5 Q Okay.

6 A Because sometimes I have to stay after church and

7 Cynthia would leave, she doesn't want to wait on me. All

8 the kids are in the car with Cynthia and I drove my car and

9 I went to church.

10 Q And did you notice anything that morning or was

11 everything normal?

12 A Everything was normal, nothing out of the ordinary.

13 Q And when you got to church what did you do?

14 A I met up -- well -- all the musicians meet and the

15 praise team, we assemble, we pray and we take our positions,

16 that's where we are.

17 Q And at some point did something happen?

18 A Yes. During the service we had sang a few songs and I

19 noticed when **victim 3** went out into the bathroom but I

20 didn't know what was wrong with her, and I saw her friend go

21 behind her, I thought they may have had a dispute or

22 something or her and Christy had done fell out. I thought,

23 what in the world, because I heard like a scream. I thought

24 what in the world, I thought her and Christy may have had a

25 falling out. So I'm just sitting there and then I notice

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1 her mother left. I think -- yeah, I saw Christy come and
2 tap her on the shoulder and her mother left. So I'm still
3 sitting in there and I could hear some voices, you know,
4 getting a little loud. I'm like what -- I still don't know
5 what was going on.

6 Q And are you busy playing music?

7 A No. I'm just sitting there at this time.

8 Q Okay.

9 A I'm not playing then. And Ms. Jefferson, she came and
10 got me, she said, "Patrick, you need to come outside." So I
11 went out the side door and down the hall, outside, I saw
12 Cynthia, I saw **victim 3** I saw Ms. Thompson. Natasha and
13 **victim 3** was whaling and crying like crazy, her mom was
14 crying like, "What in the world?" And she said the same
15 thing that she said to her mom **victim 3** said to me, she
16 said, "Patrick, I'm sorry, I'm sorry."

17 Q Did you ask her what she --

18 A Excuse me. She said, "Patrick, I'm sorry, I'm sorry I
19 didn't tell you." I said, "Tell me what?" That's when she
20 told me. And like Cynthia, I was like -- my heart was just
21 numb. I was like just sour because I didn't want to believe
22 what she told me. I'm like, "When?" She told me, "In the
23 car." I said, "In the car?" I was like -- I was just in
24 disbelief.

25 Q What were you thinking when you found out that it

PATRICK ROBINSON

1 happened while you were there?

2 MR. SHADD: Objection to what he was thinking,
3 relevance.

4 MS. SIMPSON: Your Honor, I think it goes to his
5 behavior and how he reacts next.

6 THE COURT: I'll allow him to testify concerning his
7 state of mind.

8 A I was furious. I was furious. You know, I was
9 furious. Despite what I heard and -- I was furious that he
10 did that, that he would actually betray me like that. I
11 just felt like that was the ultimate betrayal. Because I
12 took him to my home, I treated him more than a friend, I
13 treated him like a brother and I felt -- I really felt like
14 he was a brother to me, a younger brother to me and that's
15 how I treated him. It was just -- it was like a knife in
16 the heart that he would do that.

17 Q So what did you do when everybody was out there?

18 A I was so furious I just started crying. Because I saw
19 victim3 was upset, I saw she was so upset and her mom is
20 upset. I just felt really bad that that happened,
21 especially where it happened at, right under my nose. I was
22 like, wow, unbelievable.

23 Q Did you blame yourself a little bit?

24 A Sort of/kind of, yeah, a little bit.

25 Q At some point everybody is upset and outside, when do

PATRICK ROBINSON

1 the circumstances change? What do you all do?

2 A I think my pastor came out and spoke to me and he said,
3 "Man, if you can just handle this quietly, don't interrupt.
4 You know, we don't -- don't do no more than what's already
5 been done."

6 Q Okay.

7 A Because he knew we were upset. Cynthia went on home
8 and I told him, "Okay. I understand," and I went home. I
9 think by the time I got there Cynthia had already called
10 Richland County.

11 Q So she had already called 911 before you got home.

12 A Yes.

13 Q What did y'all do when you got home?

14 A We were just sitting in the living room just pretty
15 much just shaking our head.

16 Q And were you there when law enforcement came by and
17 made contact?

18 A Yes, I was there.

19 Q About what time was this? I know church started at
20 10:45, 11:00.

21 A I want to say probably -- I want to say in the time
22 frame between maybe one and two.

23 Q Pretty early?

24 A Yeah. Because we left church -- church was still going
25 on so we left I guess around 12:30, so the timeframe must

PATRICK ROBINSON

1 have been about between one and two, I think.

2 Q I want to back up just a little bit. While you were
3 outside or while any of this was going on did you ever see
4 Junior?

5 A No, I did not, I didn't see him.

6 Q Okay.

7 A I didn't see him.

8 Q What was your focus on?

9 A victim 3

10 Q At some point did you receive any calls from him? Was
11 he trying to call you?

12 A Let me see, text, text message. He didn't call me, he
13 sent me a text message.

14 Q So he texted you?

15 A Yes, he texted me.

16 Q I know it's been awhile, but do you remember, was it
17 early, was it late in the day?

18 A I want to say before three, between three and four
19 maybe.

20 Q And what was he texting you about?

21 A He said, "Hey man," something to the affect is
22 everything all right or any further -- "Hey man, is Little
23 Mama all right?"

24 Q And who is Little Mama?

25 A That's my name that I gave Cynthia, that's what I call

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1 her, I call her Little Mama.

2 Q Okay. Did you actually save those text messages in
3 your phone?

4 A Yes, I did.

5 Q And were you requested by law enforcement to retrieve
6 those?

7 A Yes, I was.

8 MR. SHADD: May we approach, Your Honor?

9 THE COURT: You may.

10 (A bench conference was held.)

11 Q I'm going to show you what's been marked as State's
12 Exhibit 6. Do you recognize that?

13 A Yes.

14 Q And what are those? What is that document?

15 A Those are text messages between David and myself.

16 MS. SIMPSON: Your Honor, at this time the State would
17 introduce State's Exhibit 6 into evidence.

18 THE COURT: Any objection?

19 MR. SHADD: No objection to the redacted version, Your
20 Honor.

21 THE COURT: All right. As to the redacted version
22 there is no objection. Has it been marked?

23 MS. SIMPSON: State's 6.

24 THE COURT: All right. As marked.

25 (The text messages were received as State's 6.)

PATRICK ROBINSON

1 Q And read for us the line of texts back and forth
2 between you and David.

3 A Okay. It said -- do you want to go from the beginning
4 or just that evening?

5 Q You can go from the beginning.

6 A This is early in the morning. "Hey man, you coming to
7 the musician? It's on down. "Huh?" I misspelled it's on
8 now. He said, "Huh? LOL, I'm on the way. Okay. Get it
9 up. I don't want to hear nothing about you have a
10 headache." I know, right? "LOL." And he texted back,
11 "LOL." And this is the one that came in in the evening
12 after church.

13 Q And you said came in. Was that text from him to you?

14 A Yes. This text was from him to me after we had all
15 left church.

16 Q What time is the text?

17 A 16:23. What's that, 4:00?

18 Q Yeah.

19 A 16:23?

20 Q And what does it say?

21 A "Hey man, is everything, okay? Little didn't look
22 good," he left off the mama. I replied. "The best thing
23 for you to do is not to call or text me or Little Mama
24 anymore because you know what you did, you betrayed us." He
25 said, "What? How, man? We were just together yesterday."

PATRICK ROBINSON

1 I said, "You're going to pay for what you did." He said,
2 "Man, I didn't do anything to **victim 3**, I was asleep in the
3 front. I wouldn't do nothing like that, I promise on
4 everything I love." And I replied, "Go to hell you lying
5 bastard."

6 Q And these were received afterwards, correct?

7 A Yes.

8 Q Did you speak to him that day or did he stop texting
9 after that?

10 A I didn't hear from him no more, I didn't talk to him no
11 more.

12 Q And is little -- you said Little Mama, is there any
13 doubt who he was referring to earlier in the text messages?

14 A Apparently he was talking about Mama.

15 Q So he was referring to Cynthia?

16 A Cynthia, yes.

17 Q And then he just brought up **victim 3**

18 A Exactly, he was referring to Little Mama.

19 Q And after reporting to the police, were you cooperative
20 with them?

21 A Yes, I was.

22 Q Did you actually call them several times on your own?

23 A Yes, I did. Once I found out who the investigator was
24 I constantly called -- I called periodically just to see
25 where the case was and what was going on, I didn't want this

PATRICK ROBINSON

1 to be swept under the rug. I knew prior to -- because of
2 what was going on prior to that, I didn't want this to be
3 one of those cases that was going to be swept under the rug.

4 MR. SHADD: Your Honor, we need to approach on that if
5 I may.

6 THE COURT: You may.

7 (WHEREUPON, a bench conference was held.)

8 THE COURT: You may proceed, Ms. Simpson.

9 MS. SIMPSON: Thank you, Your Honor.

10 Q Did you actually speak with an investigator and tell
11 him what happened, what you knew?

12 A Yes, I did.

13 Q Investigator Carter?

14 A Yes.

15 Q About the case?

16 A Yes.

17 Q And after all this happened, did you notice any changes
18 in victim 3 behavior?

19 A She was irritable. She would change her clothes for
20 nothing, no reason, where she wouldn't do it before. She
21 would sleep a lot. She just has some really, you know, mood
22 swings that she normally didn't have before, mood swings.
23 Mood swings.

24 MS. SIMPSON: Beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

PATRICK ROBINSON

1 (Pause.)

2 MS. SIMPSON: Thank you, Mr. Robinson.

3 THE COURT: Mr. Shadd, you're witness.

4 CROSS EXAMINATION

5 BY MR. SHADD:

6 Q Mr. Robinson, how long have you known David Carmichael?

7 A I met him -- it had to be early 2002, I would say 2002,
8 2003, maybe when I started going to Bible Way, early two
9 thousands.

10 Q So you've known him for about ten years?

11 A Yes, we could say that. Eight to ten years, yeah.

12 Q And you said you treated him like a brother.

13 A Yes, I did.

14 Q A younger brother.

15 A Yes, I did.

16 Q You're 48?

17 A Yes, I'm 48.

18 Q And he is how old?

19 A He will be 30 on his birthday.

20 Q So you have 18 years over him.

21 A Yes, I do.

22 Q You took him into your home to eat.

23 A Yes.

24 Q Y'all went out socially.

25 A Yes.

PATRICK ROBINSON

1 Q Y'all played music together.

2 A Yes.

3 Q That was a passion of yours and is a passion of his,
4 correct?

5 A That's correct.

6 Q Now, you took him out on family trips, your family
7 reunion, your wife, Cynthia's, family reunion, down to
8 Myrtle Beach, all of that.

9 A He went to Myrtle Beach with us for Christmas, he went
10 to my wife's family reunion, it was in July I think it was.
11 And he also went with me to North Carolina on two occasions.

12 Q Let me just get to this now. Look at section 11. Do
13 you see it, how it's numbered?

14 A Yes.

15 Q Okay. I'm sorry. This one.

16 A Which one?

17 Q Yeah, eleven, that's from him to you?

18 A Uh-huh.

19 Q What time was that?

20 A It says 2:49, I looked at the wrong time, it's two --
21 2:49?

22 Q In the morning? A.M.?

23 A That can't be right.

24 Q Well, let's back up, let's go to number nine.

25 A Uh-huh.

PATRICK ROBINSON

1 Q Number nine is when he is saying -- this is after
2 church or is it still during church? I can't tell.

3 A This is 1:16. Okay. I'm looking at it now, that's
4 1:16, I looked at it wrong, I looked at 16:23, I was looking
5 at the seconds -- I was looking at the minutes and the
6 seconds so I read it wrong the first time. So it is
7 actually 1:16 when he sent that text message.

8 Q P.M. And he says what?

9 A "Hey Man, is everything, okay? Little didn't look
10 good."

11 Q This means Little Mama.

12 A Yes.

13 Q This is, of course, the commotion, coming out, wanting
14 to get at him, he keeps coming out even though they are
15 saying for him to stay back. They're saying -- and people
16 at this point obviously are knowing what the allegations
17 are, right?

18 A I don't know, sir, I can't answer that.

19 Q Well, you heard Robin Jefferson talk about it
20 yesterday, right?

21 MS. SIMPSON: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q Was Robin Jefferson with your wife who was visibly
24 upset?

25 A Yes. She testified that she was in the bathroom and

PATRICK ROBINSON

1 she overheard what [victim 3] said to her mother, yes.

2 Q Okay. And there was another lady who was with your
3 wife as well, correct?

4 A Yes, Larissa Thompson.

5 Q Okay. And Grace Church is not a huge church, right?

6 A No, it's not a huge church.

7 THE COURT: Mr. Shadd, you need to move back out and
8 ask your questions over here. You need to move back out and
9 ask your questions over here, I didn't grant permission for
10 you to approach the witness. You're standing behind him.
11 Thank you.

12 Q So what time was it again?

13 A It was 1:16. It was 1:16.

14 Q Okay. And he said, "Little didn't look good."

15 A Right.

16 Q Okay. And then the next thing is from you, right?

17 A Yes.

18 Q What time was that?

19 A It was at 2:48, I didn't respond right away, it was at
20 2:48. I said, "The best for you is not to call or text me
21 and Little Mama anymore because you know what you did, you
22 betrayed me."

23 Q And that's at what time?

24 A This is at 2:48.

25 Q Okay. And then he responds back to you?

PATRICK ROBINSON

1 A He responds back at 2:49, he says, "What? How, man?
2 We was just together yesterday."

3 Q This was at 2:49?

4 A Yes, sir.

5 Q And then when did you respond back to him, what time
6 was that?

7 A That looks like 1:12.

8 Q A.m., correct?

9 A No, it says p.m. I don't know how that -- it says p.m.
10 it says 1:12. I don't understand how this -- anyway.

11 Q So is this -- as far as you know is this in the correct
12 order?

13 A Yes, it is. I mean, I still -- I got the text messages
14 still in my phone if you want to see the original text
15 message, I still got it in my phone. Do you want to see
16 that?

17 Q Well, you done gave that to law enforcement --

18 A It's the same thing.

19 Q I understand it's the same thing but you're now telling
20 us that a comment that you made that you believe followed
21 this natural progression --

22 A Yes.

23 Q -- according to that timeframe, it's now -- it looks
24 like it's before the -- when he asked how Little was doing,
25 right?

PATRICK ROBINSON

1 A I'm looking at this and the time is -- the time -- the
2 sequence, the way they got time here is just scrambled up.
3 How that happened I have no idea, I didn't print this out.

4 Q Yes, sir. But at least at this point -- earlier when
5 you said, "Don't call me, don't call Little, you betrayed
6 us."

7 A Yes.

8 Q And you're him that he betrayed you and betrayed your
9 wife.

10 A Yes.

11 Q That was right after he said, "We were just together
12 yesterday."

13 A Yes.

14 Q Does that not tell you he is not -- don't know exactly
15 what you're talking about, but he always -- because y'all
16 were just together. Didn't he --

17 A I can't answer that, sir, for him.

18 Q But you responded in kind.

19 A I'm saying I can't answer that for him, I'm just
20 telling you what I can -- I can only say what I replied, I
21 can't speak for him.

22 Q When he tells that what kind of.

23 A He says, "What? How man? We was just together
24 yesterday."

25 Q Does that not sound like he's surprised on what is

PATRICK ROBINSON

1 going on?

2 A I guess you could say that.

3 Q And then you responded back to him. And read to us
4 what you said. And I know there's something blocked out
5 now.

6 A Yeah. It says, "You're going to pay for what you did."

7 Q You're going to pay for what you did. Did you say
8 anything else?

9 A Did I say anything else?

10 Q Without saying the part that's blocked out.

11 A Yeah, I did.

12 MR. SHADD: May I approach the witness, Your Honor?

13 THE COURT: You may.

14 A I did. This is what you're talking about, right?

15 Q Yes. But you didn't finish everything, don't read the
16 block part.

17 A I said you lying --

18 Q You saying you lying and then you called him a name?

19 A Yes, I did.

20 Q Well, we're not sure if that's the right time or not,
21 but what time is that?

22 A It says 1:12.

23 Q Okay. And then he responded back when? I mean, I'm
24 sorry --

25 A He responded back at 1:19, "Man, I didn't do anything

PATRICK ROBINSON

1 with Britt. I was sleeping in the front seat, I didn't do
2 nothing like that, I promise on everything I love."

3 Q Okay. And that is in response to, "You saying you know
4 what you did you lying "--

5 A Uh-huh.

6 Q -- and then you called him a name.

7 A Yes, sir.

8 MR. SHADD: May I approach, Your Honor?

9 THE COURT: You may.

10 MR. SHADD: Thank you. May I approach him again, Your
11 Honor?

12 THE COURT: Yes, you may.

13 Q I think we resolved it. Look about -- when you said it
14 was one something.

15 A Yes.

16 Q After that two something?

17 A Yes.

18 Q Go back to the two something, what day was that?

19 A 2:28 -- which one?

20 Q The one when you said -- well, let's go back. Let's go
21 back when he said, "How is Little doing," what day was that?

22 A It says 8-28-2011 at 1:16.

23 Q That was the church day, right?

24 A Yes.

25 Q That was that afternoon.

PATRICK ROBINSON

- 1 A Yes.
- 2 Q And you tell him what?
- 3 A He said, "Hey man, is everything, okay? Little Mama
4 didn't look good."
- 5 Q Okay. What is the next comment?
- 6 A I said, "The best thing to do is not call or text me or
7 Little Mama anymore because you know what you did, you
8 betrayed us."
- 9 Q What time is that?
- 10 A It says here at 2:48 at -- the date is 8-28-2011 at
11 2:48.
- 12 Q 2:48 p.m.?
- 13 A Yes.
- 14 Q That's the last conversation you had with him on that
15 day; isn't that correct?
- 16 A This is the last conversation I had with David through
17 this text message.
- 18 Q Yes, sir, on that day.
- 19 A On that day.
- 20 Q The next comment between you and him came from him,
21 correct?
- 22 A Yes.
- 23 Q What day was that, sir?
- 24 A It says, "What? How man? We just "--
- 25 Q I'm sorry, what day was that?

PATRICK ROBINSON

1 A Oh, that day was 8-28-2011.

2 Q Okay.

3 A That's what is written here, 8-28-2011.

4 Q And it says what?

5 A "How man? We was just together yesterday."

6 Q Okay. So that's the -- that's the last comment that he
7 gave to you on that day; is that right?

8 A Yes.

9 Q Because the next comment is on what day and what time?

10 A It says 9-01 which is September 1st, 2011 at 1:12 p.m.

11 Q Now, that's --

12 A But I know --

13 Q We got August 28th which is that day, we've got
14 August 29th and if I remember correctly from elementary
15 school August 31st is the last day.

16 A Yes.

17 Q So that's about four days in between, correct?

18 A That's right.

19 Q Then you make a comment to him, the comment you're
20 talking about where you said he was lying and called him a
21 name, right?

22 A Yes.

23 Q And then he responds to you some four days later and
24 says something about he was in the front seat asleep; is
25 that right?

PATRICK ROBINSON

- 1 A "Man, I didn't do anything to **victim 3**. I was asleep in
2 the front seat. I wouldn't do nothing like that. I promise
3 with everything I love."
- 4 Q And I believe you said your initial reactions were --
5 you were like, "Wow."
- 6 A Yes.
- 7 Q You were in disbelief?
- 8 A Yes.
- 9 Q You were thinking unbelievable, right?
- 10 A Unbelievable, yes.
- 11 Q Okay.
- 12 A Not **victim 3** was unbelievable but unbelievable that
13 that would happen, let me clarify.
- 14 Q You believed your stepdaughter.
- 15 A She had no reason to lie about that.
- 16 Q You believed -- what did you call her, your ride and
17 die partner?
- 18 A She was my ride and die partner, she rides with me all
19 the time.
- 20 Q Okay. I believe it was Natasha that was with your
21 wife.
- 22 A Yes, I think it was Natasha.
- 23 Q I just want to clarify some things for that night.
- 24 A Okay.
- 25 Q You heard me say that it was a three or four hour

PATRICK ROBINSON

1 drive.

2 A Yes, sir. It's not that long of a drive.

3 Q Okay.

4 A It's not.

5 Q But you heard victim 3 say that yesterday, right, that
6 it was three or four hours?

7 MS. SIMPSON: Objection, Your Honor, to pitting
8 witnesses.

9 MR. SHADD: I'm not pitting witnesses, I'm just asking
10 him if that is what she said.

11 THE COURT: Address the Court, please. Your fine, just
12 don't face counsel and address her, you're supposed to
13 address me. I'm going to ask you not to pit the
14 witnesses --

15 MR. SHADD: No, sir.

16 THE COURT: -- against each other. You can, of course,
17 ask him how long the drive was. Certainty you will have an
18 opportunity to argue what other witnesses may have said, but
19 I -- again, pitting witnesses against each other does not
20 generate a lot, so I'll sustain the objection.

21 MS. SIMPSON: Thank you.

22 THE COURT: I believe that's where the questioning was
23 going. You certainly have a right to ask about the drive
24 and how long it took that day and those kinds of things so
25 you may proceed in that fashion.

PATRICK ROBINSON

1 THE DEFENDANT: Yes, sir.

2 Q How long after you got on the road on the way back to
3 Columbia did they go to sleep?

4 A I would say by the time I got what we as truck drivers
5 call the Big Load, which is the interstate, I'm going to say
6 by the time I got on I-77 entering into Charlotte I would
7 say everyone began to go to sleep.

8 Q Were you aware if victim 3 ever woke up before you got
9 back in Columbia?

10 A No. I was not aware that she ever woke up.

11 Q You don't know if she played asleep or anything like
12 that.

13 A No.

14 Q You don't know if David Carmichael played off sleep.

15 A They all appeared to be asleep.

16 Q They left you driving by yourself.

17 A I'm used to it, I'm a driver. If I can't do nothing
18 else, I can drive.

19 Q Well, you couldn't drive that day because you asked him
20 because you were exhausted, right?

21 A I know. If I had to I would have, but if he could help
22 me out, that's why I drove back.

23 Q You had a beer you said before you left?

24 A Yeah.

25 Q Just one?

PATRICK ROBINSON

- 1 A Yeah, one or two.
- 2 Q All right, sir. But obviously you were okay to drive.
- 3 A Oh yeah, I was.
- 4 Q No issues?
- 5 A No issues.
- 6 Q Okay. You listened to music as you're driving.
- 7 A Yes.
- 8 Q You're focused on the road.
- 9 A Yes.
- 10 Q You see David sleeping.
- 11 A Appear to be sleeping, yes.
- 12 Q Okay. You keep saying appeared to be sleeping. Are
- 13 you saying that he was asleep or not?
- 14 A He appeared to be sleeping, that's all I can say.
- 15 Q [victim 3] appeared to be sleeping.
- 16 A That's what I said, everyone appeared to be sleeping.
- 17 Q He was turned towards the window at some point, wasn't
- 18 he? His head was turned towards the window.
- 19 A When I observed David he was leaning straight back like
- 20 this, he wasn't sitting like this.
- 21 Q Okay.
- 22 A Because like I said, if you ever see the Impalas the
- 23 seats is small and David was bigger than he is now.
- 24 Q Right.
- 25 A So that would have been really hard for him to sit like

PATRICK ROBINSON

1 this.

2 Q How was it --

3 A David was sitting like this, that's all I'm saying.

4 When I observed David his posture was leaning back like

5 this.

6 Q He had the seat leaning back.

7 A He had the seat leaning back and he was leaned back and

8 appeared to have his eyes closed.

9 Q Just as you're doing right now.

10 A Yes, laying like this.

11 Q Okay. Was the seat reclined any --

12 A The seat was reclined.

13 Q -- or is it like your seat is right now?

14 A It was reclined and you can recline.

15 Q And you can recline different.

16 A Right, his seat was reclined.

17 Q And that's the position that you saw him in from start

18 to finish.

19 A Pretty much, yes, sir.

20 MR. ATTY3: Thank you. That's all I have.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY MS. SIMPSON:

24 Q Did you happen to notice how his arm was at some point?

25 A There's a console here --

PATRICK ROBINSON

1 MR. SHADD: Your Honor, I object, that's not responsive
2 to my cross-examination. I never asked about his arm.

3 MS. SIMPSON: He asked about the position of the
4 defendant in the seat, was he leaning, how did it go.

5 THE COURT: Overrule the objection, I'll allow her to
6 ask the question.

7 Q Did you observe his arm at some point?

8 A They were not in his lap.

9 Q Okay.

10 A His arms were not in his lap.

11 Q Okay. So they were somewhere else.

12 A Yes. His arms were not in his lap.

13 Q On the text messages, the dates and I'm just going to
14 touch on this quickly, in State's Exhibit 6. The first text
15 on September 1st of 2011 at 1:12, what does it say?

16 A That was at 1:12? It says, "You're going to pay for
17 what you did you lying --

18 Q And the blackout word.

19 A The blackout word.

20 Q And then just six minutes later on September 1st at
21 1:19 what is the defendant's response?

22 A He says, "Man, I didn't do anything to **victim 3**. I was
23 asleep in the front seat. I wouldn't do anything like that.
24 I promise on everything I love."

25 MS. SIMPSON: Thank you, Mr. Robinson.

PATRICK ROBINSON

1 THE COURT: Recross?

2 RECROSS EXAMINATION

3 BY MR. SHADD:

4 Q His arm was not in his lap?

5 A No, sir.

6 Q That's what you're saying?

7 A I'm saying -- yes. I'm saying his arms -- his hands
8 were not in his lap like that, right, they were not in his
9 lap like that, they were not.

10 Q Okay. So earlier when you were demonstrating and you
11 had your hands on the armrest of your chair, he wasn't like
12 that either?

13 A No, sir. I just had my hands like that for the purpose
14 of just leaning back, but that's not what his arms were,
15 sir. They were not like that, sir.

16 Q But you can't say under oath where his arms were.

17 A Sir, they were not in his lap, that's what I'm saying.

18 MR. SHADD: Okay. Thank you, sir.

19 THE COURT: All right, sir. You may step down, thank
20 you very much.

21 THE WITNESS: You're welcome, Your Honor.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, we're going to take about a ten minutes break at this
24 time. As always when you leave the courtroom I would advise
25 you not to discuss the case even among yourselves, you're

PATRICK ROBINSON

1 free to go to the jury room. Remain seated until the jury
2 retires.

3 (The jury left the courtroom.

4 THE COURT: All right. The Court will be in recess
5 about ten minutes. Thank you very much.

6 (A break was taken.)

7 THE COURT: Yes, ma'am?

8 MS. CAMPBELL: If I may address just one thing, I want
9 to make sure defense counsel is aware of this, I'm sure he
10 is. In the statement that he did not object basically it
11 says, "Do you have pending charging for lewd act and CSC
12 with a minor?" And the answer is, "Yes, sir." I would
13 block out the CSC with a minor part so that we don't have --
14 can I borrow that pen of yours?

15 THE COURT: Any objection to that? I assume you agree
16 to that.

17 MR. SHADD: Yes, sir. I apologize too, Your Honor, for
18 not asking to approach the witness.

19 THE COURT: Well, the problem when you're standing
20 behind him asking him questions it's not fair to a witness
21 to have an attorney stand behind him and asking questions
22 and that's the reason I called that to your attention.

23 MR. SHADD: Thank, you, sir.

24 THE COURT: Anything from the State?

25 MS. CAMPBELL: No, sir.

PATRICK ROBINSON

1 THE COURT: Anything from the defense before I bring
2 the jury back in?

3 MS. CAMPBELL: No, Your Honor. And this would be our
4 last witness.

5 THE COURT: All right. I will caution people in the
6 gallery, I have discussed this with the bailiffs, once a
7 witness is on the stand testifying the back door will be
8 locked, people will not be allowed to come and go. There
9 has been way too much movement in the courtroom and it's
10 distracting so if you need to leave do that before the
11 witness starts testifying, otherwise you'll be seated until
12 such time as the witness has completed his testimony, then
13 you'll be allowed to leave if you'd like. Bring the jury
14 in.

15 (The jury returned to the courtroom)

16 THE COURT: At this time the State may call its next
17 witness.

18 MS. CAMPBELL: Yes, Your Honor. The State would call
19 Investigator Carter to the stand.

20 THE COURT: Come forward and please be sworn.

21 The witness, RICHARD CARTER, was first duly
22 sworn and testified as follows:.

23 THE COURT: Once you're seated, state your name.

24 THE WITNESS: Richard Carter.

25 DIRECT EXAMINATION

1 BY MS. CAMPBELL

2 Q Investigator Carter, where are you employed?

3 A I'm employed with the Richland County Sheriff's
4 Department.

5 Q What do you do there, sir?

6 A Currently I'm a Special Victims Unit investigator.

7 Q With the Special Victims Unit investigator what do your
8 duties include?

9 A Part of my duties include -- I investigate crimes
10 involving child abuse, sexual assault and crimes against
11 vulnerable adults.

12 Q Against vulnerable adults?

13 A Yes, ma'am.

14 Q Have you had any training as far as law enforcement is
15 concerned?

16 A Yes, ma'am.

17 Q And what is that?

18 A I have a Bachelor's Degree from East Carolina
19 University in Criminal Justice. I was a certified law
20 enforcement officer in North Carolina prior to moving to
21 South Carolina. I'm certified here, and I have over 1,000
22 hours in advanced law enforcement training.

23 Q 1,000 hours?

24 A Yes, ma'am.

25 Q Does that include training in the field of child sexual

1 assaults?

2 A Yes, ma'am.

3 Q How long have you been in law enforcement total?

4 A Sixteen years.

5 Q How long have you been with the Richland County
6 Sheriff's Department?

7 A Nine years.

8 Q I want to turn your attention back to the end of
9 August or the 1st of September of last year. Were you
10 assigned a case involving a **victim 3** **[REDACTED]**

11 A Yes, ma'am.

12 Q And tell the jury how the cases are assigned to you
13 after the initial report is taken by say a deputy in this
14 case.

15 A Okay. When a report is generated and taken by a deputy
16 it is then forwarded up to criminal investigations division
17 and my sergeant is -- gets the report and assigns it to an
18 investigator within our unit.

19 Q And in this case did you receive a report that was
20 taken by one of the deputies on August 28th, I believe?

21 A Yes.

22 Q And which deputy was that?

23 A Carlson.

24 Q Carlson? And once you received that report what if
25 anything did you do in this case?

1 A Well, in this case after I received it I did call Ms.

2 [REDACTED]

3 Q And that would be Ms. Cynthia [REDACTED]

4 A Yes, ma'am.

5 Q And did you make contact with Ms. [REDACTED] I believe
6 that would have been September 1st.

7 A Yes, ma'am.

8 Q And when you made contact with Ms. [REDACTED] you can't
9 say what she said, but did you have a conversation with her?

10 A I did.

11 Q And as a result of that conversation did you then take
12 steps to further your investigation?

13 A I did.

14 Q What did you do?

15 A As protocol with cases involving teenagers or young
16 adults or even children I send a copy of the incident
17 report, I complete an ARC intake form and I forward it over
18 to The Assessment Resource Center or The ARC to schedule a
19 forensic interview and a medical interview.

20 Q And that's your protocol?

21 A Yes, ma'am.

22 Q What was the age of the child in this case?

23 A She was 13.

24 Q And is it up to the individual investigator whether to
25 take the statements themselves or forward them to The ARC

1 for a forensic interview?

2 A Yes.

3 Q And in this case you scheduled an appointment for her?

4 A Yes, ma'am.

5 Q And do you recall when that appointment was scheduled
6 for?

7 A I can't recall the exact date of when the point was. I
8 know the date in which I have received a report from The
9 ARC.

10 Q Okay. And I'll move your attention to September 16th.
11 Did you receive a medical followup from Dr. Luberoff?

12 A I did.

13 Q And that same day did you also receive a copy of the
14 forensic interview?

15 A I did.

16 Q And when we're talking about the forensic interview,
17 when a child goes to The ARC is the interview actually
18 recorded on video?

19 A It is.

20 Q At the time were you able to view both the medical as
21 well as the forensic interview?

22 A Yes.

23 Q Moving your attention to the end of September, did you
24 trade a number of phone calls back with Mr. Patrick
25 Robinson?

1 A Yes.

2 Q And what was Patrick Robinson's relationship to the
3 child in this case?

4 A He is her stepfather.

5 Q And you were actually able to make contact with him, I
6 believe, on October 3rd of 2011?

7 A Yes, ma'am.

8 Q And at this point had any arrests been made?

9 A No, ma'am.

10 Q Were you still gathering evidence before making an
11 arrest?

12 A Yes, ma'am.

13 Q And were you able to interview Mr. Robinson about his
14 knowledge of what occurred on the date in question?

15 A I did, I spoke with him on the phone.

16 Q And what was the date of the allegation?

17 A It's reported it occurred on August 27th, they went to
18 North Carolina and they returned into the early morning
19 hours of August 28th.

20 Q August 28th? So it occurred right there around the
21 midnight hours between the 27th and 28th.

22 A Correct.

23 Q Moving your attention to October 14th, did you actually
24 meet with the victim in this case?

25 A I did.

1 Q And what was the purpose of meeting with the victim?

2 A My purpose for meeting with her was to show her a photo
3 lineup.

4 Q And why did you feel it was appropriate to show a photo
5 lineup in this case?

6 A In this case I wanted to make sure we were speaking of
7 the same David Carmichael.

8 Q Okay. And so this was for your edification as far as
9 making sure you had the right person?

10 A Yes.

11 Q And when you showed her this photo lineup which I will
12 show you, was she able to identify the person who had
13 assaulted her?

14 A Yes.

15 Q And who was she able to pick out of that six person
16 lineup?

17 A She identified photograph number five who is David
18 Carmichael.

19 Q Did anyone influence or tell her who to pick?

20 A No, ma'am.

21 Q And the person that she identified, is that the David
22 Carmichael that's here in the courtroom today?

23 A Yes, ma'am.

24 Q On October 28th did you make contact with Mr. Robinson
25 again?

1 A I did.

2 Q And what was the purpose of that phone call?

3 A My purpose was just to let him know that I'm still
4 working this case, it is active and just to update him.

5 Q Okay. And were you attempting to make contact with
6 Mr. Carmichael himself?

7 A I was -- my plan was to do so.

8 Q However, on November 14th of 2011 did you actually
9 forward a worksheet or obtain a warrant in this case?

10 A Yes, ma'am. On November 14th I forwarded a warrant
11 worksheet to the magistrate's office.

12 Q And then on the 15th were you actually able to get a
13 warrant for the arrest of the defendant in this case?

14 A Yes, ma'am.

15 Q What did you do with the arrest warrant at that point?

16 A My normal, I guess, procedure is once I obtain the
17 arrest warrant I would forward it to our warrant division.

18 In this case it was provided to an investigator on the
19 Fugitive Task Force who go out and they serve warrants.

20 Q Were they able to effect an arrest in this case on
21 November 22nd?

22 A Yes, ma'am.

23 Q And that would be of 2011; is that correct?

24 A Yes, ma'am.

25 Q And were you contacted by a certain investigator as to

1 the custody status of the defendant?

2 A Yes, ma'am.

3 Q And at that point did you request to have the defendant
4 transported to a certain place?

5 A Yes, ma'am.

6 Q Where was he transported to?

7 A He was transported to the Richland County Sheriff's
8 Department's headquarters at 5623 Two Notch Road.

9 Q Did you actually go to headquarters yourself that day?

10 A I did.

11 Q And did you make contact with the defendant?

12 A I did.

13 Q And what was the purpose of you making contact with the
14 defendant on November 22nd?

15 A To speak with him.

16 Q Prior to speaking with him did you advise him of his
17 rights?

18 A I did.

19 Q I'm going to show you what's been marked as State's
20 Exhibit Number 2. Do you recognize this?

21 A Yes, ma'am.

22 Q What is that, sir?

23 A That is the Richland County Sheriff's Department
24 advisement of rights form.

25 Q And is this the form you actually used with

1 Mr. Carmichael on that occasion?

2 A It is.

3 Q And why is it appropriate if a defendant is in custody
4 to advise him of his rights prior to questioning him about
5 certain crimes?

6 A I don't want to violate any of his rights.

7 Q And in this case is this the form you used?

8 A Yes, ma'am.

9 Q And what time and date are indicated on the top of the
10 form?

11 A The date is 11-22-2011 and the time is 9:02 in the
12 morning.

13 Q So that would be 9:00 in the morning?

14 A Yes, ma'am.

15 Q 9:02 a.m. the time actually. And is that when you
16 initiated the advisement of his rights?

17 A Yes, ma'am.

18 MS. CAMPBELL: And Your Honor, at this time we'd offer
19 State's Exhibit 2 into evidence.

20 THE COURT: Without objection it will be admitted as
21 marked. You may proceed.

22 (The advisement of rights form was received as
23 State's 2.)

24 Q Can you go through how you actually advised him of his
25 rights that morning?

1 A Yes, ma'am. On this morning I placed the rights form
2 in front of him and asked him to read along with me and I
3 read, "Before we ask you any questions you must understand
4 your rights. You have the right to remain silent. Anything
5 you say can be used against you in court. You have the
6 right to talk to a lawyer for advice before we ask you any
7 questions and to have a lawyer with you during any
8 questioning. If you cannot afford a lawyer one will be
9 appointed for you before any questioning if you wish. If
10 you decide to answer questions now without a lawyer present
11 you still have the right to stop answering at any time. You
12 also have the right to stop answering at any time until you
13 talk to a lawyer."

14 Q And did you go through each one of those rights
15 individually with him?

16 A Yes, ma'am.

17 Q And did he seem to understand what you were saying to
18 him?

19 A Yes, ma'am.

20 Q And did he acknowledge that he understood those rights?

21 A Yes, ma'am.

22 Q And how did he acknowledge that?

23 A After reading this -- and there's also the waiver of
24 rights, he signed his name, put his initial at each one of
25 the boxes.

1 Q He put his initials?

2 A Yes, ma'am.

3 Q And he signed his name.

4 A Yes, ma'am.

5 Q Once you advise a person of those rights, do you go a
6 step further to make sure they understand what they're doing
7 when they talk to you?

8 A Yes, ma'am.

9 Q At the bottom of the form is what's called a waiver of
10 rights?

11 A Yes, ma'am.

12 Q Did you go over that with him?

13 A Yes.

14 Q Can you tell the jury exactly how you went over the
15 waiver of rights with him?

16 A I asked him -- explained to him if he wanted to speak
17 to me and if he wanted to talk to me about the incident, I
18 read to him, "I have read the statement of my rights, I
19 understand what my rights are, I am willing to talk and
20 answer questions. I understand and know what I am doing.
21 No promises have been made to me and no pressure or coercion
22 of any kind has been used against me." I explained to him
23 pressure or coercion means no one is going to make him do
24 anything he doesn't want to do, he's doing it because he
25 wants to.

1 Q And at that point did he sign off on the waiver of
2 rights as well?

3 A Yes, ma'am.

4 Q Did he indicate that he wanted to talk to you?

5 A Yes.

6 Q Did anyone promise him anything to get him to talk?

7 A No, ma'am.

8 Q Did you threaten him in any way?

9 A No, ma'am.

10 Q Did you deprive him of any creature comforts to make
11 him talk to you?

12 A No, ma'am.

13 Q And was he talking to you because he wanted to?

14 A Yes.

15 Q Once you had ensured that his rights were protected and
16 he wanted to talk to you, did you then initiate some
17 questions in this case?

18 A I did.

19 Q And how did -- did you actually take a written
20 statement from him at that point?

21 A Yes, ma'am.

22 Q And how did that process work? Explain that to the
23 jury.

24 A The process is that I -- there's a computer there and I
25 just start going through and asking questions about what's

1 related to the incident. I started off -- I will start off
2 asking his education and kind of do you know certain people
3 and will start it that way.

4 Q And do you go through it all verbally first and reduce
5 it into writing? How is it done?

6 A In this particular case I pretty much started and just
7 kind of went from one to the other and started going into
8 the question and answer.

9 Q And the -- I show you what is marked as State's Exhibit
10 Number 3. Is this the statement he actually gave you that
11 day?

12 A Yes, ma'am.

13 Q And is it in typewritten form?

14 A Yes, ma'am.

15 Q And who would have done the typing in this case?

16 A Me.

17 Q And as far as the parts that has the A by them for
18 answer, whose words are those?

19 A Mr. Carmichael.

20 Q Once you had taken the statement from him, is he
21 allowed to review it?

22 A Yes, ma'am.

23 Q And did he do it in this case?

24 A Yes.

25 Q And then does he acknowledge the statement is his in

1 any way?

2 A Yes. After I type it I give him a copy of it and ask
3 him to read it, review it, if there is any changes, any
4 corrections, make sure everything in that statement is
5 accurate and what he has said. Afterwards I will ask him
6 that he swears everything in that statement is true and
7 correct and ask him to sign it.

8 Q And again this is his story and his version?

9 A Yes.

10 MS. CAMPBELL: Your Honor, we'd offer State's Exhibit 3
11 into evidence.

12 THE COURT: Any objection?

13 MR. SHADD: Beg the Court's indulgence.

14 THE COURT: Yes, you can inspect it.

15 THE DEFENDANT: I need to talk to Ms. Campbell about
16 something.

17 (Break in proceedings.)

18 MR. SHADD: No objection.

19 THE COURT: All right. Without objection then, it will
20 be admitted into the record as marked. You may proceed.

21 (The statement was received as State's 3.)

22 MS. CAMPBELL: Your Honor, may the witness publish the
23 statement?

24 THE COURT: He may do so.

25 Q If you can basically go through the questions and

1 answer that you asked him that day that are indicated on
2 that statement.

3 A Okay. Question -- and it's indicated at the top I put
4 he, question, my name, answer, Mr. Carmichael. The first
5 question is, "Can you tell Investigator Carter your highest
6 level of education?" His answer, "I completed
7 two-and-a-half years Clafflin University. Do you know
8 Patrick Robinson? Yes, sir. Can you tell Investigator
9 Carter your relationship with Mr. Robinson?" His answer,
10 "He is the like a brother to me. Do you know **victim 3**

11 Yes, sir. Can you tell Investigator Carter your
12 relationship to **victim 3** . She is like a niece to
13 me, she is Patrick's stepdaughter. Do you know the age of
14 **victim 3** I didn't know how old she is, I knew she went to
15 Denton Middle School. The warrant says she was 13."

16 Q The warrant he's referring is the arrest warrant?

17 A Yes, ma'am.

18 Q Thank you.

19 A "Can you tell Investigator Carter the name of the
20 church you attended in August 2011? Grace Christian Church.
21 Did Mr. Robinson and **victim 3** attend the same church? Yes,
22 sir. On August 8, 2011 were you with Mr. Robinson and
23 **victim 3** Yes, sir. Can you tell Investigator Carter where
24 you, Mr. Robinson and **victim 3** went? I can't tell you what
25 part of North Carolina we went but we went to North

1 Carolina. What time did you leave Columbia? I can't
2 remember what time we left Columbia that day. Do you know
3 what time you arrived at your destination in North Carolina?
4 No, sir, I can't remember. I know we were late because
5 everybody had eaten. What did you do in North Carolina? We
6 ate and basically fellowshipped with his family and friends.
7 What time did you leave North Carolina? Between 9:00 and
8 11:00 p.m. On the drive back to Columbia who was driving?
9 Patrick. Where in the vehicle were you seated? Front seat
10 passenger. Where in the vehicle was **victim 3** seated? In
11 the backseat. Was there anyone else in the vehicle? No,
12 sir. On the drive back to Columbia did you fall asleep?
13 Yes, sir. Did you lean the back of the seat down you were
14 seated in? Just a little. Can you tell me about the drive
15 back to Columbia? I was asleep. I remember waking up a
16 couple of times to ask Patrick if he was all right. When
17 did you actually wake up and stay awake? Around the
18 Ridgeway area when Patrick received a call from his oldest
19 stepdaughter asking" -- I think it is.

20 Q Jamise.

21 A Jamise -- "asking him to get her a drink. He said he
22 didn't have any cash him and I told Patrick I would get it
23 for her. We got in Columbia and he stopped and got some gas
24 with his card from a gas station. Then we drove down the
25 street to the Spinx on Decker Boulevard and got the drink.

1 After stopping at Spinx I turned around and asked [victim 3]
2 if she wanted something out of the store and she said no at
3 first. I went into the store with Patrick, [victim 3] came in
4 the store after us and said she wanted something. She got
5 the things she wanted and we went and paid for it, Patrick
6 was in the car while we paid for it. We had gone back to
7 the car to find out what sodas Jamise wanted, then they took
8 me home. Can you tell Investigator Carter what happened the
9 next day? During church service there was a commotion in
10 the front of the church, I proceeded out the side door to
11 find out what was going on. No one told me what was going
12 on. I asked if Little Mama who was [victim 3] s mother,
13 Cynthia, was all right. I was told everything was all right
14 and I was told to go back in the church on the instruments.
15 I kept calling them to find out what was wrong with them in
16 church. For awhile they would not respond to me. Late that
17 day Patrick sent me a text message saying it wasn't best
18 that I don't call or text him or Cynthia anymore because I
19 betrayed them and I knew what I did." Question: "At any
20 time while you were riding in the car with Patrick and
21 [victim 3] did you touch [victim 3] anywhere on her body? No,
22 sir. Have you ever touched [victim 3] No, sir. Did you and
23 [victim 3] get along with one another? Yes, sir. Was
24 [victim 3] upset or mad at you for any reason? Not to my
25 knowledge, no, sir. Did Mr. Robinson or his wife have any

1 problems with you? No, sir. Why do you think **victim 3**
2 would say you touched her while in the car on the way back
3 from North Carolina? I don't know. Does **victim 3** have
4 anything to gain from you by making up that you touched her?
5 No, sir, I don't think. Is it possible that you touched
6 **victim 3** while you were asleep in the vehicle and you did
7 not realize it? No, sir. Did you place your hand on
8 **victim 3**'s butt? No, sir. Did you place your hand on
9 **victim 3**'s leg or thigh? No, sir. Do you have charges
10 pending for a lewd act? Yes, sir. Have those charges been
11 to court yet? No, sir. How long ago were you charged with
12 those offenses? Between four and five years ago. If you
13 could say something to **victim 3** what would you say to her?
14 I would say what made you say this? If I don't get a clear
15 answer, I'm not mad at you, I don't hold grudges against
16 people, I just try to move on. There is nothing to say or
17 do, only God can resolve this on my behalf. Have you told
18 Investigator Carter the truth? Yes, sir. Is there anything
19 else you would like to add that Investigator Carter has not
20 asked you? No, sir. End of statement, 09:47 hours,
21 11-22-11.

22 Q And was that the extent of the conversation that you
23 had with him that day?

24 A Yes.

25 Q And specifically did you ask him specific questions, a

1 number of them, about why she would make this up?

2 A Yes.

3 Q And was he able to tell you anything about why she
4 would make this up?

5 A No.

6 Q At any point did he ever mention anything about telling
7 her mother about some boys she had been talking to?

8 A No.

9 Q And did you ask him specifically if there was any
10 reason?

11 A Yes.

12 Q And he never mentioned that to you.

13 A No.

14 Q And at that point that was the extent of your
15 interview; is that correct?

16 A Yes.

17 Q And again once he completed the statement he was given
18 an opportunity to review it.

19 A Yes.

20 Q And read it and change anything he wanted to.

21 A Yes.

22 Q Or add anything.

23 A Correct.

24 Q And he signed it.

25 A Yes.

1 Q The defendant, how tall is he?

2 A He is above six foot tall.

3 Q The corridor where this occurred for references to
4 Phoenix University, Decker Boulevard, Percival Road, that
5 area, is that here in Richland County?

6 A It is.

7 Q So in your investigation this did occur here in
8 Richland County?

9 A Yes.

10 Q The person you took the statement from that's
11 identified by victim 3 as the person who assaulted her, do
12 you see him in the courtroom?

13 A Yes, ma'am.

14 Q Can you point him out for the jury?

15 A He is seated at the defense table wearing a jacket and
16 a white shirt.

17 Q And --

18 A And has his hand on his face.

19 MS. CAMPBELL: Your Honor, may the record reflect he
20 has identified the defendant?

21 THE COURT: The record may so reflect and you may
22 proceed. I'm sorry, are you through with the questioning?

23 MS. CAMPBELL: Yes, sir, I'm sorry.

24 THE COURT: Mr. Shadd, you're witness.

25 MR. ATTY3: Thank you, Your Honor. May it please the

1 Court?

2

CROSS EXAMINATION

3 BY MR. SHADD:

4 Q Investigator Carter, let me just, I guess, work a
5 little from behind. You said that you had asked if there
6 was a -- you asked Mr. Carmichael was there any reason why
7 she would make this up?

8 A Yes.

9 Q Why was that important for you to ask that?

10 A Well, I understood there was a relationship between the
11 family and Mr. Carmichael and I just wanted to make sure was
12 there a reason, I mean, why.

13 Q In investigating this had you come to any information
14 that she had made up anything like this before?

15 A No.

16 Q Did you ask that?

17 A Ask who, Mr. Carmichael?

18 Q No, anyone other than Mr. Carmichael.

19 A No.

20 Q Did you agree -- and I know you have the statement in
21 front of you -- would you agree that on at least four
22 occasions you asked him various ways if he touched her?

23 A Correct.

24 Q Including one time you asked is it possible that he was
25 asleep and touched her.

1 A Correct.

2 Q Why did you ask that? I haven't heard of sleep
3 touching, but why did you ask that?

4 A Based on my experience interviewing suspects I was
5 going to see if he would answer that question if it was
6 possible.

7 Q Oh, suspects in the past have said, "Yeah, I have may
8 have done it when I was asleep and just wasn't aware of it."

9 A No. It's an alternate -- it's just a -- I don't know
10 the word I'm looking for -- a tactic in asking questions in
11 interviewing.

12 Q So to throw the suspect off and hopefully you'll get
13 what you want.

14 A No, sir, give him a way out.

15 Q A way out?

16 A A way out, an alternative to if he did or didn't.

17 Q How about an alternative to his denials?

18 A Well, I mean, it could be an alternative.

19 Q Because he denied this through and through, didn't he?

20 A He denied it.

21 Q Now, you asked him if he could say something to
22 victim 3 what would he say to her. Why did you ask that?

23 A I just wanted to see what he would say to her, sir.

24 Q Sometimes suspects will apologize to the victim, won't
25 they?

1 A Sure.

2 Q He didn't do that at all, did he?

3 A No, he didn't.

4 Q In fact, he's actually saying he's not going to be mad
5 at her for what she said, right?

6 A Correct.

7 Q In fact, he said he just doesn't hold grudges against
8 people; isn't that true?

9 A Yes.

10 Q In fact, he said he would just try to move on, right?

11 A Yes.

12 Q And he acknowledges to you that he has been accused of
13 lewd act on a minor before, right, four or five charges
14 still pending?

15 A Yes.

16 Q Oh, I'm sorry, you said yes?

17 A Yes.

18 Q Okay. That would be **victim 1** and **victim 2**

19 **[REDACTED]**

20 A I didn't ask specifically who the names were, I just
21 asked about the charges.

22 Q Okay. You asked the question because you already knew
23 that he had pending charges, right?

24 A I knew there were pending charges based on the
25 information that I had developed off of a background.

1 Q Okay. And he had already been arrested at this point,
2 correct?

3 A Correct, he was in custody.

4 Q He was in custody. Was he handcuffed?

5 A Yes, sir.

6 Q In the room?

7 A Yes, sir, he had his handcuffs on.

8 Q That was standard procedure to protect you just in case
9 something happens.

10 A Correct.

11 Q Because you haven't met him before, right?

12 A Correct.

13 Q And you went over the advice of rights form and he
14 appeared to understand what you were saying.

15 A He did.

16 Q What you were reading.

17 A Yes, sir.

18 Q And what you believed he was reading, right? Because I
19 think you said he read along with you.

20 A Yes.

21 Q Okay. And then he gave this statement, he agreed to
22 talk to you.

23 A Yes.

24 Q After you advised him of his constitutional rights.

25 A Yes.

1 Q Okay. He -- now, you don't -- where it says A, those
2 are the answers that he gives but he didn't tell you which
3 questions to ask, right?

4 A Say that again.

5 Q He doesn't give you the questions to ask.

6 A No, I'm asking the questions.

7 Q Right. So you decide which questions to ask him.

8 A Yes.

9 Q You control the situation, right?

10 A Yes.

11 Q Okay. But when he gives an answer you're saying you're
12 at a computer and you're typing up what he says?

13 A Yes.

14 Q How fast do you type?

15 A Not very.

16 Q Was he talking slow or was he talking fast?

17 A I would ask, he would answer.

18 Q This is about a 40 minute statement in here. Did you
19 ever have to have him slow down and stop and go back and
20 then you made changes to any of this?

21 A No, sir.

22 Q Are you able to do that with a computer or as soon as
23 you type it in it just records it?

24 A No. I mean, changes can be made.

25 Q Okay. All right. But you're saying you did not have

1 to stop him to tell you something that he had just said?

2 A He may have stated it and then I couldn't type fast
3 enough, you know, to keep up with him --

4 Q Yes, sir.

5 A -- ask him to hold on a minute.

6 Q I can relate to that.

7 A Then there was probably a period where I was trying to
8 formulate a question where I would pause and then develop my
9 question and ask it.

10 Q And would you ask the question and then type it in or
11 would you type the question and make sure and read off the
12 question?

13 A I would type the question and then read it to him.

14 Q This looks like about four pages long, about 40 -- I'm
15 sorry, 39 minutes, does that sound about right?

16 A Correct.

17 Q And you had asked him how old -- if he knew the age of
18 victim 3

19 A Correct.

20 Q And his answer was what?

21 A "I didn't know how old she was, I knew she went to Dent
22 Middle School. The warrant said she was 13."

23 Q Okay. And then let's fast-forward to the last page
24 where you ask him, "Is there anything else you would like to
25 add that Investigator Carter has not asked you?"

1 A Correct.

2 Q And his answer was?

3 A No, sir.

4 Q And at that point did you have any other questions to
5 ask him?

6 A No.

7 Q And so you believe that the interrogation was over with
8 at that point, correct?

9 A Correct.

10 Q And so what did you do? You stopped the computer or
11 you got up or what did you do?

12 A What I did is I typed in the statement, put the time
13 and the date --

14 Q Okay.

15 A -- printed --

16 Q Okay.

17 A -- the statement off, provided him with a copy of it
18 and then asked him to read the statement.

19 Q Okay.

20 A Asked him to make sure everything in there is true and
21 correct and if it's not to let me know so we can go back and
22 make changes or corrections.

23 Q Okay.

24 A He read it, agreed and said everything is fine with it.
25 I asked him, "Do you swear everything in that statement is

1 true and correct? Yes." There's two places on each page
2 that he signed. Once he signed both places on each page
3 then I went and made him a copy of it and provided him with
4 a copy of it.

5 Q It looks like it's a section on here for two witnesses
6 to sign his signature. Why is that blank?

7 A It was me and him, I didn't have any witnesses.

8 Q Did you record this conversation at all?

9 A No, sir.

10 Q There is no video recording at the sheriff's
11 department?

12 A No, sir.

13 Q Do you agree if there was video recording we could have
14 had that for the jury to review if there was?

15 A If there was, we don't do that.

16 Q You just don't do that?

17 A Right. It's against policy and procedure.

18 Q So this is a conversation that you controlled with Mr.
19 Carmichael, just you and him in the room and you said that
20 he signed this and this is between you and him.

21 A Yes.

22 Q And if -- do you have audiotape of this?

23 A No, sir.

24 Q Okay. So once he signs it you consider that to be the
25 end, right?

1 A Yes, sir. That's -- he signed it, agreed, said
2 everything is true and accurate in his statement.

3 Q Right. He has been given an opportunity to change
4 something.

5 A Right.

6 Q Change denial, change anything about -- well, anything?

7 A Right. Because I want to make sure this is what he's
8 saying and I didn't misunderstand anything, I mean, that's
9 the purpose of doing that.

10 Q Well, what happens if he tells you he wants to change
11 something or he wants to add something to it? You go back
12 in the computer and you change this original statement or do
13 you do a second statement?

14 A If he reads it and says, "Oh no, no, that's not right.
15 Well, you know, what's the correct answer?" And I will go
16 back and I will type exactly what he says.

17 Q Okay.

18 A And then I will give it to him.

19 Q Okay. So the original statement gets changed or is
20 there a second statement?

21 A No, sir, this is the original statement. If there was
22 anything in this statement that wasn't true or correct he
23 would have told me and I would have went and changed it into
24 the correct version. In this he read it after I printed it
25 off. He read it, he signed it, and I asked him if

1 everything in that statement was true and correct and he
2 said yes.

3 Q But y'all in the past -- I mean, I'm familiar with you
4 all -- in the past once you allow the suspect to just
5 initial the change and then handwrite in whatever they
6 wanted to change from that, y'all have allowed that, right?

7 A I can't speak for other investigators, that's not my
8 practice.

9 Q Okay. But wouldn't that be preferred so that way
10 anyone who is viewing this later on would see what the
11 original comment was and then later on see what any changes
12 that were made particularly by the suspect who would
13 handwrite it themselves, they could write, of course.
14 Wouldn't that be preferred?

15 A I don't know. That's -- I don't know how to answer
16 your question because that's not something I do.

17 Q Okay. Different officers do it different ways,
18 different investigators do it different ways.

19 A I guess, I don't know.

20 Q You've never seen a statement that was hand -- where
21 the changes were made and it was handwritten?

22 A Well, handwritten versus typed, yeah. I mean, if
23 you're handwriting a statement you can't necessarily go back
24 and erase the ink and then you would put a line through it,
25 I mean, which I would do --

1 Q Okay.

2 A -- put my initials by it and then go on.

3 Q And let the suspect do it too so they can confirm that
4 this was a change that they agreed upon, not just that you
5 didn't do it yourself.

6 A Right, some do.

7 Q Okay. So after this was over with, after you decided
8 that was it and you didn't have any other questions for him,
9 he signed, Mr. Carmichael told you about an age situation,
10 didn't he?

11 A I do not recall that.

12 Q Okay. You do not recall that Mr. Carmichael told you
13 that she -- that [victim 3] was mad at him because he had got
14 on her for talking to 18 and 19-year-old men. You don't
15 recall that, do you?

16 A No, sir.

17 Q You're don't recall telling him, "Well, it's too late,
18 I have your statement now, do you?"

19 A No, sir, I do not.

20 Q If he had done that surely you would have gone back to
21 the computer and added that, correct?

22 A Correct. If he had during the time he was reading this
23 had stated that it would have been corrected.

24 Q During the time that he read it and signed it.

25 A Correct.

1 Q But I'm talking about after he signed it and then
2 offered other information you would have allowed him at that
3 point to go back and do it or once he signs it that's it?

4 A No. If he wanted to make any changes to the statement
5 we would have done it.

6 Q Well, what if he said, "I don't want to make a change
7 to the statement, I do have some information about age and
8 why she would be mad at me." If he had said that then you
9 would have done what?

10 A If he would have said that we could have gone and
11 corrected the statement but I do not recall him saying that.

12 Q And you did not give him an opportunity to make any
13 changes after he signed it, that's correct?

14 A He signed and he was escorted and placed in our holding
15 cell.

16 MR. SHADD: Thank you, sir.

17 THE COURT: Redirect?

18 MS. CAMPBELL: Nothing.

19 THE COURT: You may step down, sir. The State may call
20 its next witness.

21 MS. SIMPSON: Your Honor, at this time the State rests.

22 THE COURT: All right. Ladies and gentlemen of the
23 jury, that completes the presentations of evidence by the
24 State in this matter. At this point in time there's some
25 things I have to take up with the attorneys before we

1 proceed with the remainder of the trial, so I'm going to ask
2 you at this time to step back to the jury room. As always
3 I'm going to instruct you not to begin any discussions about
4 this case until I've asked you to do so. You may retire.

5 (WHEREUPON, the jury left open court at
6 approximately 11:45 a.m.)

7 THE COURT: All right, sir. Any motions from the
8 defense?

9 MR. SHADD: Yes, Your Honor. May it please the Court?

10 THE COURT: Yes, sir.

11 MR. SHADD: On behalf of Mr. David Carmichael I
12 respectfully ask the Court at this stage now that the State
13 has presented its case in chief that the Court direct a
14 verdict in his favor. We believe that on all of the
15 indictments, Your Honor -- and I know at this stage, Your
16 Honor, you're not concerned about credibility of the
17 witnesses but merely with -- the fact that evidence has been
18 presented, but we would submit, Your Honor, that the
19 evidence does not even -- is not legitimate enough to go
20 even further than this stage and the Court direct a verdict
21 in its favor. With regard to [victim 1] there were
22 plenty of inconsistencies in her statement. With regard to
23 [victim 2] there were plenty of inconsistencies in her
24 statement. And it turns out that she came up with even more
25 information saying that she had been digitally penetrated

1 which is well above and beyond what was said five or six
2 years ago. We also have [victim 3] [REDACTED] who has provided
3 information, Your Honor, that is inconsistent with what her
4 stepfather said with regard to where the hand placement was
5 and she has actually affirmatively said that he was plucking
6 at her clothes, Your Honor. There were no statements or
7 comments that was made from him -- from my client to her or
8 her to him which any person would believe that he was trying
9 to commit a lewd and lascivious act against her in the car
10 by plucking at the clothing. This was not associated with
11 any type of comments that would have shown that he was
12 trying to arouse her passions or his passions by plucking at
13 her clothing even if it is believed that that occurred, and,
14 of course, we contend that that did not occur at all. So at
15 this stage, Your Honor, we believe it is appropriate that
16 the Court direct a verdict in his favor on all three
17 indictments.

18 THE COURT: Hear from the State?

19 MS. SIMPSON: Thank you, Your Honor. As counsel said,
20 the Court's concern is the existence of the evidence and not
21 its weight, and his arguments are regarding inconsistencies
22 with testimony, which is exactly that, the weight of the
23 evidence. As to [victim 1] [REDACTED] we have not only her
24 testimony but corroborating evidence from other evidence as
25 to timeframe. As for [victim 2] -- and the specific

1 disclosures from [victim 1] do constitute a lewd act. As to
2 [victim 2] she has provided three separate occasions which
3 qualify as lewd acts as well. There is additional
4 corroborating testimony from the aunt, from her mom and
5 other witnesses in this case. And as for [victim 3] [REDACTED],
6 he not only -- she not only indicated that he was plucking
7 at her shorts but actually that he was rubbing on her in
8 that area towards her bottom and that she was attempting to
9 move, she was shifting so that he would not reach her
10 private area. I think we've more than met our burden for
11 purposes of this stage of the trial so we would respectfully
12 ask that you deny the directed -- motion for a directed
13 verdict.

14 THE COURT: Well, the Court does note at this stage of
15 the proceedings my inquiry is whether or not evidence --
16 sufficient evidence has been introduced to support the
17 claims or the charges made in the indictment. I do not
18 weigh the evidence as far as its consistency or whether or
19 not it's been contradicted or anything of that nature,
20 that's for the jury to do if I send it to the jury. So in
21 this case I am denying the motions for directed verdict and
22 will allow the cases at this point in time to go forward to
23 the jury. Any other matters from the defense?

24 MR. SHADD: Your Honor, I guess I just need to know on
25 time, I think I told you yesterday we should have four

1 witnesses, I's almost 12:00 now, did you want to break for
2 lunch now or did you want to go straight into it?

3 THE COURT: I'd rather go straight into it. I'm going
4 to get started and go until 1:00 for lunch.

5 MR. SHADD: If you don't mind I need to speak to one
6 witness about a matter regarding testimony.

7 THE COURT: I do want go over some things with your
8 client. And let me inquire of the State, are there any
9 criminal convictions on the part of the defendant which the
10 State intends to use for purposes of impeachment?

11 MR. SHADD: There are none, Your Honor.

12 MS. CAMPBELL: No, Your Honor, I'm not aware of any.
13 He has a prior arrest for criminal sexual conduct with a
14 minor before but there was not a conviction so we won't be
15 able to go into that.

16 MR. SHADD: It was dismissed, Your Honor.

17 THE COURT: I still want to advise your client of his
18 right to remain silent should he choose to do that. If
19 you'll stand, Mr. Carmichael, the clerk is going to swear
20 you at this time.

21 (At this time the defendant was sworn.)

22 THE COURT: You can be seated, Mr. Carmichael. Mr.
23 Carmichael, at this point in time I'm going to go over
24 certain of your constitutional rights, I want to be sure
25 that you understand these rights. So when I finish my

1 explanation I will give you an opportunity to ask questions
2 or seek additional admonition if you feel that it's
3 necessary. We have reached the stage at this trial where
4 you have the right to present your case. As part of that
5 you have the right to testify on your own behalf, however
6 you also have the right not to testify. I want to make you
7 aware of the protections which are given to you under the
8 Fifth Amendment to the United States Constitution. That
9 amendment reads in part that no person shall be compelled in
10 a criminal case to be a witness against himself. What that
11 means is that while you have the right to testify you also
12 have the right not to testify, to remain silent if you
13 choose to do that. The right to remain silent is a personal
14 right, it's given to you and only you can waive or give up
15 that right. I will advise you that if you decide to testify
16 your testimony will be governed by the same rules that
17 govern any other witness' testimony. You'd be examined by
18 your lawyer and cross-examined by the State's attorneys. If
19 you decide to testify the decision on your part must be
20 freely, voluntarily and knowingly made, that is that you are
21 aware of the protections given to you under the Fifth
22 Amendment and also aware of the consequences that would
23 result from your decision to testify. I will advise you
24 that if you decide not to testify in this case that I will
25 instruct the jury that that fact should not be considered by

1 them in any manner whatsoever in reaching a verdict in this
2 case. In fact, I would instruct them that they could not
3 even discuss that matter in their deliberations. Now, the
4 decision as to whether to testify is yours and yours alone.
5 You have the right to consult with your lawyer, family,
6 friends, anybody you would like to talk to, but the decision
7 is yours and ultimately yours alone. So I've got a couple
8 of questions for you at this time. Do you understand the
9 rights that I have explained to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions about that?

12 THE DEFENDANT: No, sir.

13 THE COURT: And have you had an opportunity to discuss
14 this decision with your lawyer and others if you chose to do
15 so?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And do you intend to testify in this case?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Anything further, counsel, from
20 your client concerning this matter?

21 MR. SHADD: No, Your Honor.

22 THE COURT: All right, sir. At this point in time
23 we're going to go forward with the presentation of the first
24 witness from the defense.

25 MR. SHADD: Yes, sir. I just --

1 THE COURT: You said you wanted to talk to someone.

2 MR. SHADD: Yes.

3 THE COURT: I'll give you a few minutes, I'll stay on
4 the bench and just let me know when you're ready.

5 MR. SHADD: Yes, sir.

6 (Break in proceedings.)

7 THE COURT: Is the State ready to go forward at this
8 time?

9 MS. SIMPSON: Yes, sir.

10 THE COURT: Is the defense ready?

11 MR. SHADD: Yes, sir.

12 THE COURT: All right, let's bring the jury in. Thank
13 you.

14 (The jury returned to the courtroom.)

15 MR. SHADD: We'd like to call Lakeisha Edmonds to the
16 stand.

17 THE COURT: Come forward, please, to be sworn.

18 The witness, LAKEISHA EDMONDS, was first duly
19 sworn and testified as follows:

20 THE COURT: Ma'am, once you're seated I'm going to ask
21 that you state your name, please.

22 THE WITNESS: Lakeisha Edmonds-Widener.

23 THE COURT: Thank you. Mr. Shadd, you're witness.

24 DIRECT EXAMINATION

25 BY MR. SHADD:

LAKEISHA EDMONDS

- 1 Q If you don't mind pulling your chair up closer. And I
2 called you Lakeisha Edmonds but it's Edmonds-Widener.
- 3 A Yes.
- 4 Q Are you a citizen of Richland County?
- 5 A I am.
- 6 Q And where do you work?
- 7 A At Bethel Academy.
- 8 Q What type of establishment is Bethel Academy?
- 9 A That's a child development center and a private school.
- 10 Q And it's here in Columbia?
- 11 A It is.
- 12 Q Are you married?
- 13 A I am.
- 14 Q How old are you?
- 15 A I'm 30.
- 16 Q And do you have any children?
- 17 A I do.
- 18 Q How old?
- 19 A Ten, my twins are two -- three, and my baby is nine
20 months old.
- 21 Q So you have four children?
- 22 A I do.
- 23 Q All boys and girls?
- 24 A All boys.
- 25 Q And how do you -- do you know the Carmichaels?
-

LAKEISHA EDMONDS

1 A Uh-huh, very well.

2 Q And how do you know them?

3 A Davetta and I have been close friends all through high
4 school, I've known her since I was in middle school, my aunt
5 is her Godmother. We grew up in the same neighborhood in
6 Eastway Park.

7 Q Would you say you were closer to Davetta or closer to
8 David?

9 A I would say that I'm closer to Davetta because Junior
10 has always been involved in music and so I spent a little
11 more time with her. But we have with bickered back and
12 forth like brother and sister and all that.

13 Q Okay. And when you say he's involved with music, can
14 you tell us to what extent is he involved in music?

15 A I've known him to be traveling.

16 Q Traveling doing music?

17 A Uh-huh, traveling with his music, with his groups.

18 Q What does he do?

19 A He's the director, I know he was I guess CEO or
20 whatever you want to call it of his group.

21 Q Okay. Does he sing?

22 A He does.

23 Q Does he play instruments?

24 A He does.

25 Q So when you say he travels, that means he goes on

LAKEISHA EDMONDS

1 tours?

2 A Uh-huh. I've known him to do backup singing for
3 different prophets and evangelists and things like that,
4 that's what I mean by traveling.

5 Q How about for any recording artists? Has he opened for
6 any recording artists or groups that you know of?

7 A Not that I can remember but I think there were one time
8 or something like that that he sung somewhere.

9 Q And do you recall him traveling a lot in 2005, 2006,
10 2007?

11 A I can't recall for 2005, but I know in 2006 he did
12 travel a good bit.

13 Q Okay. But he was obviously back home, too, when he was
14 not on the road.

15 A Yes.

16 Q As far as you know.

17 A Uh-huh.

18 Q Okay. Do you know Lashanda [REDACTED]

19 A I do.

20 Q How do you know her?

21 A I met her through my friend, Davetta Carmichael.

22 Q And how well did you know her?

23 A In the beginning I did not know her very well, but as
24 time persisted I got to spend time with her, her children,
25 I've been around her mother, her sister and that's about it.

LAKEISHA EDMONDS

1 Q Okay. When you say her mother, do you know her
2 mother's name?

3 A Janie [REDACTED]

4 Q Do you know her sister's name?

5 A Shannon [REDACTED]

6 Q And do you know the children that Lashanda has?

7 A I do.

8 Q How many does she have?

9 A She has four, two boys and two girls.

10 Q Who's the oldest daughter?

11 A [REDACTED] victim 2

12 Q Did you happen to interact with them, the children?

13 A I have.

14 Q Now, Ms. Edmonds-Widener, when you say you interacted
15 with the children and interacted with Lashanda and her mom
16 and Shannon, did you have any occasions to actually go to
17 their home?

18 A Yes. I have been to their home before.

19 Q And do you recall an occasion when there was a
20 conversation with you, Lashanda and [REDACTED] victim 2 [REDACTED]

21 A Yes.

22 Q Where were you all?

23 A We were in Lashanda's bedroom.

24 Q Why were you there?

25 A Earlier that week I had a situation with my

LAKEISHA EDMONDS

1 transportation and Lashanda [REDACTED] offered me to stay at her
2 house so that I could get to work and so that's how I ended
3 up at her home.

4 Q Now, this home, who was living in the home at that
5 time?

6 A It was her mother, her sister and LaShonda and her four
7 children.

8 Q All at Janie [REDACTED] house?

9 A No. They were at Lashanda [REDACTED] Janie [REDACTED] house
10 had a fire.

11 Q Okay. And because of the fire they had all moved in
12 with Lashanda.

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes.

16 Q Okay. And you stayed with her that weekend or that
17 whole week?

18 A It was a week.

19 Q Okay. And while you were there was there anything out
20 of the ordinary with regard to [REDACTED] victim 2 behavior and
21 demeanor?

22 A Not nothing that I consider out of the normal as far as
23 her behavior, no. She would come home from school
24 sometimes -- I know she did get in trouble one incident
25 where her mother spanked her because she wasn't supposed to

LAKEISHA EDMONDS

1 be outside and she was outside talking to some boys. But
2 other than that, that's --

3 Q And you say her mother, Lashanda, did that, not Janie

4 [REDACTED]

5 A No, not Janie, it was her mother.

6 Q But when there was a conversation in Lashanda's room,

7 where was Janie [REDACTED]

8 A She was not there that day, or at that time.

9 Q Where was Shannon [REDACTED]

10 A I think she was in the living room with the boys

11 helping them with her homework.

12 Q Who initiated the conversation?

13 A Her mother brung something to me earlier that day, she
14 gave me a phone call and I told her that I would talk to her
15 daughter when I got there. So whenever I got to her home we
16 sat down, us three in her bedroom, and we had the
17 conversation.

18 Q What was [REDACTED] victim 2 behavior or demeanor at that time?

19 A Her behavior to me was her normal reaction, she was
20 very giggly smiling, she didn't seem very sincere or
21 serious. In my opinion her mother did, though.

22 Q But the subject matter was serious, was it not?

23 A Yes, it was.

24 MS. CAMPBELL: Objection, Your Honor. May we approach?

25 THE COURT: You may.

LAKEISHA EDMONDS

1 (A bench conference was held.)

2 THE COURT: You may proceed, Mr. Shadd.

3 Q So I believe you said that she was giggly.

4 A Playful.

5 Q Playful.

6 A Her normal self.

7 Q Okay. So you suggested that you all needed to -- that
8 you would talk when you got together.

9 A Uh-huh, yes.

10 Q And so y'all were in the room and her mom was serious
11 about it.

12 A Yes. Her mother was very serious.

13 Q Okay. What did you say to **victim 2**

14 A My comment to **victim 2** was, "If you tell the truth
15 somebody can help you, but if you do not tell the truth then
16 nobody can help you. But if you do be honest then we can
17 help you."

18 Q Okay. And without saying what she told you, okay --

19 A Uh-huh.

20 Q -- without any specifics about what she told you, you
21 came to learn that something had happened; is that right?

22 A Well, I had already known what had happened. Because
23 the day that the incident was brought up I was at church
24 with her mother on that day and so I already knew what
25 happened. But there was another incident that particular

LAKEISHA EDMONDS

1 Wednesday where someone called her daughter's school.

2 Q Okay.

3 A And so that's how we got to make the conversation that
4 afternoon.

5 Q And that prompted Ms. Lashanda [REDACTED] to reach out to
6 you about it because of a phone call.

7 A Yes, and I was there.

8 Q Oh, and you were there. Okay.

9 A Uh-huh.

10 Q And so you asked [REDACTED] victim 2 to tell the truth.

11 A I did.

12 Q And she told you something, right?

13 A She did.

14 Q About an incident.

15 A Yes.

16 Q Nothing more?

17 A Nothing more.

18 Q What was Ms. Lashanda [REDACTED] response, her behavior?

19 A What was her response to the answer?

20 Q Her behavior, her demeanor, her response.

21 A A couple of times she said, "You better get your" --

22 MS. CAMPBELL: Objection, Your Honor.

23 THE COURT: I'll caution the witness she cannot quote
24 what he was said. I think he asked for her demeanor and how
25 she responded and how she acted and so I'm going to ask the

LAKEISHA EDMONDS

1 witness not to quote individuals but you can describe how
2 people react to in certain situations and your observations.

3 So you may proceed.

4 A As far as her demeanor, because I had been around her
5 in several different situations where we had been having a
6 good time or drinking or anything like that, this has been
7 the most sincere or serious I had ever seen her mother.

8 Q Really?

9 A Yes.

10 Q Okay. What impression did you get because of the
11 exchange between the mother and the daughter?

12 MS. CAMPBELL: Objection, Your Honor, to her
13 interpretation and interpreting what other people think.

14 THE COURT: The objection is?

15 MS. CAMPBELL: To her interpretation. He's asking her
16 to speculate.

17 MR. SHADD: I'm not, Your Honor, I asked her
18 impression.

19 THE COURT: Well, I'm going to allow her to state what
20 she observed and how she observed it to that extent, I
21 suppose her impression. She has the right to testify
22 concerning how she observed people responding to situations
23 and I'll allow her to do so.

24 MR. SHADD: Thank you, Your Honor.

25 Q Go ahead.

LAKEISHA EDMONDS

1 A My impression of their interaction was her mother was
2 taking it a little more serious than she did, **victim 2** did.

3 Q And this incident that she talked about, this one
4 incident that she talked about --

5 A Uh-huh.

6 Q -- it occurred her in Richland County.

7 A It did.

8 Q It involved David Carmichael.

9 A Yes.

10 Q Do you remember where?

11 A From what was said to me?

12 Q Yes, from what **victim 2** said.

13 A It occurred at their home on **██████████** **██████████**.

14 Q You said their home. Who?

15 A Davetta and her brother were living there at the time
16 together.

17 Q Okay. Which room?

18 A It was supposed to have happened in Davetta's room.

19 Q In Davetta's room.

20 A Uh-huh.

21 Q And Davetta was home?

22 A Yes, she was. She was supposed to be baby-sitting.

23 Q Anything about time or age or --

24 A She did not tell me the age. It did not happen like a
25 month or a week or anything like that beforehand, because

LAKEISHA EDMONDS

1 like I told you, I had already had some of the information
2 from the Sunday at church. But what she told me on that day
3 it happened in the evening and it was a couple of years
4 prior.

5 Q Okay. And how old is she when she said this to you?

6 A She was in middle school, I believe she was about 11 or
7 so.

8 Q At some point you and Ms. [REDACTED] received a phone call
9 from David Carmichael. Do you remember that?

10 A That's -- I remember a phone call but we didn't receive
11 it in that manner.

12 Q Okay. Well, tell us the manner you received it.

13 A The Sunday when the situation was presented itself
14 Junior was out of town -- David was out of town and --

15 Q And I'm sorry, this was before you had the conversation
16 with [REDACTED] victim 2

17 A On Wednesday, yes.

18 Q Okay.

19 A On that Sunday.

20 Q Sunday the 4th?

21 A It was late October. The Sunday prior I went to church
22 that morning with Janie [REDACTED] and the children because
23 Shannon and Lashanda had to work. Well, we got to church
24 and everything was fine. After church one of Davetta's
25 aunts locked her keys in the car so as church was out Janie

LAKEISHA EDMONDS

1 [REDACTED] took us to her home to get a spare key to get the keys
2 out of the car, when we came back we couldn't find [REDACTED] victim 2
3 and we found her she was downstairs talking to [REDACTED] victim 1

4 Q I'm sorry, whose aunt did you say?

5 A Davetta's aunt.

6 Q Okay.

7 A Shirley.

8 Q Shirley. Okay.

9 A So when we got back she got in the car, there was no
10 crying, no anything, nothing out of the normal so we didn't
11 know what was going on. Later that evening there was a
12 phone call made, and I'm assuming it was from someone in the
13 Mack household, and they told Janie [REDACTED] what had happened.
14 Lashanda asked me to call Junior. When I got on the phone
15 with him --

16 Q Lashanda asked you to call Junior?

17 A Yes.

18 Q She didn't call?

19 A No.

20 Q Okay.

21 A I got on the phone with Junior and I told him that if
22 he did something -- because at this time he still didn't
23 know, he had not even found out what happened, I was the
24 first person to tell him what happened.

25 Q Okay.

LAKEISHA EDMONDS

1 A I explained what happened at church that day, the
2 person that was supposed to have overheard the conversation
3 between the young ladies.

4 Q To your knowledge at that point where was he, in town
5 or out of town?

6 A He had to have been in town because his sister was on
7 the phone three-way.

8 Q Oh, his sister was present when you were having a
9 conversation with him?

10 A No, he was present with her.

11 Q That's what I meant, the two of them were together when
12 you called?

13 A Uh-huh.

14 Q Okay.

15 A And I explained the situation to them, what had
16 happened and I told Junior that if he did this be honest and
17 let's get you some help, his sister said the same thing. He
18 said that he did not do what the little girl had said that
19 he had done, and we continued with the conversation. And we
20 ended the conversation and that's when **victim 2** you know,
21 kind of went her way. That was all.

22 Q Okay. But get me to the point where you and Lashanda
23 are together and David calls into Lashanda's phone.

24 A I'm unaware of that.

25 Q Okay. You weren't present -- okay. I'm sorry. So you

LAKEISHA EDMONDS

1 weren't present when David had a conversation with Ms. [REDACTED]
2 and supposedly he apologized to her?

3 A No. Because when I --

4 Q You didn't answer the phone first and then tell
5 Lashanda to talk to David so you can hear him out?

6 A No. No.

7 Q You're saying that never took place.

8 A That conversation never took place. The only
9 conversation I had with David during that whole week was on
10 Sunday when I informed him of what was said and he did not
11 admit to doing anything, he told me that he didn't do
12 anything and his sister was on the phone with us and she
13 said the same thing I said, "If you did something let us
14 know, we can get you help." And he said he did not touch
15 anybody.

16 Q Well, let me make sure this is clear. When you had
17 this conversation with him and Davetta was present --

18 A Uh-huh.

19 Q -- and Lashanda was in the room with you, right?

20 A Yes. She was on the room with him.

21 Q Did she get on the phone with him?

22 A No. I talked to him the entire time.

23 MR. SHADD: Thank you, ma'am. I have no further
24 questions, Your Honor.

25 THE COURT: You may cross-examine.

LAKEISHA EDMONDS

1 MS. CAMPBELL: May it please the Court?

2 THE COURT: Yes, ma'am.

3 CROSS EXAMINATION

4 BY MS. CAMPBELL:

5 Q Ms. Widener?

6 A Yes.

7 Q You are closer to the Carmichael family, is that fair?

8 A Yes, I would say so.

9 Q What's the relationship like between Davetta and her
10 brother, David?

11 A I would say it's the typical brother/sister
12 relationship just as mine is with my brother. We fight, we
13 don't speak, we talk, I would say it's the same thing.

14 Q Would it be fair to characterize Davetta as devoted to
15 her brother?

16 A I think anybody is devoted as I'm sure you're devoted
17 to your brother. Yeah, I would say so.

18 Q And what about Danielle?

19 A I would say she's devoted to her brother as well.

20 Q She is devoted to her brother as well?

21 A I would say so.

22 Q Is she here in the courtroom?

23 A I don't see her, no.

24 Q And you became aware of what he was accused of.

25 A Uh-huh.

LAKEISHA EDMONDS

1 Q And you would agree with me that's a serious matter.

2 A Very serious.

3 Q Very serious, it's a crime.

4 A I know that.

5 Q And as part of that, of course, if you would have been
6 asked you would have cooperated with law enforcement?

7 A Yes. But no one asked me and I would have.

8 Q Do you remember earlier this week or this month an
9 investigator from my office approached you?

10 A No, I don't. I remember yesterday after they mentioned
11 that I would be coming in, but earlier this month, no, I
12 don't remember.

13 Q Let's just talk about this week. Do you remember
14 yesterday -- because you have information about what
15 happened; is that correct?

16 A I do.

17 Q So it would be important to let law enforcement know
18 that information, wouldn't it?

19 A I would say that it would be.

20 Q You would say it would be?

21 A Uh-huh.

22 Q So when an investigator with law enforcement approached
23 you, you told them everything you knew.

24 A No, I didn't. And he did not come to me as an
25 investigator, he introduced himself as someone else.

LAKEISHA EDMONDS

1 Q He introduced himself as whom?

2 A He said he was a solicitor.

3 Q Did he say he was an investigator with the solicitor's
4 office with law enforcement?

5 A He did not, he said, "I am solicitor so and so."

6 Q Well, if we're after the truth as the solicitor we're
7 the prosecutors, right?

8 A Uh-huh.

9 Q So you would cooperate with us.

10 A I would but I didn't feel that there was any need for
11 me to disclose any information to you.

12 Q You didn't want to disclose any information to me or to
13 anyone from law enforcement from my office.

14 A Not at that moment. We were about to go to lunch,
15 someone that I'm unfamiliar with approaches me as we're
16 going to lunch and he asked me did I have time to speak, as
17 my constitutional right I said no.

18 Q That is your constitutional right.

19 A Uh-huh.

20 Q But you didn't having anything to hide if it's the
21 truth.

22 A No. No.

23 Q But you refused to cooperates or talk to him at all.

24 A I did not refuse to cooperate. I did not want to speak
25 because I was going to lunch but that does not mean that I

LAKEISHA EDMONDS

1 have anything to hide.

2 Q Do you remember telling him you wouldn't talk to him,
3 you had no time for him?

4 A I don't remember saying it in that way, no.

5 Q But you have nothing to hide.

6 A No.

7 Q You're still friends with the Carmichaels.

8 A Pretty much.

9 Q Very close.

10 A Yes.

11 Q You would want to try to help them if you could.

12 A As long as they were right. I believe right is right
13 and right (sic) is wrong and if he did something wrong, no,
14 I would not uphold him in his wrong, no.

15 Q And you weren't there when any of these several young
16 women were assaulted, were you?

17 A I don't think anyone was.

18 Q And you're still close with Davetta.

19 A Yes.

20 Q Is she considered your best friend?

21 A Pretty much, yes.

22 Q And you're still close with David.

23 A I have seen him, you know, after his mother's passing
24 and things like that. I'm close with their family, yes.

25 Q And you mentioned to this jury that you were friends

LAKEISHA EDMONDS

1 with Lashanda [REDACTED] as well.

2 A You mean -- yeah. Like I said, I met her through

3 Davetta, we spent time together, yes.

4 Q But that's no longer true.

5 A That was no longer true years ago.

6 Q And y'all had, let's characterize it nicely, a falling
7 out.

8 A I wouldn't consider it a falling out.

9 Q Y'all are no longer friends at all.

10 A It wasn't because of any one particular situation.

11 Q Do you remember a man being involved?

12 A No. I remember a woman being involved.

13 Q But it's fair to say y'all don't like each other
14 anymore.

15 A I have no problem with her, none.

16 Q You are not friends anymore.

17 A No. But it's not because of anyone else, it's because
18 people grow, they change and distance comes between people.

19 Q When was the first time defense counsel contacted you
20 about this case?

21 A When she brung up my name in the trial on Monday or
22 Tuesday, whatever day that was.

23 Q And exactly when was it -- what year was it that you
24 had these conversations and these phones calls you took?

25 A It was in October of 2006.

LAKEISHA EDMONDS

1 Q And you've been able to come to court and testify about
2 specifics.

3 A Uh-huh.

4 Q You have a perfectly clear memory here six years later.

5 A Yes. I can remember things as far as when I was five
6 just as I'm sure the jury and some other people and the
7 young ladies when they testified six years later remembered
8 things that took place then, too.

9 Q And they gave statements and cooperated with the police
10 when all this happened.

11 A And I'm cooperating too.

12 Q And you don't have any grudge against Ms. [REDACTED]

13 A No. If it were the other way around and something
14 happened and -- the only reason I'm here is because of the
15 fact that she said I took a phone call that gave testimony
16 from him saying that he committed the crime. If it were the
17 other way around I would support her as well, I don't have a
18 grudge against her. I don't.

19 Q I'm sorry. Are you through?

20 A Uh-huh.

21 Q I just want to make sure. And I believe you
22 characterized your relationship to them is that they're like
23 a brother and sister to you.

24 A Uh-huh.

25 Q And you would want to help them?

LAKEISHA EDMONDS

1 A I would. Like I said, as long as I felt like it was
2 justified my help would be justified. I would not help him
3 if I felt like he were wrong. He's been around my children,
4 I trusted him and if any reason I thought different, no, I
5 would not be here.

6 Q And your children are boys, aren't they?

7 A They are.

8 MS. CAMPBELL: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 (Break in proceedings.)

11 MS. CAMPBELL: I don't have anything further.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MR. SHADD:

15 Q Ms. Edmonds, Ms. Campbell asked you if you -- several
16 times if you are close to the Carmichael family.

17 A Uh-huh.

18 Q And you want to help them.

19 A Yeah, she asked me that.

20 Q Are you testifying because you want to help David
21 Carmichael, you're good friend's younger brother?

22 A I'm testifying because I believe that our justice
23 system should work, and if you are innocent then you should
24 be proven innocent, if you are guilty then you should be
25 proven guilty. In this instance I do not believe that the

LAKEISHA EDMONDS

1 allegations are true and that's why I'm here.

2 Q And that's based on the observations that you had and
3 the conversations you had with [victim 2] [REDACTED] and interaction
4 with her mom; is that right?

5 A Yes. I can't speak for any other instances but in this
6 particular one, yes.

7 Q And you took an oath to tell the truth, didn't you?

8 A Oh, yeah. And I do, I'm very honest.

9 Q You don't have to talk to an investigator if he wants
10 to talk to you, do you?

11 A I don't. And I wasn't told that, it's just something
12 that I know.

13 Q Now, you talked about giving a statement or anything.
14 Had law enforcement contacted you before yesterday about
15 this case?

16 A No. No. When I got home yesterday afternoon I got a
17 phone call late yesterday evening that I received a call at
18 11:00 -- which I was here at 9:00, once my name was
19 mentioned then I received a phone call about giving a
20 statement but I wasn't even there.

21 Q But I'm saying since 2007, 2006, 2007, eight, nine, 10,
22 no one from law enforcement or the Richland County
23 Solicitor's Office contacted you to find out what your story
24 was, to find out if you had witnessed anything, to find out
25 if you had been present when a conversation was made by one

LAKEISHA EDMONDS

1 of these young ladies.

2 A No.

3 MR. SHADD: Thank you. That's all I have.

4 THE COURT: Ms. Campbell?

5 RECROSS EXAMINATION

6 BY MS. CAMPBELL

7 Q If you had important information about a victim in this
8 case you should have gone to law enforcement. Did you do
9 that?

10 A I did not.

11 Q And when you were approached by law enforcement you
12 told them you would not talk to them.

13 A When I was approached by law enforcement yesterday
14 afternoon I told him I was going to lunch.

15 Q And you just mentioned that you were contacted
16 yesterday about this case. Do you remember sitting in the
17 courtroom all day yesterday?

18 A Yes, I do.

19 MS. CAMPBELL: Thank you.

20 MR. SHADD: That's all I have.

21 THE COURT: You may step down, thank you very much,
22 ma'am.

23 MR. SHADD: I'd like to call Ms. Tamara Green.

24 THE COURT: Come forward, please, to be sworn.

25 The witness, TAMARA GREEN, was first duly sworn

TAMARA GREEN

1 and testified as follows:

2 THE COURT: Ma'am, once you're seated I'll ask that you
3 state your name.

4 THE WITNESS: My name is Tamara Green.

5 THE COURT: Thank you. You're witness.

6 DIRECT EXAMINATION

7 BY MR. SHADD:

8 Q Where do you live?

9 A I currently stay at [REDACTED] [REDACTED] [REDACTED].

10 Q That's in [REDACTED]?

11 A [REDACTED], South Carolina.

12 Q So you're a resident of Richland County?

13 A I am.

14 Q Do you know David Carmichael?

15 A I do.

16 Q How much do you know David Carmichael?

17 A I met him with my sister singing on the choir.

18 Q Okay. On his choir?

19 A Yes.

20 Q And how else do you know him, what other mutual friends
21 do you have?

22 A Well, my fiancée was his drummer.

23 Q You're fiancée was his drummer?

24 A Yes.

25 Q What is your fiancée's name?

TAMARA GREEN

- 1 A His name is Clarence [REDACTED]
- 2 Q It's the same Clarence who plays or played at Grace?
- 3 A Yes.
- 4 Q He's still there?
- 5 A No, he is no longer there.
- 6 Q And do you have any social interactions with David
- 7 Carmichael other than singing?
- 8 A He actually comes around my family, things like that.
- 9 Q Do you have any children?
- 10 A Well, I have two kids, one passed this year.
- 11 Q I'm sorry.
- 12 A And my older son, which is six.
- 13 Q The child that passed, was it a boy or girl?
- 14 A It was a boy.
- 15 Q Okay. And how old was he?
- 16 A It was -- they said 21 weeks.
- 17 Q And how old is your oldest son?
- 18 A He's six years old.
- 19 Q And do you know Davetta Carmichael, I'm sorry, Grant?
- 20 A Yes, I do know Davetta Grant.
- 21 Q You sing with her, too?
- 22 A Yes, sir.
- 23 Q All right. I don't know if you want to rank them but
- 24 who are you closer to, David or Davetta?
- 25 A Well, me and Davetta, we are still close, David, you

TAMARA GREEN

1 know, he is close, as well.

2 Q Do you know are [victim 3] []

3 A Whenever I knew her as Pat, Pat's daughter and Little
4 Mama's daughter is what I was advised about the question.

5 Q And how do you know Pat?

6 A With Clarence and David and another friend.

7 Q Is this Patrick Robinson?

8 A Yes, I only know him as Pat.

9 Q Okay. Is he a musician, too?

10 A I think he plays the bungalows or something like that.

11 Q Did he play when you all sung, too?

12 A I know I've seen him play before because with Clarence,
13 sometimes he goes to different churches and I'm there, I
14 can't remember what he played.

15 Q But any interaction with Pat on a social level that you
16 have with David?

17 A Well, no. It's always been, you know, "Hey, how are
18 you doing," and keep going.

19 Q Before today have you been here in court?

20 A No, sir.

21 Q Before today were you contacted by law enforcement to
22 see if you have a statement to give?

23 A No, sir.

24 Q Let me direct your attention to a cookout that occurred
25 at I believe your home.

TAMARA GREEN

1 A Yes.

2 Q Was Clarence there?

3 A Yes, Clarence was there. He was outside, you know,
4 grilling.

5 Q And around how many people do you think were there?

6 A At that time it was just me and Clarence before David
7 and the two young ladies came.

8 Q And when David and the two young ladies came, how long
9 did they stay if you know?

10 A It was a good little while.

11 Q Go ahead.

12 A No, it was a good little while. David went out back
13 and he was with Clarence and the young ladies were inside.

14 Q Okay. Was anyone else inside with you?

15 A At that time.

16 Q Okay. At some point did some folks come inside the
17 house?

18 A There were a few gentleman coming by, they were coming
19 for the cookout.

20 Q Okay. You're saying gentlemen, roughly what ages were
21 they?

22 A They were in their twenties, the oldest have been 23,
23 24.

24 Q And they were invited to the party, the cookout?

25 A Yes, sir.

TAMARA GREEN

1 Q So while they were -- they were in the house for a
2 period of time?

3 A They actually -- when they came through they came
4 through the house, spoke and they went out back to speak
5 with Clarence, once they went out back they came back
6 inside.

7 Q What was going on inside, was it TV, music?

8 A Yeah, it was TV. I had Direct TV and we had it for
9 free so we watched pretty much different things.

10 Q You said the two young ladies, one was a cousin, I
11 believe, Kayla [REDACTED]; is that right?

12 A That was Aunt Ursula's daughter or something like that.
13 I described her as the young lady with the capris pants.

14 Q Because you didn't know the names.

15 A I didn't know the names.

16 Q So one lady had capris pants on.

17 A Uh-huh.

18 Q And what did the other young lady have on?

19 A It was a green dress, I think it was a button down
20 front.

21 Q Could you describe her dress more in-depth?

22 A It was a short green dress. It was, you know, like
23 this, right around there.

24 Q But the one with capris pants on you said that -- well,
25 did you interact with the two young ladies?

TAMARA GREEN

1 A Yeah. I spoke to them, you know, kind of laughed a
2 little bit with them to kind of loosen them up at the time
3 the young lady --

4 Q Because they didn't know you all, correct?

5 A Yeah, they didn't know -- yeah. I didn't know them
6 other than, you know, after the fact when I found out who
7 they were.

8 Q Okay. And then David introduced Ursula's daughter,
9 that's the one with the capris pants, right?

10 A After all of this happened, the introduction of who
11 they were happened at the end of whenever he was getting
12 ready to leave.

13 Q Okay. You said they were there for a good little
14 while, how long would you say? An hour? Two hours? Five
15 hours?

16 A It may have been an hour or so.

17 Q Did Patrick come over for that?

18 A No.

19 Q Did what we call Little Mama come over for that?

20 A No.

21 Q And did anything occur that caused you to pause about
22 one of the young ladies or both?

23 A At first they were very reserved, relaxed, just, you
24 know, they didn't say much unless I said something to them.
25 So when the guys came in they asked, you know, asked, "How

TAMARA GREEN

1 are you doing," you know, "Who are y'all?" And they gave
2 their names or whatever at the time and they went on out
3 back with Clarence. Once they came back inside that's when
4 I noticed a change in the young girls.

5 Q What kind of change was that?

6 A Went, you know, they got -- their posture changed and
7 things of that nature. The young lady in the green dress
8 kept walking back and forth, she was, you know, walking a
9 whole lot more at that time.

10 Q Well, what's wrong with walking back and forth in the
11 house?

12 A It was just shocking. Because before she wasn't doing
13 anything, everybody was just sitting there, there was
14 nothing being done so she was just sitting there, you know, .
15 everybody was just watching television at the time. And
16 whenever she walked back and forth it was a change in the
17 way she even looked at the guys there.

18 Q Okay.

19 A It wasn't just her, now, the other young lady did it as
20 well.

21 Q Okay.

22 A And at that time I was shocked, you know what I'm
23 saying, for the change that I saw.

24 Q Did you say anything to them?

25 A I didn't say anything to them, I said something to

TAMARA GREEN

1 David.

2 Q What did you say to David?

3 A I'm not -- am I to say exactly what I said?

4 Q Yes. You're testifying, you can say what you told him.

5 A Well, I told them to not bring the fat a-s-s little
6 girls back to my house.

7 Q Did they leave immediately then?

8 A The young ladies by that time were outside, David was
9 still out back. I went to the window to see what they were
10 doing a couple of guys was coming towards the door.

11 Q Did you recognize those guys?

12 A No. I didn't know who they were.

13 Q Just looking at them, could you tell how hold they
14 looked?

15 A They looked like they were in their higher teens but I
16 don't know.

17 Q Do you know who invited them to come on your property
18 to much less come to the cookout?

19 A Well, at that time we were staying in an apartment
20 complex so it wasn't unusual to see someone coming towards
21 where I was living.

22 Q So this was in the yard, this wasn't out in the parking
23 lot?

24 A Yeah. This was in the parking lot, they were coming
25 towards where I stayed.

TAMARA GREEN

1 Q And once you made this comment to David what did he do,
2 if anything?

3 A He was going towards the door at the time and when I
4 made the comment towards him he opened, the door and he
5 asked, you know, Hey, what are y'all doing?" Like that.
6 That's when I asked, too, I asked one of the girls --

7 Q Okay.

8 A -- at that time, that's when I asked him, I said, "Well
9 who are these little girls anyway?" And he said, you know,
10 they're the little girl -- he told me who it was, he said
11 it's Aunt Ursula's or cousin or somebody, Ursula's daughter
12 and that's Pat's and Little Mama's daughter.

13 Q Okay.

14 A And at that time, you know what I'm saying, just by my
15 boyfriend knowing Pat and basically -- I've actually sat
16 beside Little Mama at a church function before and I saw her
17 reaction to something that the child did at the time and I
18 just felt like they wouldn't play that if they would have
19 known how they were acting in my house at the time.

20 Q You said you saw the reaction how Little Mama reacted?

21 A Yeah. We was at a church function at Piedmont and I'm
22 assuming that's her child, but she pinched the little girl.

23 Q It wasn't even her child that she pinched?

24 A I'm not sure who it was, I just said "Oh, she don't
25 play," you know, that's just my assumption.

TAMARA GREEN

1 Q So having that knowledge and seeing what occurred in
2 your home and outside --

3 A I just know they wouldn't play that, they wouldn't like
4 to hear or know that happened.

5 MR. SHADD: Ms. Green, thank you for coming. Please
6 answer any question the State may have.

7 THE WITNESS: Okay.

8 THE COURT: You're witness, Ms. Campbell.

9 MS. CAMPBELL: Thank you.

10 CROSS EXAMINATION

11 BY MS. CAMPBELL

12 Q Hi Ms. Green, I just have a few questions. We've never
13 met.

14 A No.

15 Q And this took place at your house.

16 A At my apartment.

17 Q At your apartment, I'm sorry.

18 A Yes.

19 Q When did this take place, do you remember?

20 A It was sometime last year.

21 Q Was it hot? Cold? Do you remember?

22 A Not exactly. I'm pretty sure it was warm by what they
23 were wearing.

24 Q I'm sorry, I didn't hear you.

25 A By what I remember them wearing because I remember them

TAMARA GREEN

1 by their clothing.

2 Q Do you remember what you were wearing?

3 A At that time I was wearing like maybe a t-shirt and
4 these little black pants.

5 Q Do you remember what David was wearing?

6 A No. I know -- well, if I'm not mistaken I think he was
7 wearing some jeans and like a gray shirt, something like
8 that.

9 Q Was David invited to your cookout?

10 A He was.

11 Q And the three young men you mentioned, the ones you
12 first mentioned in their twenties which are now different
13 than the ones that were in their teens, were they invited?

14 A Yes.

15 Q What were their names?

16 A There was Lamar Hill, Shawn Player I think it was,
17 Frankie Rafeal.

18 Q And are they're in the courtroom today?

19 A No, they're not.

20 Q Okay. And you're still close with Davetta; is that
21 true?

22 A I am.

23 Q Do you talk on a weekly basis, a monthly basis?

24 A More often -- we text more often but we conversate.

25 Q And in this day and age texting and talking, I'm kind

TAMARA GREEN

1 of using those interchangeably so I don't mean to mislead
2 you.

3 A Oh no.

4 Q So you would text or talk to Davetta I guess every
5 week.

6 A Sometimes, you know, we would actually pick back up,
7 you know what I'm saying, within the last few months.

8 Q So in the last few months you got back into talking and
9 texting.

10 A Texting.

11 Q Did you know this trial was coming up?

12 A Well, I actually inquired about it.

13 Q And did you know the allegation that **victim 3** had made?

14 A I heard about it.

15 Q So in the several months that you got together and
16 talking, she's talked to you on multiple occasions.

17 A We talked via text, more so via texted.

18 Q So in the months leading up to this you told her about
19 this inappropriate behavior you saw on **victim 3** part.

20 A I told a few mutual friends.

21 Q You told a few of your girlfriends, and those would be
22 Davetta's girlfriends, right?

23 A Not necessarily.

24 Q But Davetta was one of those that you told.

25 A It was a long time ago.

TAMARA GREEN

1 Q And you're supportive of Davetta.

2 A I am.

3 Q So you told her about this inappropriate behavior weeks
4 ago, months ago.

5 A Whenever it happened.

6 Q Whenever it the happened, last year.

7 A Yeah, it was awhile.

8 Q And when is the first time defense counsel ever got in
9 touch with your?

10 A Defense counsel? I talked to him --

11 MR. SHADD: Your Honor, I would object to the
12 character --

13 A He asked me to speak to him for awhile.

14 MR. SHADD: Your Honor, I object to the
15 characterization as defense counsel getting in touch with
16 her.

17 THE COURT: She's asking questions, I'll let her ask
18 them. If you want to ask some follow-up I'll give you a
19 chance to do so.

20 MR. SHADD: All right.

21 THE COURT: You may have proceed, Ms. Campbell.

22 MS. CAMPBELL: Thank you.

23 Q When is the first time defense counsel ever got in
24 touch with you?

25 A Well, he was trying to from what I understand with

TAMARA GREEN

1 Davetta --

2 Q You can't talk about what Davetta knows, okay, you can
3 just talk about your knowledge, I'm sorry, those are the
4 rules. When is the first time you actually had contact with
5 defense counsel?

6 A When I actually had contact with him was this week.

7 Q This week? And what day this week actually?

8 A I think it was maybe Monday.

9 Q Maybe Monday?

10 A Uh-huh.

11 Q Could it have been as late as Tuesday or Wednesday?

12 A I can't remember. I know it was in the afternoon
13 whatever day it was, I think it was Monday. Because I was
14 supposed to come on Tuesday but I wasn't able to get off my
15 job on time.

16 Q Okay.

17 A Well, today is Thursday so it may have been Tuesday.

18 Q Okay. And then you were supposed to come the next day
19 but you couldn't get off your job.

20 A I couldn't get off my job.

21 Q But you had given this information, this important
22 information to Davetta back when it happened.

23 A Yes. And -- go ahead.

24 Q And did you tell her right after the party what you
25 observed?

TAMARA GREEN

1 A It wasn't right after the party. Whenever, you know,
2 everything went on and me and Clarence we were conversing
3 about it and at that time when I got in contact with Davetta
4 and I let her know exactly what had happened, what I saw.

5 Q So it would have been within a week or so of all of
6 this happening?

7 A Maybe so.

8 Q Two weeks, three months?

9 A Maybe a little longer.

10 Q And I'm not trying to pin you down.

11 A Yeah. I'm not really sure.

12 Q So that was information you definitely gave to Davetta.

13 A She knew, yeah.

14 Q And you would agree with me that Davetta is devoted to
15 her brother?

16 A Yeah. I mean, it's her brother.

17 Q Did you ever go to law enforcement and tell them about
18 your information?

19 A No. I figured someone would call me if they needed
20 anything from me.

21 Q And Clarence, what relationship is he to you? I'm
22 sorry.

23 A He is my fiancée.

24 Q He was your fiancée?

25 A Uh-huh.

TAMARA GREEN

- 1 Q And he's David's best friend.
- 2 A Very close.
- 3 Q They're like brothers.
- 4 A Like brothers.
- 5 Q Ursula, what relation is she to the Carmichael family?
- 6 A I think she's either the aunt or the cousin, it's
- 7 either/or, I'm not exactly sure. He just mentioned her
- 8 name, so I don't know her.
- 9 Q You don't know her?
- 10 A I never met her.
- 11 Q Did you know that she -- she's a Carmichael.
- 12 A I know that she is related to them.
- 13 Q And her daughter was one of two girls that you --
- 14 A With the capris pants.
- 15 Q That you made that comment about earlier.
- 16 A Uh-huh.
- 17 Q And do you know, did she get in trouble after this
- 18 about her behavior?
- 19 A I'm not exactly sure. But I did tell David that, you
- 20 know, he should let them know.
- 21 Q So you went so far as to telling David to let Ursula
- 22 know.
- 23 A Yeah.
- 24 Q And is Ursula here?
- 25 A I'm not sure, I don't know who she is.

TAMARA GREEN

1 Q The twenty something year old men you referred to,
2 Lamar Hill, Frankie Rodriquez I guess, I can't read my own
3 handwriting.

4 A It's Frankie and Rafael.

5 Q They were invited to your home.

6 A They were invited to my home.

7 Q And these were young men welcome in your home.

8 A They were welcome in my home.

9 Q That's because they were friends of your family.

10 A They were friends of us, yeah.

11 Q So these weren't just some strange young men from off
12 the street or something.

13 A Not to us.

14 Q These were people that you would approve of so much
15 that you would have them in your home.

16 A Yes.

17 Q And did you talk to those young men when they were in
18 your home?

19 A Of course I spoke to them.

20 Q Did other people talk to them when they were in your
21 home?

22 A Whenever they would come over.

23 MS. CAMPBELL: Beg the Court's indulgence.

24 THE COURT: Yes, ma'am.

25 (Break in proceedings.)

TAMARA GREEN

1 MS. CAMPBELL: Thank you, I appreciate it.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION

4 BY MR. SHADD:

5 Q These other people who came into your home with
6 Frankie, Lamar, Sean, Rafael, were they walking back and
7 forth in front of these young men?

8 A No. They came in, they spoke, they went out back, when
9 they came back outside they went back outside. Now, Lamar
10 is the one that I had a conversation with about what
11 happened after everyone left, he said, "Where did you get
12 these little fat ass little girls from?" And then we had
13 our conversation about what transpired.

14 Q Then the teenagers who were outside, they were not
15 invited into your home.

16 A Yeah.

17 Q They never came in your home.

18 A No not at all.

19 Q These were literally strangers off the street.

20 A I never -- no, I don't know them.

21 MR. SHADD: Thank you. That's all I have.

22 THE COURT: Anything further?

23 MS. CAMPBELL: No, sir.

24 THE COURT: You may step down, ma'am.

25 THE WITNESS: Okay.

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, at this point in time we're going to take our lunch
3 break. I'll give you the same caution every time you leave
4 the courthouse, don't try to gather any information on your
5 own, don't discuss the cases with anyone even among
6 yourselves and don't allow anyone to discuss it with you.
7 Don't listen to, watch or read any media reports or news
8 reports about this case if there are any. I'm going to
9 advise you, it does appear the case could be placed in your
10 hands for deliberation this afternoon and so you may want to
11 let people in your family know that you may be in
12 deliberations with the jury and that it could take a little
13 while, so we'll see how that goes, I'm just letting you know
14 I does look like it will come into your hands at some point
15 this afternoon. Now, I will ask that you be back in the
16 jury room, if you could be there at 2:00 sharp because I'm
17 giving you about ten extra minutes, so be there about 2:00
18 and we should be able to resume at that point in time.
19 You're free to go. Everyone remain seated while the jury
20 retires.

21 (The jury left the courtroom)

22 THE COURT: All right. The Court is in recess until
23 2:00, the defendant remains in custody. Thank you very
24 much.

25 (A lunch break was taken.)

1 THE COURT: State ready to go forward at this time?

2 MS. SIMPSON: Yes, sir.

3 THE COURT: Defense ready?

4 MR. SHADD: Yes, sir.

5 THE COURT: Bring the jury in.

6 (The jury returned to the courtroom.)

7 THE COURT: Ladies and gentlemen, if there was any
8 member of the jury panel who had any difficulty complying
9 with my instructions in your absence please stand. It
10 appears all jurors have been able to comply with my
11 instructions during the lunch break. When we stopped before
12 lunch the defense was in the process of calling witnesses.
13 You may call your next witness.

14 MR. SHADD: Thank you, Your Honor. We called Davetta
15 Graham.

16 THE COURT: Come forward, please, and be sworn.

17 The witness, DAVETTA GRAHAM, was first duly
18 sworn and testified as follows:

19 THE COURT: Ma'am, once your seated state your name.

20 THE WITNESS: Davetta Graham.

21 THE COURT: Mr. Shadd, your witness.

22 MR. SHADD: Thank you, Your Honor. May it please the
23 Court?

24 THE COURT: Yes.

25 DIRECT EXAMINATION

DAVETTA GRAHAM

1 BY MR. SHADD

2 Q Ms. Graham, you're a resident of Richland County; is
3 that correct?

4 A Yes.

5 Q Are you married?

6 A Yes.

7 Q And who are you married to?

8 A Darryl Graham.

9 Q And do you all have children together?

10 A Yes.

11 Q How many children?

12 A We have three in the house.

13 Q And how old are those children?

14 A My oldest is seven, my middle child is five, and my
15 youngest is two.

16 Q And the oldest is a girl or a boy?

17 A Girl.

18 Q And the five year old is what?

19 A Girl.

20 Q And the two year old is what?

21 A Boy.

22 Q You are related to David Carmichael, Jr.?

23 A Yes, I am.

24 Q How?

25 A That's my brother.

DAVETTA GRAHAM

- 1 Q How many years apart are you all?
- 2 A Two.
- 3 Q Y'all grew up in the household of Ms. Annie Carmichael.
- 4 A And David Carmichael.
- 5 Q And David Carmichael?
- 6 A Yes.
- 7 Q And Ms. Annie Carmichael passed away when?
- 8 A She passed away December 1st of 2010? 9, I'm sorry.
- 9 Q 2009. This was after he was charged with and accused
- 10 of fondling **victim 1** or **victim 1** and **victim 2** is that right?
- 11 A Yes.
- 12 Q When you all were growing up which house did you all
- 13 live in?
- 14 A When we all were growing up we stayed in Bluff Estates.
- 15 Q Okay.
- 16 A Some will consider it 48, but we stayed there in Bluff
- 17 Estates and were together.
- 18 Q And then you moved eventually when?
- 19 A For that I can't -- you're saying when we were little
- 20 kids or you're talking about now when we are grown?
- 21 Q When you got older where did you move to?
- 22 A Okay. When we got older we were kind of all over the
- 23 place, because we left Columbia for awhile and moved to
- 24 Baltimore, Maryland.
- 25 Q Okay.

DAVETTA GRAHAM

1 A And then we moved back here and for awhile we stayed
2 with my Aunt Moreen.

3 Q And at what point had you and your brother and your
4 mother move from Doc. Morant's Place into your own house?

5 A I think I were in the 9th -- I think I was in high
6 school, my first year of high school.

7 Q Okay. Where did you stay there?

8 A We stayed off of Decker in a little residence, I'm not
9 sure, you know, of at this moment.

10 Q Okay.

11 A It's been awhile.

12 Q And were your parents still together then?

13 A No.

14 Q And so your mom was raising you and your brother?

15 A Yes.

16 Q Was she --

17 A And my oldest brother was there, but, you know, we were
18 younger.

19 Q Okay. And how many siblings do you have?

20 A I have one sister, two brothers, one is deceased.

21 Q So one brother is deceased and the sister, her name is
22 Danielle?

23 A Yes.

24 Q And I believe she moved to Myrtle Beach?

25 A Yes.

DAVETTA GRAHAM

- 1 Q She lived there awhile.
- 2 A Yes.
- 3 Q Is she older than you or younger than you?
- 4 A She's older, she's five years older than me.
- 5 Q Okay. So at some point you and David were in the house
- 6 with your mom?
- 7 A Yes.
- 8 Q Okay. And y'all were raised in the church?
- 9 A Yes.
- 10 Q And which church did y'all primarily go to during your
- 11 formative years?
- 12 A Well, we started off at Progressive, then we went to
- 13 Bible Way Piedmont.
- 14 Q Okay.
- 15 A And from Bible Way Piedmont -- we stayed there for a
- 16 while. And then after we left from Bible Way Piedmont we
- 17 went to New Life. And after New Life we moved to Grace
- 18 Christian Church and that was the last church we were with.
- 19 Q Okay. And when you say we, would that include your mom
- 20 too?
- 21 A Me, my mother and my brother.
- 22 Q So y'all kind of left as a unit.
- 23 A Yeah.
- 24 Q Even once you and David got enough to decide you wanted
- 25 to go to this church?

DAVETTA GRAHAM

1 A We always wanted to be together.

2 Q Well, until your mom passed away.

3 A Right.

4 Q And you love your brother.

5 A I do.

6 Q But like brothers and sisters y'all don't always agree,
7 right?

8 A We don't. We don't.

9 Q You -- how many years are y'all apart?

10 A Two.

11 Q Just two. Okay. And so you say something he doesn't
12 like he may tell you about it or ignore you or what have
13 you, right?

14 A He is that type of person.

15 Q He is that type of person, right?

16 A Yes, he is.

17 Q Well, how is it if you'd like for him to -- I don't
18 know what word you want to use, baby-sit, keep, watch your
19 children?

20 A He didn't want to.

21 Q Why?

22 A He was that type of person, because if he felt that he
23 was going to get a phone call it was time for him to go and
24 he didn't need no kids holding him down at that moment.

25 Q Okay. In other words, if he wanted to get up and go he

DAVETTA GRAHAM

1 wouldn't want anybody tying him down.

2 A Right.

3 Q Including kids?

4 A Including kids.

5 Q Now, you heard testimony your brother loves to eat,
6 right?

7 A Right, he do.

8 Q In years past he's been a very large person would you
9 say?

10 A Yes, he has.

11 Q He's not going to get you, I mean, you can say that.

12 A He was a large person, yeah.

13 Q And he has -- he's dated, hadn't he?

14 A He's who?

15 Q Dated.

16 A Yeah.

17 Q Has he dated anybody that you felt this is an abnormal
18 relationship or unnatural relationship age wise or anything
19 like that?

20 A Well, you know, as a sister you are very defended about
21 who your brother or sister date but, you know --

22 Q But that's the life that he chooses.

23 A That's the life he chooses, the same way as me.

24 Q So he can't tell you about who you date.

25 A No.

DAVETTA GRAHAM

- 1 Q All right. Now, you know Lashanda [REDACTED]
- 2 A Very well.
- 3 Q Is she your best friend?
- 4 A We were best friends.
- 5 Q How long ago was that that y'all were best friends?
- 6 A Me and Lashanda [REDACTED] actually really started hanging
- 7 together -- stopped hanging together around -- okay. I was
- 8 staying -- '08.
- 9 Q 2008?
- 10 A Right about around that time, '07, '08. I worked with
- 11 them, that's why I said really stopped hanging around
- 12 because I worked with her mother and her.
- 13 Q And this would have been after her brother was accused
- 14 of harming her child.
- 15 A Right.
- 16 Q You continued to work with her mother?
- 17 A That was my job and that's the only way I had income
- 18 coming in.
- 19 Q And you continued to be friends with Lashanda [REDACTED] as
- 20 well.
- 21 A Yeah. We were taught to love one another in spite of
- 22 it.
- 23 Q In spite of what was said about your brother?
- 24 A What was said at the time.
- 25 Q Okay. When Lashanda [REDACTED] -- was there an occasion

DAVETTA GRAHAM

1 when Lashanda [REDACTED] came and talked to you and your mom,
2 Annie Carmichael?

3 A Yes.

4 Q Whose house was this?

5 A This was at [REDACTED] [REDACTED] [REDACTED].

6 Q Who rented out the house at [REDACTED] [REDACTED]?

7 A David Carmichael.

8 Q So --

9 A It was my mother and him. When we first moved into
10 that house it was me and my brother, then my mom moved in a
11 little after the situation with the charges and everything.
12 She moved in with us and she stayed there with us until, you
13 know, we left that house.

14 Q And then Shanda came to the house?

15 A She came to the house and spoke to me, my mother, and
16 my brother was in the house. He's the type of person when
17 he is there he makes himself very known that he's in there.

18 Q Okay. So he was there. Shanda [REDACTED] came to your
19 house.

20 A She did.

21 Q And she had a conversation with you and your mother.

22 A She did.

23 Q And what did she tell you?

24 A They were talking about the situation, what was going
25 on --

DAVETTA GRAHAM

1 MS. CAMPBELL: Objection, Your Honor, hearsay.

2 THE COURT: Sustained.

3 THE WITNESS: We were talking --

4 THE COURT: Ma'am, I'm not going to allow you to quote
5 what other people may have said or not --

6 THE WITNESS: Okay.

7 THE COURT: -- either a defendant or involved directly
8 in this case.

9 Q Based on what Shanda [REDACTED] said to you all -- well, let
10 me ask you this, was there a concern -- well, let me ask
11 you, was there any type of a threat?

12 MS. CAMPBELL: Objection, Your Honor.

13 THE COURT: And the objection is?

14 MS. CAMPBELL: It would call for a hearsay answer.

15 THE COURT: Well, threats can be verbal or otherwise,
16 I'll ask you to rephrase the question.

17 Q Did Shanda [REDACTED] have a concern moving forward in this
18 case?

19 MS. CAMPBELL: Objection, Your Honor, same reason.

20 THE COURT: You need to stand up.

21 MS. CAMPBELL: I'm sorry, Your Honor. Objection as to
22 hearsay, calls for hearsay and is leading.

23 THE COURT: I'm going to ask the jury at this time to
24 retire to the jury room, don't begin your discussions until
25 such time as I've asked you to do so. Thank you very much.

DAVETTA GRAHAM

1 (The jury left the courtroom.)

2 THE COURT: Mr. Shadd, she's not going to be able to
3 testify as to what Lashanda [REDACTED] said and you're asking her
4 if she expressed a concern about going forward in this case,
5 that in effect is asking for what she said.

6 MR. SHADD: Yes, sir.

7 THE COURT: Now, she can state what she did as a result
8 of listening to a conversation.

9 MR. SHADD: Yes, sir.

10 THE COURT: She can state her state of mind as a result
11 of listening to the conversation, but she's not going to be
12 able to quote or express what LaShonda [REDACTED] in that
13 conversation, that's hearsay.

14 MR. SHADD: And out of --

15 THE COURT: Unless you can give me some exception to
16 the hearsay.

17 MR. SHADD: We feel, Your Honor --

18 THE COURT: I assume it's being offered for the truth
19 of the matter, her position regarding the case, truth of the
20 matter asserted.

21 MR. SHADD: Actually it's not, it's not offered for the
22 truth.

23 THE COURT: Then what is it being offered for?

24 MR. SHADD: Well, the impact that it had on her and the
25 impact that it -- which goes to most of the motivation of

DAVETTA GRAHAM

1 Lashanda [REDACTED] at that time, Your Honor, really about
2 whether she believed her daughter.

3 THE COURT: That's expressing what she said, her
4 opinion, someone else's opinion through what she said.

5 MR. SHADD: And the actions that she took as a result.

6 THE COURT: Now, she can testify as to actions.

7 MR. SHADD: Yes, sir.

8 THE COURT: But you're asking her as to what she said
9 about the case and I'm not going to let you do that.

10 MR. SHADD: Okay.

11 THE COURT: Do you need to talk to your witness before
12 we bring the jury in?

13 MR. SHADD: No, sir.

14 THE COURT: Okay. Let's bring the jury back in.

15 (The jury returned to the courtroom.)

16 THE COURT: Thank you. I'll sustain an objection by
17 the State. You may proceed, Mr. Shadd.

18 BY MR. SHADD:

19 Q After Shanda [REDACTED] made the comments to you and your
20 mother, what was your state of mind at that point? Without
21 saying what she said, what was your state of mind at that
22 point?

23 A I was confused.

24 Q And did Shanda [REDACTED] come to your wedding?

25 A She did.

DAVETTA GRAHAM

- 1 Q Did you invite her to your wedding?
- 2 A No, I did not.
- 3 Q This was -- you got married when?
- 4 A July 2nd.
- 5 Q Of what year? 2009?
- 6 A 2011.
- 7 Q 2011?
- 8 A Uh-huh.
- 9 Q So this is three years after this.
- 10 A Yes.
- 11 Q But she comes to your wedding, and who does she bring
- 12 with her?
- 13 A Her daughter.
- 14 Q **Victim 2** [REDACTED]
- 15 A **Victim 2** [REDACTED]
- 16 Q Was your brother at the wedding?
- 17 A Yes, he was, he was in it.
- 18 Q And did he direct the reception later on?
- 19 A Yes, he did.
- 20 Q Music and all that?
- 21 A Yes.
- 22 Q Did you know Sabrina Mack Sanders?
- 23 A Yes, sir, I did.
- 24 Q How did you know her?
- 25 A We all grew up together. Me and her, we sung together,

DAVETTA GRAHAM

1 her and her sister, Misty, we sung together and, you know,
2 always this joked around laughed, played around, that's just
3 that type of family we had, our family and their family, we
4 always joked around. They grew up, you know, spent the
5 night at our house and everything.

6 Q Did that happen with the [REDACTED] too, spend the night?

7 A No.

8 Q Are you sure about that?

9 A I didn't start hanging around Shanda [REDACTED] until I
10 turned 21.

11 Q She wasn't spending the night at your house during high
12 school?

13 A No, she wasn't.

14 Q Okay. Did [REDACTED] Victim 2 [REDACTED] spend the night at your house?

15 A No, she did not.

16 Q Was [REDACTED] Victim 2 [REDACTED] ever in your bed?

17 A No, sir, she wasn't.

18 Q Did you ever keep [REDACTED] Victim 2 [REDACTED]

19 A No, sir, I didn't.

20 Q All right. Well, tell me about the set up. I'm
21 talking about the house that you and David shared and I
22 think at one point your mom ended up sharing with you.

23 A In our house at [REDACTED] [REDACTED] it was a three bedroom and my
24 room was more close to the bathroom so you would -- but once
25 you come in the door if you would make a right and come down

DAVETTA GRAHAM

1 the hall, that door down the hall was my brother's room.

2 Q David's room?

3 A Right. And no one was allowed to be in that room when
4 he's not there.

5 Q But is his door open sometimes?

6 A I mean, if he leaves it open, but half of the times
7 he'll close it.

8 Q But if anybody walks past and it's open --

9 A Uh-huh, you can.

10 Q -- you can see a TV in there, too?

11 A No.

12 Q Okay. Did he have a TV in his room?

13 A At that time he did have a TV but you couldn't see it
14 unless you looked inside the room, and, you know, look up.
15 Because he did have a dresser where it was, you know, kind
16 of tall and the TV set up kind of high.

17 Q Like an armoire?

18 A Yes.

19 Q And did he have cable in there?

20 A He had cable in there but you wouldn't know unless you
21 were in there before. If you've never been in there you
22 never would have knew that he had cable in there.

23 Q Did you have cable in the other rooms in the house,
24 too?

25 A All three of the rooms, too, because I had a TV in my

DAVETTA GRAHAM

1 room as well.

2 Q Okay. And was there a time when you at least was
3 watching [Victim 2] and you were in the living room watching TV
4 and y'all fell asleep?

5 A No, sir.

6 Q Have you and [Victim 2] ever been in the same bed
7 together?

8 A No, sir. If it would have happened off of Shannon
9 Crossings, I had a baby at the time and she was two years
10 old.

11 Q Okay.

12 A Are we sticking with dates still? Does it matter with
13 the dates or not?

14 Q That's up to you.

15 A Because if this was to happen in '05 I was staying in
16 Shannon Crossings.

17 Q That is an apartment complex.

18 A Yes, sir, Beltline.

19 Q And did David live with you when you had your kid?

20 A No, sir, he did not.

21 Q This is in '05?

22 A '05. We didn't move into [REDACTED] until the
23 end of '06.

24 Q And that's when you and David as an adult lived
25 together.

DAVETTA GRAHAM

1 A Yes.

2 Q That was in '06?

3 A '06.

4 Q And that was David's house that you --

5 A That was David's house and I stayed there with him,
6 then sooner or later my mom moved in and both of their names
7 were on the lease together.

8 Q How would you describe how you are as a sleeper? Are
9 you a heavy sleeper? Light sleeper? What?

10 A No, sir, I am not a hard sleeper. Anybody can tell you
11 that, I'm not a hard sleeper at all.

12 Q You and David obviously lived together on [REDACTED] [REDACTED].
13 If you were asleep and he comes home, what's going to
14 happen?

15 A You can hear everything. When he comes in the house
16 you're going to know that -- you can hear him.

17 Q Did --

18 A Because of the fact our screen door when it shuts it's
19 very loud because, you know, it needed some work on it. But
20 my floors were very thin, my carpet, you know, it was real
21 thin carpet and the floors was very weak, you know, it was
22 kind of an old house so when he came through I'm pretty
23 sure -- he's a big man, when he walks through you're going
24 to hear those walks and I'm not a hard sleeper at all.

25 Q If he had walked in --

DAVETTA GRAHAM

1 A If he had walked and I'm babysitting her, first of all
2 if her mother leave her in my care, why would I, you know,
3 let her get up and leave out the room and I'm asleep and not
4 watching her?

5 Q Right. But that assumes that you would leave her by
6 herself and go into your room and --

7 A Why would I do something like that?

8 Q Are you saying that you wouldn't do that?

9 A No, I wouldn't do nothing like that.

10 Q And this is at this time a child who is seven years old
11 or eight years old or nine years old.

12 A If it happened in '07 and it's [REDACTED] [REDACTED] she would have
13 been a little older, right?

14 Q Even a little older would you have done that?

15 A No.

16 Q Would you have given permission to have any child go
17 into your brother's room?

18 A No, sir, I would not, not out of his permission.

19 Q Now, you said David would not -- he just didn't want to
20 be tied down to watching kids.

21 A Right.

22 Q Watching --

23 A Right. Because he traveled a lot, he sing a lot, he
24 goes to different people's houses. I'm sure you heard he
25 loves to go and eat, he loves to go and socialize, he was

DAVETTA GRAHAM

1 just that type of person.

2 Q How about volunteering to go babysit?

3 A No. I couldn't even get him to babysit my kids.

4 Q All right. Let's go back to Ms. victim 1 and her
5 mother, Ms. Sabrina.

6 A Uh-huh.

7 Q You said y'all joked together and played around.

8 A Yeah. We were -- our family and their family was very
9 close and I looked at them as sisters, big sisters because
10 they're much older than us as you can see.

11 Q Yes, ma'am.

12 A And, you know, we looked at them as sisters. But my
13 brother hung around them more than I did so he would be with
14 the oldest sister, which is Misty Mack, a lot.

15 Q Okay.

16 A They we want a lot of the places together. And, you
17 know, of course you'll get jealous because I'm like, "Why
18 was you with her all the time?"

19 Q You were jealous of David?

20 A Yeah. Because he used to be with her a lot, he used to
21 be with her a lot.

22 Q And what was --

23 A They went different places together.

24 Q And what was the age difference between them?

25 A If he's 30 -- well, yeah, we're two years apart so I am

DAVETTA GRAHAM

1 not sure what's the age of Misty Mack but I'm pretty sure
2 she would have been a little older than him.

3 Q Okay. Is she here today?

4 A Yes, she is.

5 Q Okay. And so they were close.

6 A Uh-huh.

7 Q And they hung out.

8 A Uh-huh.

9 Q Did him and Sabrina hang out?

10 A Not that I know of because she was married at the time.

11 Q Okay. Do you know -- did him and Misty work on music
12 together or something?

13 A They always did.

14 Q Okay. What was her role at the church as far as music
15 was concerned?

16 A She was over the music department.

17 Q And what was his role at the church?

18 A I guess he was the assistant.

19 Q Okay. And do you know if there were occasions where he
20 and Misty got together to go over the music for church?

21 A They did that plenty of times, yeah, they did that a
22 lot together.

23 Q Do you know if that was just limited to church at the
24 church facility?

25 A No. He would be over at the house with her a lot.

DAVETTA GRAHAM

- 1 Q Okay. Are you aware of these women's gatherings
2 that --
- 3 A Women's gatherings?
- 4 Q Gatherings, yes.
- 5 A For the church?
- 6 Q Yes.
- 7 A If it's for the church, I would have knew about it.
- 8 Q Okay.
- 9 A But if it's not for the church, no, I wouldn't have
10 knew about those.
- 11 Q Do you recall attending any church women's gatherings
12 with Sabrina?
- 13 A Yeah, plenty of them.
- 14 Q Okay.
- 15 A Once I got older, yeah.
- 16 Q And were you asked to watch [vic 1]
- 17 A No, I never was asked to watch [vic 1] My mom was
18 [vic 1]'s Godmother at the time.
- 19 Q Okay. Do you know if your mom was asked by Sabrina to
20 take care of [vic 1] while Sabrina went to a women's gathering
21 or women's night out?
- 22 A No, she wasn't.
- 23 Q Even though this was her Godmother?
- 24 A No, she wasn't.
- 25 Q Would your mom have been available if that was the

DAVETTA GRAHAM

1 case?

2 A Yeah.

3 Q So even if you wasn't available because you were at the
4 women's gathering or had something to do, your mom was
5 available.

6 A Right.

7 Q Okay. Ms. Graham, do you know [Victim 3] [REDACTED] at all?

8 A I know of her from church. I know her father and he
9 went to Bible Way Piedmont with us, but as knowing her as
10 growing up with her or anything like that, no. But they
11 attended my wedding, you know, to the point where I would
12 have allowed them to come to my wedding, so I guess I knew
13 them that much.

14 Q Who attended your wedding? I know we talked about
15 Shanda [REDACTED] and [Victim 2] coming.

16 A Patrick. Patrick and his wife.

17 Q They came to your wedding?

18 A Yes.

19 Q You didn't have a problem with that, did you?

20 A No.

21 Q But Patrick Robinson was at Bible Way Piedmont with you
22 all at the time that [Victim 2] [REDACTED] and [victim 1] [REDACTED]
23 accused your brother of touching them, right?

24 A Can you repeat it again?

25 Q Patrick Robinson was at Bible Way Piedmont at the time

DAVETTA GRAHAM

1 these other two girls --

2 A Yeah, he was, he was there.

3 Q Okay. Bible Way Piedmont is not a very big church, is
4 it?

5 A No, it's like the family church.

6 Q All right. How does it compare in size to Grace?

7 A It's small.

8 Q Bible Way Piedmont is smaller?

9 A Yeah. I would consider it -- as members or the size of
10 the building?

11 Q Members.

12 A It was bigger, yeah, larger.

13 Q Piedmont was bigger?

14 A Membership wise, yes.

15 Q And y'all's spiritual leader at that time was Bishop
16 Belton?

17 A Before Bishop Belton came in it was Bishop Morgan. At
18 the time we were there Bishop Belton, I'm not sure if he was
19 already ordained the elder of that church, because I knew
20 Bishop Morgan was leaving. So I think at this time when he
21 was talking he really wasn't -- they hadn't ordained him as
22 being an elder at that time. But he preached, he was coming
23 over, you know, they let us know that he was getting ready
24 to come over and take over for Bishop Morgan.

25 Q Okay. And I'm sure when the news broke that **victim I**

- DAVETTA GRAHAM

1 and [Victim 2] had made these accusations against your
2 brother --

3 A Uh-huh.

4 Q -- the church knew about it?

5 A Oh, yeah, the church knew very well.

6 Q And do you recall Bishop Belton preaching from the
7 pulpit about handling things in the church and people going
8 to the police and their lying, do you remember that coming
9 out of his mouth in the sermon?

10 A No, sir.

11 Q Did he say anything anywhere close to that?

12 A I can't recall that, him saying anything but I'm pretty
13 sure if he would have stated just like that we all would
14 have knew that -- who he was talking about.

15 Q Okay. Now, Bishop Belton did attend a hearing.

16 A He did but I didn't go to the hearing.

17 Q Okay. So you don't know if he was -- what he said,
18 whether he had taken a side, you don't know that.

19 A I can only talk about when he was in my presence with
20 my brother. But as what he said at the hearing at the time,
21 no, sir, I can't tell nothing like that.

22 Q Would it surprise you that Patrick Robinson and Cynthia
23 [REDACTED] would have no problem with David Carmichael being
24 around their daughter?

25 A Would it surprise me?

DAVETTA GRAHAM

1 Q Yeah. Would it surprise you at all?

2 A Why would it surprise me? I mean, him and Patrick was
3 like brothers, they went everywhere together to the point
4 that I used to get mad and say, "Why you can't stay at your
5 own house? Why do you have to be around Patrick and his
6 family all the time?" As you see, they went to plenty
7 gathering together so that tells you they've been together a
8 lot.

9 Q And in that same vein they played music together,
10 right?

11 A Uh-huh.

12 Q That was a passion for them.

13 A Yeah.

14 Q That's a passion for you as well.

15 A As for all of us.

16 Q You sing, David sings.

17 A Uh-huh.

18 Q You're part of a -- you're still part of a music group,
19 correct?

20 A Uh-huh.

21 Q And would you say David is gifted as far as music is
22 concerned?

23 A Yeah, he is.

24 Q Okay. And he's also very spiritual?

25 A He's a very spiritual person.

DAVETTA GRAHAM

1 Q And as part of him coming up through the church
2 playing, did he start achieving a certain status --

3 A Yes, sir, he did.

4 Q -- in the church?

5 A Yes, he did.

6 Q Tell us about that.

7 A When we were at Bible Way Piedmont, and like I said
8 although Belton had just came to our church Misty Mack was
9 over the choir.

10 Q This is Sabrina's sister.

11 A Yes, this is Sabrina's sister. For whatever reason
12 Misty Mack and Elder Belton would bicker with each other, of
13 course, Junior was the second in line to do the music. So
14 at this time for whatever reason they argued or got into it
15 over anything he said that he was going to put my brother
16 over the music, and after that it was like a whole bunch of
17 chaos went on in the church. It wasn't like how we've
18 always been talking and joking and laughing, me knowing that
19 him and Misty Mack come together all the time and to see
20 them not hanging around each other, that kind of threw me
21 for a loop.

22 Q Ms. Graham, Patrick Robinson wasn't a part of the
23 division between the Carmichael's --

24 A Oh no.

25 Q -- and the Macks.

DAVETTA GRAHAM

1 A No.

2 Q Okay. And we've talked a little bit somewhat about the
3 response when you received terrible information about your
4 child being touched.

5 A Right.

6 Q Isn't it natural for a parent to believe a child?

7 A Yes. I'm a mother first.

8 Q You're --

9 A And I love my brother very dearly but I'm a mother
10 first so I can understand how they feel, but I also know my
11 child as well. And if I have know that my child is a mouthy
12 child and don't have a problem with telling anything else
13 that happened, she shouldn't have a problem with telling
14 that someone touched her.

15 Q And you also teach your children at a very young age if
16 they are being touched --

17 A As a matter of fact I wasn't the first one that taught
18 them that, their uncle taught them that. He always tells
19 them, "Do not sit on men's lap, it's not approvable."

20 Q You're talking about --

21 A He's always talking about that.

22 Q You're talking about your brother that passed, right?

23 A No. I'm talking about David Carmichael, Junior as
24 everyone calls him.

25 MR. ATTY3: Thank you, ma'am.

DAVETTA GRAHAM

1 THE COURT: The State may cross-examine.

2 MS. CAMPBELL: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MS. CAMPBELL:

5 Q So Junior told them to never sit on any man's lap?

6 A Yes. He always talks to them like that, that's their
7 uncle.

8 Q Those are his relatives.

9 A Those are his nieces.

10 Q And he went out of his way to tell them to never sit on
11 any man's lap.

12 A Not just him, both of us, as well. But yes, he did,
13 that's the kind of family that we grew up in, we talked like
14 that.

15 Q He loves his nieces and nephew?

16 A Yes, he do.

17 Q And does he like to spend time with them?

18 A Yes, he do.

19 Q But he won't babysit.

20 A No, not if -- I can ask him to do it but he don't want
21 to do it.

22 Q He doesn't want to do it.

23 A No.

24 Q So he doesn't do it.

25 A No.

DAVETTA GRAHAM

1 Q Even though he loved --

2 A Now I'm not saying that he wouldn't do it and he hadn't
3 did it, he wouldn't be in the house by himself with them.

4 Q You wouldn't leave your brother in the house by himself
5 with them?

6 A Yes, I would leave my brother in the house. But he is
7 that type of person, he leaves a lot. When it's time for
8 him to go, he goes, he don't let nothing -- he don't want
9 nothing stopping him to leave and not where he got to go.
10 As you see, he loves music so a lot of people call him from
11 different groups, different churches and that's what he had
12 to do. He used to help youth choir, Richland Northeast
13 Choir, he was over there. When someone called him he went,
14 he left, so he didn't want no kids holding him down from
15 leaving and going where he got to go.

16 Q I believe your testimony was a minute ago that he spent
17 a lot of time with other people.

18 A Yeah.

19 Q In fact, he spent so much time with other people, other
20 families that you were actually jealous.

21 A Okay. Well, at the time we were young.

22 Q Okay.

23 A I'm young, too.

24 Q Well, y'all lived --

25 A Me and my brother are very close.

DAVETTA GRAHAM

1 Q Yes, ma'am.

2 A And so if I asked him, "Can you go a certain place with
3 me?" Well, I've already told them that I'm going to go. Of
4 course, you're going to be like, "Well, why can't you go
5 with me?"

6 Q But he --

7 A That's the only jealous.

8 Q Uh-huh. But he had made commitments and wanted to
9 spend time with these other families.

10 A Uh-huh.

11 Q Families with young girls in them.

12 A Family with who?

13 Q With young girls.

14 A Okay.

15 Q And you testified on direct that you would get jealous
16 when he would go with Misty Mack.

17 A Right.

18 Q And you would get jealous when he went with Patrick.

19 A Uh-huh.

20 Q Because he would rather spend time with you -- with
21 them --

22 A No. It wasn't the fact that he would rather spend time
23 with them, they were going places at the time and I -- you
24 know what I'm saying, I would want him to come over there
25 with me. But, you know, he just went -- it was music when

DAVETTA GRAHAM

1 it came to Misty, so you know, of course, he -- he went with
2 them, he would go with her and would go over music. That's
3 notes saying that I can't be jealous about that, that's my
4 brother.

5 Q I understand. I'm just trying to say you were jealous
6 because he spent time with them rather than you.

7 A No.

8 Q Okay. And I'm somewhat confused, too, because I
9 believe your testimony was on direct at one point that you
10 never watched or had **Victim 2** over at your house?

11 A I've never watched or babysat **Victim 2** at **████████**
12 **████████**.

13 Q Did you ever babysit her at any other house?

14 A No, ma'am, I have not.

15 Q Okay. But then you testified if you had been watching
16 her that you wouldn't have let her get up and walk away from
17 you. Do you remember that testimony?

18 A I wouldn't go to sleep, I wouldn't.

19 Q And you --

20 A I'm babysitting somebody's child, that means when she's
21 in my care I need to know where she's at at all times until
22 she leaves my house.

23 Q Well, was she in your care or was she not?

24 A She was not but I'm telling you if she was.

25 Q And you were best friends with her mother you

DAVETTA GRAHAM

1 testified.

2 A Yeah, we were.

3 Q So she --

4 A We were best friends.

5 Q Did y'all do things together?

6 A Yes, we did.

7 Q And you would go places together?

8 A Yeah, we had a good time.

9 Q Did you go to her house?

10 A Yeah.

11 Q Did she come to your house?

12 A Yes.

13 Q But your testimony is she never had you watch your best
14 friend's child.

15 A She never had me to watch at 3916 nor at any other

16 place that I have stayed I watched or babysat [Victim 2] [REDACTED]

17 She stayed up under her aunt and her grandmother half of the
18 time, she barely was with her mother like that. So no, she
19 didn't.

20 Q Was she welcome in your home?

21 A Yeah, she was welcome in my home. Why wouldn't she be
22 welcome in my home?

23 Q And even after these accusations came out you remained
24 friends with Ms. [REDACTED]

25 A We worked together.

DAVETTA GRAHAM

1 Q Okay. Characterize that, you worked together.

2 A We did.

3 Q That's how --

4 A We did private duty together.

5 Q So you were able to put aside whatever differences you
6 had and worked together.

7 A That's my job, that's how I make my money.

8 Q Yes, ma'am. You mentioned that you and your brother
9 lived together, I believe you grew up as you said in the
10 Bluff Road area?

11 A Yes.

12 Q And then you moved into a house by yourself, you and
13 your brother?

14 A No. I did not tell you that we moved in a house by
15 myself, we were still young when I said we lived in Bluff
16 Estates. So when he asked me that question that's why I
17 asked him as a child or are you talking about as a grownup
18 and he corrected it.

19 Q Okay. As you were teenagers did you move out of the
20 home?

21 A Yes. We moved out of the home but my mom and dad were
22 still together.

23 Q They were still together?

24 A Yeah. They didn't breakup until we moved to Baltimore,
25 Maryland.

DAVETTA GRAHAM

1 Q Did you and your brother continue to live together as
2 the years passed?

3 A Yes, with my mother.

4 Q And then eventually did you and your brother move into

5 --

6 A No, I moved on my own.

7 Q You moved on your own.

8 A Yes.

9 Q I may have misheard your testimony but I thought you
10 said on [REDACTED] [REDACTED] at first it was you and your brother
11 living there, and then your mother moved in after these
12 charges came up.

13 A What are you talking about? I said Shannon Crossings
14 if it happened in '05, that's where I was staying at, ma'am.
15 I was no more around Shanda [REDACTED] at that time, I had just
16 conceived my daughter.

17 Q I'm not talking about Ms. [REDACTED] I'm talking about you
18 and your brother.

19 A Okay. Me and my brother was not staying together.

20 Q At any time?

21 A Not at any time.

22 Q You and your brother never shared this same house on

23 [REDACTED] [REDACTED]?

24 A On [REDACTED] [REDACTED] we did but that was the end of '06.

25 06/07 --

DAVETTA GRAHAM

1 Q All right.

2 A -- we stayed at [REDACTED] [REDACTED] [REDACTED]. '05 I stayed off of
3 Beltline in Shannon Crossings.

4 Q Where were you in '04?

5 A '04 I stayed -- let's see, with one of my stepsisters,
6 it was either off of Fort Jackson, because me and my brother
7 still wasn't staying together, it was still me by myself.

8 Q Do you remember in your direct examination the defense
9 attorney asking you about [REDACTED] [REDACTED] [REDACTED] being a three
10 bedroom apartment?

11 A No, a house. I never said an apartment.

12 Q Excuse me, a house. When you entered you would come
13 down the hall?

14 A Yes.

15 Q And that then your room was next to -- I can't remember
16 what you said.

17 A The bathroom.

18 Q And that your brother had his own room?

19 A Yes, he did.

20 Q And you described it and you said that he had a TV in
21 it.

22 A Yes, I did.

23 Q But you wouldn't be able to see that TV unless you had
24 been in that room.

25 A Unless you're being nosey. If the door is open then

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1 you're being very noseey.

2 Q And that no one was allowed in that room.

3 A Nobody was allowed in that room without his permission.

4 I would never send anybody in his room without his

5 permission.

6 Q And you even went on so far as to describe in detail

7 the armoire where the TV was.

8 A Right. If you look at it it's not hard to see, it's

9 sitting right there, once you look in it's sitting right

10 there at the door. I'm not saying once you walk down the

11 hall you can see it.

12 Q Yes, ma'am. And that's what I'm saying, you can't see

13 it unless you go in the room.

14 A Right.

15 Q Thank you.

16 A Being noseey.

17 Q You mentioned that there was a falling out in the

18 church about the music program.

19 A Uh-huh.

20 Q And that there was a falling out between I believe you

21 said which Bishop and Ms. Mack?

22 A Belton.

23 Q Bishop Belton.

24 A Bishop Belton.

25 Q And Ms. Mack?

DAVETTA GRAHAM

1 A Yes, Misty Mack.

2 Q As a result of them having problems he was going to
3 appoint your brother the minister of music.

4 A Well, at the time if she would stepped down then he was
5 going to have to put him as the music -- over the music.

6 Q But his problems were between Bishop Belton and Misty
7 Mack, weren't they?

8 A Right. But still it's a church and you need music and
9 if he was the next person in line to take over he has no
10 choice but to put my brother over the music ministry.

11 Q But your brother wasn't involved in the argument
12 between Misty Mack and the Bishop.

13 A No, he wasn't.

14 Q And he never even got appointed as director or the
15 minister of music, did he?

16 A At that moment I'm not sure if he was appointed because
17 it was so much stuff going on I'm not sure. I don't know if
18 they rationed it out or they put him over it because that
19 stuff right there wasn't important to me.

20 Q I'm sorry, ma'am. In your church you mentioned that
21 you didn't attend the sermon where the preacher told them to
22 let the church handle things.

23 A I didn't tell you that I didn't attend church, I said
24 that I didn't know of --

25 Q Know of.

DAVETTA GRAHAM

1 A Right, that's what I said.

2 Q You didn't recall that. And you don't recall him
3 saying not to go to the police?

4 A Not to go, no, I didn't hear him say nothing like that.

5 Q And that the church should handle those matters?

6 A No. I didn't hear him say that.

7 Q And you do agree, however, that the Bishop was very
8 supportive of you and your family.

9 A He was supportive of both.

10 Q And you --

11 A But when you have stuff like that going on of course
12 family is going to feel that one person is taking more side
13 than the other.

14 Q Okay. Well, you would agree that he did appear on
15 behalf of David in that hearing.

16 A He went there for both. If it's so important that I
17 sit down and talk to you -- I mean, tell you what him and my
18 brother talked about in my presence, is it okay?

19 Q No, ma'am, I'm sorry, you can't.

20 A Okay. Well --

21 Q And since then the Bishop has become disabled.

22 A Yeah, he's become very disabled.

23 Q In your church -- and let me get your scenario of
24 churches. You first started out at which church? I'm
25 sorry.

DAVETTA GRAHAM

1 A I started out at Progressive.

2 Q And then you went to?

3 A Bible Way Piedmont. My father -- most of the majority
4 of my father which is Carmichael went to Bible Way Piedmont.

5 Q And then you --

6 A Yeah. My mother and my brother, the majority of us
7 went to Progressive but then we moved back over to Bible Way
8 Piedmont so she was back and forth at the time. We were
9 little so that's what I remember when I was younger coming
10 up, I'm at this church at one time, now I'm at Bible Way
11 Piedmont.

12 Q As you got older you kind of grow up in the Bible Way
13 Piedmont Church?

14 A Yeah, I did.

15 Q And then eventually you left Bible Way Piedmont, and
16 where did you go?

17 A We went to New Life Ministry.

18 Q And is that here in Columbia?

19 A Yes, sir -- yes, ma'am, it is.

20 Q How many years did you stay at New Life before you
21 left?

22 A I couldn't tell you, I know that we have been there
23 long enough to the point where I would know in '08 that's
24 where we went to Grace Christian Church.

25 Q In '08 you went to Grace Christian?

DAVETTA GRAHAM

- 1 A Yes.
- 2 Q Are you still there?
- 3 A No, ma'am, I'm not there at this time.
- 4 Q First you went to the church where your mother grew up,
5 then you went to Bible Way Piedmont.
- 6 A Right.
- 7 Q Then you had to leave there?
- 8 A Had to? We didn't have to leave there.
- 9 Q After all of this happened you left there?
- 10 A We left there because -- and you're asking me questions
11 that I really can't answer at this moment because, you know,
12 if I can answer it then I will tell you the reason why we
13 actually left from Bible Way Piedmont.
- 14 Q Okay. I'm just going over the timeline right now,
15 okay? And then you went to which church?
- 16 A New Life Ministry.
- 17 Q And stayed there for approximately a year or two?
- 18 A Yes, ma'am, we did.
- 19 Q And then you went to Grace.
- 20 A Yes.
- 21 Q And then the new accusations came out.
- 22 A Right.
- 23 Q And then you left.
- 24 A Yes.
- 25 Q And each of those times when you were changing churches

DAVETTA GRAHAM

1 and all you were always with your brother.

2 A Yeah. I don't feel that that's a problem.

3 Q Since your brother was arrested on these latest charges
4 you would talk to him on the phone?

5 A What do you mean by talk to him on the phone?

6 Q Did you have phone conversations --

7 A Oh, yeah, me and my brother talked all the time.

8 Q Are you aware that those phone calls were being
9 recorded?

10 A If they were, okay.

11 Q Does it say in the beginning when you received the
12 collect call that the phone call was being recorded?

13 A They sure do.

14 Q And you were aware that they were being recorded?

15 MR. SHADD: Your Honor, may we approach.

16 THE COURT: Yes, you may.

17 (A bench conference was held.)

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, this is one of the occasions that I'll ask you to step
20 back in the jury room, don't begin your discussions until
21 I've asked you to do so. You may retire at this time,
22 please.

23 (The jury left the courtroom.)

24 THE COURT: All right. Your objection?

25 MR. SHADD: Yes, Your Honor, this is actually a motion

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1 in limine now because Madam Solicitor is now, I believe,
2 trying to introduce any information that -- regarding my
3 client who as you know is currently in jail being detained.
4 The jury has no knowledge of that, that has not come out.
5 The only conversation or mention was about a bond hearing on
6 the first charges. I believe it's obvious to them that he
7 must have been out on bond on the first charges in order for
8 there to -- him being in the car with Patrick Robinson. Now
9 they are going into an area where we're talking about
10 conversations between his sister and him with the collect
11 calls. I believe that is highly prejudicial, that overrides
12 any probative value with regards to any conversations --
13 THE COURT: What I'll do is let me ask the State the
14 content of the calls --
15 MR. SHADD: Yes, sir.
16 THE COURT: -- and the purpose for which they're being
17 introduced. It's very difficult for me to weigh the
18 probative value since I have no clue what they are.
19 MR. SHADD: Okay.
20 MS. CAMPBELL: May it please the Court, Your Honor?
21 There are two different occasions where she is having a
22 phone call with her where the witness reminds him they're on
23 the phone and we have to be careful, we can't talk about
24 things on the phone. The second phone call she says again
25 references the recording and we can't talk about the

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1 situations on the phone, that would be the extent of what I
2 wanted to impeach her with. And I'll even be glad to not
3 bring up specific dates.

4 THE COURT: Counsel?

5 MR. SHADD: Even then, Your Honor, it still references
6 the fact that he is in jail, that's akin to him coming up
7 here in cuffs and coming out here in prison blues lettings
8 this jury know that he is detained and those conversations
9 that he's having with his sister is being recorded which is
10 different from any other situation where folks are just
11 talking to each other on the phone. And we believe that is
12 highly prejudicial and if that's all they're having then the
13 probative value is minor if at best. And I don't believe
14 that necessarily impeaches her about what she said to him.

15 THE COURT: Yes, ma'am?

16 MS. CAMPBELL: I think it would be very probative as
17 far as her admonishing her brother not to talk about what
18 happened on a recorded phone call that we would have access
19 to, Your Honor.

20 THE COURT: Exactly what was said?

21 MR. ATTY1: Exactly what was said is, "We're on the
22 phone, we have to be careful on the phone. Don't talk about
23 it, we can't talk about the situation."

24 THE COURT: Well, I'm having difficulty because there
25 could be a lot of situations involved in this. There could

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1 be situations concerning his representation, setting of a
2 bond, it may not apply specifically to these events. Is
3 there some indication as to what events they are talking
4 about?

5 MS. CAMPBELL: I believe, Your Honor, in the first one
6 he has just gone through a colloquy with her about how God
7 has put him in this situation and he's come a long way in
8 the situation he's in and then she stops him and says,
9 "We're on the phone, we have to be careful on the phone."
10 In other words, he's talking about the situation that God
11 has put him in that has put him in jail, which, Your Honor,
12 we would submit what other situation would he be talking
13 about on that point? And then the second one --

14 THE COURT: I mean, it could be matters of trial
15 strategy, it may be a lot of things they may not want the
16 State to know about.

17 MS. CAMPBELL: And that could be something they could
18 argue but it's equally probative to the inference she
19 doesn't want them talking about what happened.

20 THE COURT: Mr. Shadd?

21 MR. SHADD: I don't think that dog hunts, Your Honor.
22 They may make that inference but I definitely don't want
23 this jury to make anymore inferences to that. And
24 specifically she talks about, "God put me in this situation,
25 God put me in this jail." If that gets out to this jury and

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1 she even stops him they believe that this situation put him
2 in this jail, the fact that the jury is hearing that he is
3 in jail and she stopped him, she didn't know what else he
4 was going to be talking about. As you said, it could have
5 been about his representation. I will submit I am the
6 second lawyer on this case. This case -- the first two
7 cases went very long, very long, six years past, Your Honor,
8 we've had this weighing on him a for quite some time. As
9 she said, he is a very spiritual person and he is talking to
10 his sister and then this, we all know he is in jail at the
11 time talking to her. So I just don't think they can make an
12 inference on something that they believe he said when the
13 jury could be left thinking other things that is not
14 probative.

15 THE COURT: And then there is a concern of putting
16 before the jury that he spent some period of time or is
17 spending some period of time in jail.

18 MS. CAMPBELL: Your Honor, I know --

19 THE COURT: There's a reason we go through all these
20 things in the courtroom to keep people from knowing he is in
21 custody.

22 MS. CAMPBELL: And Your Honor, I believe there is case
23 law saying we could get into the jail logs and I can pull
24 that for you.

25 THE COURT: Oh, I didn't say you couldn't. The

DAVETTA GRAHAM

1 question is the probative value and the prejudicial affect
2 it might have.

3 MS. CAMPBELL: The testimony --

4 THE COURT: The question I have is whether or not this
5 proves anything other than she says, "Remember we're being
6 recorded," you know --

7 MS. CAMPBELL: I'll move on.

8 THE COURT: -- "don't talk." I don't know what the it
9 is she's talking about. Because again, there could be a lot
10 of different things that a defendant in jail would not want
11 to discuss in front of the prosecution that may or may not
12 have to do with the incident itself.

13 MS. CAMPBELL: And, of course, she could explain that,
14 Your Honor. I think I -- whatever, Your Honor.

15 THE COURT: Well, again, I'm not saying it's not
16 admissible, per se, the question is whether or not the
17 probative value outweighs the prejudicial affects. And that
18 the reason I was trying to get to what was the discussion
19 leading up the that.

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: What was her purpose in saying that, and
22 it's not real clear if he was talking about the Lord putting
23 him in this position and -- I'm struggling to find how it is
24 related specifically to whether or not he is more likely or
25 less likely to have to committed these particular events.

DAVETTA GRAHAM

1 MS. CAMPBELL: Yes, sir.

2 THE COURT: So I'm going to sustain the objection.

3 MR. SHADD: Thank you, Your Honor.

4 THE COURT: Bring the jury in.

5 (The jury returned to the courtroom.)

6 THE COURT: Thank you. I have sustained an objection
7 by the defense. You may proceed with your cross-examination
8 Ms. Campbell.

9 MS. CAMPBELL: Thank you, sir. I just have a couple
10 more questions.

11 BY MS. CAMPBELL

12 Q You mentioned you have an older sister.

13 A I do.

14 Q And what's her name?

15 A Danielle Long.

16 Q Danielle Long?

17 A Yes.

18 MS. CAMPBELL: Thank you. I don't have anything
19 further.

20 THE COURT: Redirect?

21 MR. SHADD: No.

22 THE COURT: You may step down. The defense may call
23 its next witness.

24 MR. SHADD: Your Honor, we call David Elijah
25 Carmichael, Junior.

DAVID CARMICHAEL, JR.

1 THE COURT: Sir, come around and be sworn.

2 The witness, DAVID CARMICHAEL, JR. was first

3 duly sworn testified as follows:

4 THE COURT: Have a seat, please. Once you're seated

5 please state your name.

6 THE WITNESS: David Carmichael.

7 THE COURT: Thank you. Mr. Shadd?

8 MR. SHADD: May it please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. SHADD:

12 Q You're a resident of Richland County; is that correct?

13 A I am.

14 Q Born and bread?

15 A Yes, sir.

16 Q Okay. Other than I think you moved to Maryland,

17 Richland County has been your home, correct?

18 A That's it.

19 Q Okay. You are -- you're not 30 yet, you'll be 30 in

20 December.

21 A Yes, sir.

22 Q Mr. Carmichael, what do you do for a living?

23 A I'm a full time musician.

24 Q Are you also a minister?

25 A Yes, sir.

DAVID CARMICHAEL, JR.

1 Q Are you ordained as a minister?

2 A Yes, sir.

3 Q And how long have you been ordained as a minister.

4 A I've been ordained as a minister since 2012. I would
5 go back to 2005 -- not five, six if I'm not mistaken.

6 Q Where were you ordained?

7 A Bible Way Piedmont.

8 Q Well, who -- I guess the Lord ordained you, but who
9 carried out the ordination?

10 A Bible Way Church of Christ.

11 Q And who was the under shepherd there?

12 A You mean the Chief Apostle?

13 Q I'm sorry. Correct me with these titles, the chief
14 apostle who at that time?

15 A At that time over the Bible Way Church of Christ the
16 chief apostle is -- I want to say Apostle Campbell.

17 Q And is he -- he has a supervisory role over Bishop
18 Belton?

19 A Yes.

20 Q Okay.

21 A Let me back up and explain. The leader of Bishop
22 Belton is Bishop Theodore Myers.

23 Q Okay.

24 A And he is the State Bishop.

25 Q Okay. This is a connectional --

DAVID CARMICHAEL, JR.

1 A Right. And I was ordained under Bishop Belton which is
2 under the leadership of Bishop Theodore Myers.

3 Q And is Bishop Belton considered an elder?

4 A He's a bishop now.

5 Q He used to be an elder.

6 A Yes. When he came to Bible Way Church of Christ he
7 became an elder.

8 Q And elders can pastor churches.

9 A Yes, sir.

10 Q And at Bible Way Piedmont you have the director of the
11 music ministry; is that right?

12 A The minister of music, yes, sir.

13 Q Okay. Was Misty Mack the minister of music or was she
14 a director of the youth choir?

15 A Misty Mack was the head director of the church choir.

16 Q The head director of the church choir.

17 A Yes, sir.

18 Q At that time was there a minister of music?

19 A We didn't too much have a minister -- well, we did.

20 Dr. Doug Errison Fluid (phonetically) was the minister of
21 music.

22 Q Okay. So he was over Misty Mack?

23 A He was. After he left and they allowed the deacons to
24 come in to be over the music department because they didn't
25 know quite how to run the music department, so they would be

DAVID CARMICHAEL, JR.

1 over us. And then you have the head director who was over
2 that specific choir and Misty Mack was the head director and
3 I was her assistant.

4 Q Okay. And there was some dispute between her and
5 Bishop Belton.

6 A Right. I don't know what the dispute is and I'd rather
7 not get into what I heard, but --

8 Q Sure. Right. But that happened.

9 A Right, it happened.

10 Q And was she removed from that position?

11 A It wasn't that she was removed from it, she stepped
12 down.

13 Q Okay.

14 A She stepped down. They didn't remove her, she stepped
15 down.

16 Q And who stepped up?

17 A I had no choice but to step up.

18 Q So you wasn't part of the dispute but you were the
19 beneficiary of it.

20 A Yes, sir.

21 Q Okay. Mr. Carmichael, you know Davetta Carmichael.

22 A I do.

23 Q She's your sister.

24 A Yes.

25 Q You have -- or you had a mother who was with us named

DAVID CARMICHAEL, JR.

1 Annie Carmichael; is that right?

2 A Yes.

3 Q And your father is David Carmichael, Sr.?

4 A Yes.

5 Q And he has been here throughout this week; is that
6 right?

7 A Yes.

8 Q Okay. But you -- your father and your mother ended up
9 going their separate ways; is that right?

10 A Yes.

11 Q And you ended up -- you and your siblings ended up
12 staying with your mother; is that right?

13 A Yes.

14 Q Okay. But you would go visit your father; is that
15 right?

16 A Yes.

17 Q Okay.

18 A As far as siblings now, me and Davetta, we went to go
19 see our father. Danielle, when we were in Baltimore, she
20 moved back to Columbia, South Carolina way before we did.

21 Q Okay. And she is seven years older than you?

22 A Davetta -- if she's five years from Davetta she is
23 seven years from me.

24 Q Okay. So you and Davetta only two years apart, y'all
25 grew up together.

DAVID CARMICHAEL, JR.

1 A Yes, sir, all my life.

2 Q And the brother that unfortunately passed, what was his
3 name?

4 A Orlando Tyrone Johnson.

5 Q Okay. He was older than you, too?

6 A He was the oldest of all of us, me and him were ten
7 years apart.

8 Q So you're the baby.

9 A I am.

10 Q And Mr. Carmichael, you were living with your mother
11 and your sister, Davetta, off of -- well, obviously Bluff
12 Estates, you went to Maryland and then you came back. Do
13 you remember where you all stayed?

14 A When we came back -- and I noticed when she was
15 speaking, she left out Live Oak Apartments.

16 Q Okay.

17 A But when we moved right back to Columbia we had to move
18 with my Aunt Dot. My Aunt Rhetta (phonetically) that was my
19 mother's caretaker because my mother was extremely sick.
20 All of us could not stay at my Aunt Dot's house so she took
21 me and Davetta, it was me and her. And, of course, Danielle
22 was staying with her grandmother if I'm not mistaken because
23 I don't think she was married yet.

24 Q And your -- when -- at what points did you and your
25 sister, Davetta, and your mom start living back together

DAVID CARMICHAEL, JR.

1 again if she was with your Aunt Rhetta?

2 A My mother got well, she stayed there -- when she was
3 completely well -- oh Jesus. When we moved back in
4 together, her and my father, I believe, got back together if
5 I'm not mistaken and we feel started living in Live Oak
6 Apartments off of live Oak which is by South Kilbourne
7 Elementary School.

8 Q Okay.

9 A And that's where I was going.

10 Q Okay.

11 A Uh-huh.

12 Q And then that continued until what point?

13 A Well, while we were at Live Oak Apartments my mother
14 was attending Progressive Church and my father was attending
15 Bible Way.

16 Q Which Bible Way?

17 A Piedmont.

18 Q Okay.

19 A Bible Way Church of Christ off of Piedmont Avenue. We
20 were still at Progressive with my mother. They stayed
21 together, we moved out of Live Oak, went to Decker into the
22 Wood Hill Housing Development, I believe that's the name of
23 it. And my mother and my father, that was the last time
24 they were together in Wood Hill Housing Development off of
25 Decker Boulevard.

DAVID CARMICHAEL, JR.

1 Q Okay.

2 A Then they split up after that. But my mother and my
3 sister and myself, which is Davetta, we moved in another
4 house in the Wood Hill Development.

5 Q Okay.

6 A Davetta. Me. And then we --

7 Q You're saying a house, it's an apartment?

8 A No. After that it was houses, we didn't stay in no
9 more apartments.

10 Q Okay.

11 A The apartments didn't come up until me and Davetta
12 split out on our own.

13 Q She went to an apartment.

14 A Well, I was still staying with my mother. Because
15 after that my mother got remarried to Robert Spears, well,
16 not remarried but she married Robert Spears.

17 Q Okay.

18 A By the time they got married we moved off of Clemson
19 Road, and when we moved off of Clemson Road we were staying
20 in Whitfield -- I'm sorry, Winslow off of Whitfield.

21 Q Are you in high school at this point?

22 A Yeah, I'm in high school now, Clemson Road. I'm going
23 to Dreher High School even though it's off of Whitfield.

24 Q What church are you going to?

25 A In high school I was going to Bible Way Piedmont then

DAVID CARMICHAEL, JR.

1 because I had left Progressive.

2 Q You're mother was at Bible Way Piedmont?

3 A Yes. I left Progressive and when I left Progressive my
4 mother and my sister came after I did to Bible Way.

5 Q Which was your daddy's church when your mom was going
6 to Piedmont, you had been going to Progressive.

7 A Right. But he had left there and went to Bible Way,
8 another church, which the pastor was Bishop Barry Mitchell.

9 Q Okay.

10 A So he wasn't at Bible Way when we got there.

11 Q So y'all ended up going to Piedmont.

12 A Uh-huh.

13 Q And some of the members that were there were Janie

14 [REDACTED] Shannon [REDACTED] Lashanda [REDACTED] and her family.

15 A Correct.

16 Q And did y'all grow up together?

17 A We did.

18 Q Okay. Y'all had fun, played, did what kids do.

19 A Yes, sir.

20 Q Okay. Now, you were younger than Shanda [REDACTED] right?

21 A Yes, sir.

22 Q Was there -- did she have any younger sisters or
23 brothers or anything like that?

24 A No, sir.

25 Q Okay. You -- now, what about the Macks? Were they

DAVID CARMICHAEL, JR.

1 also at Piedmont?

2 A Yes, sir.

3 Q Okay. And so you knew Sabrina Mack at the time.

4 A Yes, sir.

5 Q Sabrina Mack.

6 A Uh-huh.

7 Q And you knew her family and her mother and family
8 members.

9 A Yes, sir.

10 Q Okay. And did you grow up with them as well?

11 A With the Macks?

12 Q Yes.

13 A I can't really say grow up but they was around us, I'm
14 younger than all of them.

15 Q Okay.

16 A So when you say grow up you mean playing and having a
17 personal relationship, the family was together.

18 Q Okay.

19 A But mean --

20 Q Well, how about Ms. [REDACTED] is coming over to your house
21 -- Lashanda [REDACTED] is coming over to your house and spending
22 the night over there.

23 A No.

24 Q How about Sabrina Mack, later Sabrina Mack-[REDACTED]
25 coming over and bringing her family over to your house so

DAVID CARMICHAEL, JR.

1 that her sister could watch?

2 A So that my sister can watch her kids?

3 Q Right.

4 A Oh, I've never heard that. My sister never babysat
5 Sabrina's kids.

6 Q How about the house on [REDACTED] [REDACTED]?

7 A Me and Sabrina didn't share a house on [REDACTED] [REDACTED].

8 Q Not Sabrina, I'm sorry, you and Davetta.

9 A Yeah. When we moved into [REDACTED] I was in college then
10 but I had to leave college because no sooner -- after my
11 brother died I tried to go back to Claflin to finish school
12 because my mother -- no. I didn't go back to Claflin just
13 yet, excuse me.

14 Q Right.

15 A After my brother took sick and he passed I moved into
16 [REDACTED] [REDACTED] -- well, my apartment first.

17 Q Okay.

18 A I had an apartment off of Garners Ferry.

19 Q Okay.

20 A And I forgot what the name of those were. After my
21 lease was up there I moved into [REDACTED] [REDACTED] [REDACTED].

22 Q And you moved there by yourself?

23 A Yeah. I remember the name now, it's Austin Wood
24 Apartments.

25 Q That's the one off Garner's Ferry.

DAVID CARMICHAEL, JR.

1 A Off Garner's Ferry.

2 Q And you left there and went to [REDACTED] [REDACTED] which is a
3 house.

4 A I left there and went to a three bedroom house.

5 Q And you stayed there by yourself?

6 A No, my sister came with me. She came from her
7 apartment and I moved into [REDACTED] [REDACTED] [REDACTED].

8 Q You later on added her to the lease on the apartment.

9 A No. I didn't add her on the lease but she moved in the
10 house with me.

11 Q You allowed her to come.

12 A Oh yeah.

13 Q At this time had she had any children?

14 A She had just had my niece, my oldest niece by Davetta,
15 which is Dasharia.

16 Q So she and Dasharia came to stay with you?

17 A Yes.

18 Q Okay. And when you and Davetta was at [REDACTED] [REDACTED], do
19 you ever recall [REDACTED] Victim 2 [REDACTED] coming to your house?

20 A. No, sir.

21 Q Do you ever recall coming to the house and if she was
22 home?

23 A No, sir.

24 Q Tell me your policy as far as your room is concerned.

25 A Well, because it's my house of course I had the master

DAVID CARMICHAEL, JR.

1 bedroom.

2 Q Of course.

3 A I don't believe in locking nothing up, my house is my
4 house. I'm not a hard person to get along with but just
5 don't go in my room, I don't allow nobody in my room.

6 Q Would you sometimes leave the door open, though?

7 A Yeah. I don't mind leaving my door open but the
8 majority of the time I left it closed.

9 Q Did y'all ever host any folks at your house and kids
10 would be coming in and out and going up and down the hallway
11 and going to the bathroom?

12 A Yeah.

13 Q Did that occur?

14 A Yeah.

15 Q If they ended up going to the bathroom, could they look
16 in your room?

17 A They could.

18 Q And what would they see if they looked in your room?

19 A It depends. By the time they finish going to the
20 bathroom you could look from an angle and see my shift row
21 which is what I call my armoire, you will see the TV on top
22 of it, but you won't be able to see the face of the TV. You
23 will see the side of the armoire and the side of the TV.

24 Q Okay.

25 A And if you walk to turn the corner going back to the

DAVID CARMICHAEL, JR.

1 living room or the kitchen, which is back down the hall, you
2 will only be able to see my bed.

3 Q Okay. So you can see your bed from that vantage point
4 as well.

5 A You can.

6 Q You had cable in your room?

7 A I did.

8 Q Did you have cable anywhere else in the house?

9 A I did.

10 Q Where else?

11 A My living room and Davetta's room, the third bedroom
12 didn't have any cable.

13 Q Okay.

14 A I had a desk in there.

15 Q You've heard the allegations with regard to **Victim 2**

16 **[REDACTED]**

17 A Uh-huh.

18 Q What is your response to that?

19 A My response to that is I didn't do it.

20 Q Let's talk about **victim 1**. I'm calling her **victim 1** but
21 what do y'all call her?

22 A **vic 1**.

23 Q Short for **vic 1**

24 A Yes.

25 Q **victim 1** **vic 1** I believe is her full first time.

DAVID CARMICHAEL, JR.

1 A Right.

2 Q Did you keep her or babysit her or watch her for any
3 second, ten minutes, two or three hours, anything like that?

4 A Not myself. When I was at the house the night that
5 they were talking about there was a light skinned young lady
6 that I don't know if it was her friend, Misty or Sabrina,
7 she used to work at Applebees, I don't remember who this
8 girl is, but --

9 Q Was she there before you got there?

10 A I don't recall if she was there before I got there
11 because I remember riding with Sabrina because I wasn't
12 driving then.

13 Q You wasn't driving then?

14 A No, I wasn't driving.

15 Q Sabrina came and got you?

16 A Yeah.

17 Q Why?

18 A Because I was supposed to meet her sister there to go
19 over some music for the concert that we had coming up for
20 that year.

21 Q Which sister?

22 A Misty.

23 Q Okay. And eventually did Misty come?

24 A Later on that night, yes, sir.

25 Q Because she wasn't home when y'all first got there.

DAVID CARMICHAEL, JR.

1 A No, she was not there.

2 Q Okay. Do you remember where she was?

3 A I can't remember if she was at work or whatever, I
4 don't know.

5 Q Okay. But **vic 1** was there.

6 A Yes.

7 Q You saw her there.

8 A Yes.

9 Q Okay. And her brother was there, right?

10 A Yes.

11 Q Do you remember how old **vic 1** was at that time?

12 A No.

13 Q Okay. Well, why do you remember that this was the
14 occasion that they are talking about then?

15 A Because that's the only nighttime occasion that I had
16 at that house and the kids were there.

17 Q Okay. And so you've heard the allegation that y'all --
18 first of all that y'all was watching the Lion King, you and
19 these little kids was watching the Lion King; is that true?

20 A To be honest with you I don't remember what was on that
21 TV.

22 Q Okay.

23 A I was too busy trying to figure out who this girl was
24 from Applebees.

25 Q Was she pretty?

DAVID CARMICHAEL, JR.

1 A Yeah, she was pretty.

2 Q And then there is an allegation that this young lady
3 was in your lap, not the light skinned girl --

4 A Uh-huh.

5 Q -- but it's **vic 1**.

6 A (Indicating in the negative.)

7 Q What's your response?

8 A I don't sit too tight with that.

9 THE COURT REPORTER: I'm sorry, I didn't understand.

10 A I don't sit too tight with girls in my lap like that.

11 Q Okay. Have you talked to your -- Davetta's kids about
12 that?

13 A Yes.

14 Q Why is that important to you?

15 A I just -- I don't sit -- it don't look good to me and I
16 don't like it, I really don't.

17 Q Okay. Or about you having your penis exposed and
18 having **vic 1**'s hand on your penis, what is your response to
19 that?

20 A That's not true.

21 Q And I think this is on the tape about your penis being
22 on **vic 1**'s stomach. What's your response to that?

23 A That's not true.

24 Q Would you have had to tell **vic 1**, "Go, shh, shh, go, get
25 out of here."

DAVID CARMICHAEL, JR.

1 THE COURT: Just a moment, Counsel. There is a phone
2 vibrating over here and this is about this fourth time I've
3 heard it, take that out of the courtroom now, right now.
4 And, sir, you stay outside of the courtroom as well. Sorry
5 to interrupt.

6 MR. SHADD: That's okay.

7 Q Mr. Carmichael, with regard to [victim 3] let's
8 talk about her. Now, [Victim 3] was Patrick Robinson's
9 stepdaughter; is that right?

10 A Yes.

11 Q And you knew Patrick for how long? How long had you
12 known Patrick?

13 A I knew Patrick since he came to Bible Way Church of
14 Christ, Piedmont Avenue.

15 Q So you were there, of course, once he came.

16 A Right.

17 Q He was one of the musicians?

18 A When he first came there he was just a choir member, he
19 was not a musician at Bible Way yet. I remember him being a
20 musician, we had some bongos and he would play that but he
21 was mainly on the choir so he wasn't at musician at Bible
22 Way from my point of view.

23 Q But he became a musician at some point, right?

24 A As far as my understanding from Grace, a musician to me
25 as far as you have a set instrument you come in every Sunday

DAVID CARMICHAEL, JR.

1 and play, he sung on Sundays. I don't remember when he
2 brought his bongo set in, I can't recall if he did it or
3 not, but I don't know him as a choir member to be honest
4 with you. Now, he was a musician at Zion Chapel, I know
5 that for a fact because he had his percussion center set up,
6 he would start playing for Zion. As far as Bible Way, no.

7 Q And you definitely remember that because you pulled him
8 away from Zion Chapel and brought him over to Grace where
9 you were, right?

10 A I didn't pull him away, I asked him and he was like
11 "Well, you know, I'm already playing at Zion Chapel." And I
12 was like, "Visit me, I really want you." I didn't pull him
13 away but come visit our church. And as he visited the
14 church and he played twice a month and then he ended up
15 starting to play every Sunday as a full time musician
16 instead of a part time.

17 Q And when you were at Bible Way Piedmont, is it true
18 that you would play there and go over to another church, or
19 go worship at another church?

20 A Yes.

21 Q But obviously when you played there and then you went
22 and played at Bible Way Piedmont and you went to play at
23 another church you were getting paid, right?

24 A Yes.

25 Q And that was your livelihood, right?

DAVID CARMICHAEL, JR.

1 A Yes.

2 Q And that was the reason why you would leave Bible Way
3 Piedmont and then go to another place.

4 A Yes.

5 Q So you end up -- and Mr. Robinson is about 18 years
6 older than you, right?

7 A Patrick?

8 Q Yes.

9 A I don't know, I didn't get into the age thing.

10 Q Okay. But y'all were considered not just friends but
11 you treated him as a brother and he did likewise.

12 A Yes, sir, that was my big brother to me. Because my
13 oldest brother is deceased so I was like, who else am I
14 going to look up to? He was the only one I could get down
15 with, not everybody I can call a big brother.

16 Q You've obviously spent time with him.

17 A Yes, him and his family.

18 Q And you spent time with him when his family wasn't
19 around.

20 A Yes.

21 Q Y'all indulged in certain adult activities that you're
22 not necessarily too proud of, correct?

23 A Yes.

24 Q Now, then there is victim 3 [REDACTED] I believe she was
25 about nine years old when you, I guess, knew her and her

DAVID CARMICHAEL, JR.

1 mom; is that right?

2 A Say it again.

3 Q [victim 3] was about nine years old when you first met
4 her and her mom through Patrick.

5 A I don't know what her age was, but I met Cynthia and
6 [victim 3] through Patrick.

7 Q Okay. Now, you called her Cynthia but y'all called her
8 what?

9 A Little Mama. But from the testimonies I'm going to
10 respect that's his name, never knew it was a problem, it's
11 Cynthia now.

12 Q Okay. You're saying that, but you sent a text at least
13 when you called her Little Mama and he didn't say anything
14 about that.

15 A Right. At that point she was still Little Mama to me.

16 Q Okay.

17 A But now after hearing it that's his name, I never heard
18 that it was just his name.

19 Q Even in his text he was saying, "Don't contact me,
20 don't contact Little Mama," right?

21 A Right.

22 Q But now that you've heard this, you're going to call
23 her Cynthia?

24 A Cynthia.

25 Q And Cynthia has an older daughter, Jamise?

DAVID CARMICHAEL, JR.

1 A Jamise.

2 Q And do you recall when Cynthia -- do you recall when
3 there was an issue between Cynthia and Jamise, what you know
4 and what you saw?

5 A Yes, sir.

6 Q Tell us about that, what you saw.

7 A Well, when I was at church and I knew Jamise was very
8 emotional even during the service, so when I went to talk to
9 her, I was like, "What's up?" You know, she was like, "Mama
10 is mad at me "--

11 MS. CAMPBELL: Objection.

12 THE COURT: Sustained.

13 MS. CAMPBELL: Thank you, Your Honor.

14 Q You can't go into what Jamise told you.

15 A Okay. Basically on what she told me I knew she was
16 upset and it was something that she had done wrong.

17 Q And it was addressed by Cynthia?

18 A Yes, ma'am -- I mean, yes, sir.

19 Q Did you address this when you and **victim 3** and Kayla --
20 is it Kayla --

21 A Uh-huh.

22 Q -- went over to Tammy Green's house?

23 A Yes.

24 Q When you went to Tammy Green's house, why did you go
25 there?

DAVID CARMICHAEL, JR.

1 A I went there -- they were having a cookout. I didn't
2 really know that it was officially a cookout because it was
3 just her and Clarence there, I went there purposefully to
4 get a CD that was being burnt for one of the choir members
5 that had to learn a song and she's one of the mothers that
6 is in the choir and I said I needed to get this CD.

7 Q From Clarence?

8 A From Clarence. Because he had a system that he can
9 take off the songs for me to pass it on to the mother.

10 Q Okay.

11 A Well, I went over there, he was in the back grilling so
12 I began to talk to him. I told the girls, "Y'all have a
13 seat in the living room," they were talking to Tammy.

14 Q Let me stop you there. Now, you went there just to get
15 a CD but you saw he was grilling so you stayed awhile.

16 A Yeah. I was hoping he would be finished cooking.

17 Q Yes, sir. Yes, sir.

18 A I went there and I went in the back and started talking
19 to him out by the grill and I came back in and Tammy said --

20 MS. CAMPBELL: Objection, Your Honor.

21 THE WITNESS: I'm sorry, I'm sorry.

22 THE COURT: I'll caution the witness again, you cannot
23 quote what someone told you've.

24 THE WITNESS: Yes, ma'am. I mean, yes, sir.

25 Q But Tammy said something to you?

DAVID CARMICHAEL, JR.

- 1 A And after --
- 2 Q What was your reaction after she said something to you?
- 3 A Right. After she said something to me I proceeded to
- 4 go out the door.
- 5 Q Where were the girls?
- 6 A Outside.
- 7 Q Okay.
- 8 A As I was walking out Tammy was walking with me outside,
- 9 she didn't quite come all the way out but she stood out like
- 10 this, and as I walked out I saw --
- 11 Q What did you see?
- 12 A **victim 3** outside the car standing at the front of my
- 13 car, Kayla sat in the backseat playing a game on her phone.
- 14 Q Let me stop you there. Had you given -- because you're
- 15 the one who brought the girls over to the house.
- 16 A Right.
- 17 Q Had you given these two girls permission to go outside
- 18 of the house that you told them to wait at while you went to
- 19 the back?
- 20 A No, sir. But that's not what made me mad.
- 21 Q I understand, but they were out there.
- 22 A Yeah. When I walked out **Victim 3** was outside with her
- 23 phone talking to two younger men than me.
- 24 Q Okay.
- 25 A That actually -- they stayed out in the apartment

DAVID CARMICHAEL, JR.

1 complex. I got upset, and I was like, "Whoa, whoa, wait a
2 minute, what's up with this? What's going on?"

3 Q And did [victim 3] say anything to you?

4 A No.

5 Q Okay.

6 A She didn't say anything to me.

7 Q Did the men who were younger than you say anything to
8 you?

9 MS. CAMPBELL: Objection, Your Honor.

10 THE COURT: Well, he just asked if they said something,
11 he didn't ask him to quote him. And I've cautioned him a
12 couple of times not to be quoting what people have said
13 directly.

14 THE WITNESS: Right, I'm not.

15 Q So did they say something to you?

16 A Right. They said something to me and after they said it
17 to me I got upset, and I flew off the hinges. The first
18 thing I said -- because I already have allegations like
19 this, you're not going to sit here and play this on my time
20 and on my dime, that's how I look at it.

21 Q You're talking about [vic 1] and --

22 A [Victim 2] yes, sir.

23 Q [Victim 2]

24 A [Victim 2] excuse me. So I began to proceed after I got
25 their age from them which was way higher than [victim 3]'s.

DAVID CARMICHAEL, JR.

1 age. And the fact of the matter is after I revealed her
2 age, I revealed, they didn't say it, I said it, once I asked
3 her her age she revealed her age. And I looked at them and
4 I said, "Do she look like she's a 17-year-old little girl?"
5 And I proceeded to tell them, "If I ever see your phone
6 number pop up in her phone or I ever see you around my car
7 again I will personally call the police."

8 Q And you didn't know these gentlemen, did you?

9 A I did not, I did not know them at all.

10 Q Okay.

11 A So they did not come to the cookout, they were out in
12 front of the apartment. After we got done, I told her, "Get
13 in the car."

14 Q Told who?

15 A [Victim 3] I told [Victim 3] "Get in the car." But
16 before -- let me back up. Before I was getting distraught
17 Kayla had yelled through the window, "I didn't call them to
18 the car, I didn't say anything." I said, "No problem, no
19 problem. I'm so sorry. So I proceeded to get in the car
20 and I said, "When we get home, when we get to your house I'm
21 going to let your mother and your father know this." She
22 proceed to act as if she didn't care, she rolled her eyes,
23 sucked her teeth, and did that. I said, "You know what,
24 don't worry about riding with me nowhere else not even on
25 dates with me and Sharon." Because I would invite [Victim 3]

DAVID CARMICHAEL, JR.

1 to go with me and my female friend, Sharon.

2 Q Sharon?

3 A Sharon.

4 Q How old was Sharon at this time?

5 A Sharon -- I'm sorry, me and Sharon were two years
6 apart. So at this time she was -- this happened last year,
7 so if I'm 28 -- Sharon is 26.

8 Q Okay.

9 A She was 26 at that time.

10 Q Okay. So you even said she would no longer be able to
11 hang out with the two of you.

12 A Right. Because she began to show disrespect and
13 literally I'm tired of it.

14 Q Okay. Now you mentioned disrespect. Was **Victim 2**
15 disrespectful to you, kicking on you and that sort of thing?

16 A Let me first say nobody will kick me.

17 Q Okay.

18 A If you kick me it must be in a fight.

19 Q Okay. So none of that was going on.

20 A No.

21 Q Okay. How about being just disrespectful to you
22 whenever you came around and said, "Come here, give me a
23 hug," nothing like that?

24 A No. She's not -- **Victim 2** wasn't -- she wasn't
25 disrespectful but she wasn't respectful.

DAVID CARMICHAEL, JR.

1 Q Okay. All right.

2 A It was always a nonchalant I don't care, you know, so
3 I'm like okay.

4 Q That was her demeanor around you?

5 A Right, at all times.

6 Q Is that her demeanor around other people?

7 A Yeah.

8 Q Okay. All right. All right. Go on. Now, you're in
9 the car getting on her and --

10 A Getting on her. We proceed in the car and I was
11 fussing, I told her. I said, "That you know good and well
12 how your mother is about you being with boys, and on top of
13 that because of their age you could have got them boys in
14 trouble, you could have got them in trouble and I could get
15 in trouble."

16 Q Because you're watching over her at this stage?

17 A Right, because she was with me.

18 Q Right.

19 A So we proceeded, we stopped by the mother's house, I
20 delivered the CD to her. As a matter of fact -- yeah, I
21 delivered the CD to her apartment, got back in the car, we
22 dropped Kayla off to her apartment first and then we took
23 **Victim 3** home. I didn't get out because the whole time in
24 my headed I was like, "You know what, I don't really want to
25 go through this."

DAVID CARMICHAEL, JR.

1 Q Okay.

2 A As far as I don't want to get this girl in trouble like
3 that, I'm good like that.

4 Q You were still emotional about it I'm sure.

5 A Well, yeah. I was emotional because I remember how
6 Jamise was.

7 Q Okay.

8 A And I was like, you know, she just lied about her age
9 to some older dudes and that's not good, I'm not trying to
10 get her in trouble like that.

11 Q You mean how Cynthia was.

12 A How Jamise got in trouble.

13 Q Oh, Jamise got in trouble.

14 A I didn't want her to get in trouble like Jamise got in
15 trouble with their mom.

16 Q Okay.

17 A But I still said I was going to tell.

18 Q Right. She knew that you were going to tell.

19 A Right. And I told her when -- I said when I talked to
20 them I'm going to let them know.

21 Q But you didn't tell them immediately.

22 A I didn't tell them immediately.

23 Q And then let's go ahead to the trip to North Carolina.

24 A Uh-huh.

25 Q They invited you to a trip to go to North Carolina.

DAVID CARMICHAEL, JR.

- 1 A To North Carolina.
- 2 Q This was not long after this cookout, right?
- 3 A Right. Now, I did -- let me back up. I did call twice
- 4 during the week but my calls were taken by **Victim 3**
- 5 Q Okay.
- 6 A And I said, "Well, just tell your mom and your dad that
- 7 I called."
- 8 Q Do you know if they got that fine?
- 9 A I don't know. At that time it had rolled down and had
- 10 died down on me.
- 11 Q But then y'all took a trip.
- 12 A Yeah, we took a trip to North Carolina. Personally I
- 13 love to go to Patrick's father's house.
- 14 Q You've been there before?
- 15 A I've been there before.
- 16 Q Okay.
- 17 A As a matter of fact that was my second or third time
- 18 going there with them.
- 19 Q Okay. And when you went with him who all rode with you
- 20 all?
- 21 A **Victim 3**
- 22 Q Whose car were you all in?
- 23 A We were in Cynthia's car, I drove Patrick up there.
- 24 Q Do you recall the make of the car, model?
- 25 A Impala.

DAVID CARMICHAEL, JR.

1 Q It's an Impala?

2 A Uh-huh.

3 Q Can you describe the car for us?

4 A It's a champagne color Impala with tinted windows.

5 Q Two doors, four doors?

6 A Four door sedan.

7 Q On the way up to North Carolina, who drove?

8 A I drove.

9 Q Why?

10 A Because he was sleepy.

11 Q He slept on the way up there?

12 A He didn't like sleep on the way up there but because he
13 was sleepy he didn't want to drive and fall asleep, he did
14 sleep a little bit. He woke back up to give me directions.
15 I was like, "I know when I'm in North Carolina. Pat, tell
16 me where I'm going." He will say, "You're coming up to the
17 exits. How much time I got?" Most of the time we were
18 tripping about the music that we were listening to, it was
19 gospel music, some of them we were singing.

20 Q What was Victim3 doing on the way up?

21 A Sitting in the backseat.

22 Q Do you know if she was asleep or not?

23 A I can't tell you that because I was driving. As a
24 matter of fact, she wasn't, she was sitting looking between
25 us as we was laughing and talking.

DAVID CARMICHAEL, JR.

- 1 Q And this would be in the middle of the seat?
- 2 A Yeah.
- 3 Q Okay.
- 4 A Because she was sitting in the middle at that time.
- 5 Q Okay.
- 6 A Looking between the chairs.
- 7 Q Of course when you're driving and looking in the
- 8 rearview mirror --
- 9 A Right, in the rearview mirror.
- 10 Q She is sitting directly in the middle --
- 11 A Right. Because as a matter fact she can give some of
- 12 the directions as well to his father's house so that was
- 13 part of the conversation how she knew how to get there.
- 14 Q And was -- is there anything in the middle between you
- 15 and him at this time?
- 16 A Yes, there's an armrest there.
- 17 Q Is it one of those that you can open it up and put
- 18 stuff in it? If you know.
- 19 A I believe so.
- 20 Q Is there a parking brake, too?
- 21 A I don't remember a parking brake being there, it
- 22 probably is I just never paid attention to that.
- 23 Q Now, when you drive do you drive with both hands?
- 24 A I'm not going to lie, no.
- 25 Q You drive with one hand and the other is somewhere

DAVID CARMICHAEL, JR.

1 else?

2 A Right. One hand might be on the door or one hand might
3 be on the steering the wheel.

4 Q Are you right-handed or left-handed?

5 A I'm right-handed.

6 Q Okay. But if you did have your right arm on the
7 armrest going up --

8 A Uh-huh.

9 Q -- could Patrick put his arm there as well without
10 touching?

11 A I don't know without touching, we touch arms because
12 it's not that big in there.

13 Q Okay. And y'all went on to -- you went on your trip
14 and had a good time, right?

15 A Uh-huh.

16 Q And did it appear victim 3 was having a good time, too?

17 A She was. She was around his sister and the other
18 people. I mean, even at the cookout we periodically stand
19 together talking while we're eating and then she had a good
20 time.

21 Q Okay.

22 A I know I did.

23 Q Okay. You ate?

24 A Yes.

25 Q Okay. And then it's time to leave and come back to

DAVID CARMICHAEL, JR.

- 1 Columbia?
- 2 A Uh-huh.
- 3 Q When you all are on the way back, who makes the
- 4 decision to drive back?
- 5 A Patrick.
- 6 Q Were your happy with it?
- 7 A I was fine with it.
- 8 Q Were you sleepy at that point?
- 9 A Yes.
- 10 Q How did you sleep in that car?
- 11 A I slept with the seat reclined back.
- 12 Q How far reclined, sir? I think that's important.
- 13 A As far as it could but I was slightly turned.
- 14 Q Okay.
- 15 A My body was slightly turned.
- 16 Q Which way?
- 17 A To the window, because I don't like nobody sleeping in
- 18 my face area.
- 19 Q You're what?
- 20 A My face area. Even if I'm like that I have to have air
- 21 blowing on me and she did complain about it was cold when we
- 22 were going towards 77.
- 23 Q Okay. So you had the window down.
- 24 A Not all the way because he left his cracked and mine's
- 25 was cracked too, so I just turned toward my window to let

1 the air blow on me a little bit.

2 Q So not leaned back like this.

3 A No, sir.

4 Q You were turned to the right towards the window is what
5 you're saying.

6 A Slightly, yes, sir.

7 Q Okay. Where were your hands, sir?

8 A In front of me, sir.

9 Q Do you recall ever having your hand behind Patrick?

10 A No, sir.

11 Q Did you have your hand behind Patrick for ten minutes?

12 A No, sir, I was asleep.

13 Q If you did have your hand behind Patrick for ten
14 minutes, how would your arm feel?

15 A I wouldn't know because my hand wasn't uncomfortable.

16 I was comfortable sleeping.

17 Q You were comfortable the whole time back?

18 A Sleeping. But I'm a light sleeper, I'm not a heavy
19 sleeper.

20 Q So you weren't having conversations with him?

21 A Patrick?

22 Q Yeah.

23 A No. Once I was asleep, I was asleep.

24 Q Okay. Why wouldn't you try to keep him awake?

25 A Because I was asleep, I was sleepy.

DAVID CARMICHAEL, JR.

1 Q Do you think that's good etiquette for everybody else
2 in this car to be sleeping?

3 A No, that's not good etiquette but I was sleepy. It's
4 Patrick so I didn't think I had to have correct etiquette to
5 sit up and talk to him, he's a truck driver so that's why I
6 kind of felt a little more comfortable.

7 Q I understand. I understand. Do you know if **Victim 3**
8 was asleep?

9 A I believe she was.

10 Q Okay. What about -- I'm sorry, let me go back a little
11 bit. What about you having your hand on the floorboard
12 behind Patrick --

13 A Uh-huh.

14 Q -- this would be your left hand. Is that a no?

15 A No, sir.

16 Q So when you all come back to Columbia what prompted you
17 all to get off the exits?

18 A We got a call, that's what really woke me up.

19 Q Okay.

20 A Patrick got a call on his phone from Jamise stating she
21 had wanted an Arizona Tea if I'm not mistaken.

22 Q Okay.

23 A He stopped and got gas at the pump, he paid with his
24 card. I said, "Well, I'll get the Arizona from Spinx,
25 because I wanted to get something to eat.

DAVID CARMICHAEL, JR.

1 Q Because Spinx offers food?

2 A Spinx offers good food.

3 Q But he stopped where?

4 A Shell gas station.

5 Q Okay.

6 A Me and Patrick proceeded out of the car and we went in
7 the store.

8 Q Why did you go out?

9 A I got out to go get the Arizona because he had told
10 Jamise that he's not spending no money and I told him, "I
11 got money, tell her I will get it."

12 Q And you got out of the Shell station?

13 A No, we drove to the Spinx.

14 Q Before you get to the Spinx did you stop at the Shell
15 station and get gas?

16 A Yes, we did, we got gas.

17 Q So it was two stops.

18 A Yes.

19 Q So you went and got gas, but while you went and got gas
20 did you get out of the car?

21 A No.

22 Q Did Victim 3 get out of the car?

23 A No.

24 Q Was there any conversation between you and Victim 3

25 A No.

DAVID CARMICHAEL, JR.

- 1 Q So he got gas at the Shell station.
- 2 A Uh-huh.
- 3 Q And then you all went to the Spinx at your request to
- 4 get some food.
- 5 A Yes, sir.
- 6 Q And --
- 7 A And the Arizona.
- 8 Q Okay. And so then you got to the Spinx, you and --
- 9 A Patrick went in, he went to the bathroom, I went to get
- 10 the Arizona.
- 11 Q Before you asked that, did you have any conversation
- 12 with **Victim 3** about getting her something, food or anything
- 13 like that?
- 14 A I just asked her did she want something.
- 15 Q What was her response?
- 16 A No.
- 17 Q Okay.
- 18 A And so when me and him got out there was no more
- 19 conversation.
- 20 Q Okay.
- 21 A We went in the store, he went in the restroom, I was
- 22 looking for an Arizona. That night they didn't have no
- 23 Arizona, I told him they didn't have no Arizona and he said,
- 24 "Just get a Sprite." I said, "Well, let me call Jamise just
- 25 to make sure." I called Jamise, she said, "Well, just get

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1 me a Sprite." I got a Sprite, [Victim 3] came in and said,
2 "Uncle Junior, can I have this?" She named three things. I
3 proceeded to say, "Go ahead." She grabbed four and I said,
4 "You're overdoing it." And so she walked with me to the
5 counter, she did hold my hand --

6 Q Okay.

7 A -- and as I let her hand go to grab my wallet she stood
8 there until I got the stuff, got her stuff and proceeded to
9 the car with me.

10 Q Okay.

11 A Patrick had went before us to the car. We got in the
12 car, we went down Decker, I took him the back way to my
13 house. We did not take her home first, I went home first.

14 Q Are you sure about that?

15 A I'm very sure because I had to give him directions
16 there. And I remember [Victim 3] -- I said, "You're getting
17 in the front seat?" She said, "Yeah, I'm getting in the
18 front seat," when we pulled up in the apartment. Because
19 the conversation was, "I don't really know this way," so
20 [Victim 3] was in there with us.

21 Q So let's back up. When y'all got back in the car at
22 Spinx you were, in fact, still in the front seat or you were
23 in the back at this point?

24 A I was still in the front seat.

25 Q So she was not in the front seat and you were in the

DAVID CARMICHAEL, JR.

1 back.

2 A I was never in the back, I was in the front seat. So I
3 got out of the car and she proceeded to get in the front
4 seat, I went in the house and that was the end of that for
5 that night.

6 Q And then the next morning it's church, the time your
7 getting ready for church.

8 A Uh-huh.

9 Q And I think you sent a text to him or he sent a text to
10 you, and when I say him I'm meaning Patrick Robinson; is
11 that right?

12 A Yes.

13 Q Let me show you State's Exhibit 6 and look at line six.

14 A Okay.

15 Q That's your telephone number to him.

16 A 705-0687, yes, sir.

17 Q And you texted him what.

18 A I texted him, "Get up, I don't want to hear nothing
19 about you having a headache."

20 Q Okay. What does that mean?

21 A A hangover.

22 Q Why would Patrick Robinson have a hangover, or why
23 would you say you didn't want to hear about him having a
24 hangover?

25 A Because there was a little drinking that night, it

DAVID CARMICHAEL, JR.

1 wasn't much but there was a little.

2 Q And he obviously took it as a joke because he

3 responded --

4 A LOL.

5 Q Laugh out loud.

6 A He and I, yes, let me go ahead and say, I am admitting.

7 Q Okay. You drank beer?

8 A I don't drink beer. I don't drink beer. I had another
9 drink.

10 Q It was an alcoholic drink.

11 A Yes, sir. I will admit to that, it was an alcoholic
12 drink, he and I had a drink. He didn't have many and I
13 didn't have many.

14 Q Sure. Okay. So then y'all go to church.

15 A Uh-huh.

16 Q Do you remember who arrives first, you or the [REDACTED]
17 family -- Robinson/[REDACTED] family?

18 A They arrived first because I have an 8:00 service that
19 I play for.

20 Q Where at?

21 A In Irmo off St. Andrews Road.

22 Q Okay. So you played there at 8:00 in the morning and
23 then you go over to your church.

24 A Uh-huh.

25 Q Graces Christian Church.

DAVID CARMICHAEL, JR.

1 A Uh-huh.

2 Q So you begin playing -- well, are you playing at this
3 time or do you have to get set up?

4 A No. When I got to Grace it was still the beginning and
5 as I was walking in I saw Cynthia and we smirked and laughed
6 at each other.

7 Q You did?

8 A I didn't bypass her.

9 Q Or not look her in the eye.

10 A We smirked and looked at each other.

11 Q Do you know if **Victim 3** saw that?

12 A I didn't see **Victim 3** at all. I didn't see **victim 3** at
13 all. So I proceeded to the front and then me and Patrick
14 got up there and we was laughing about the day before.

15 Q Okay.

16 A And we proceeded, you know, to get things in order.

17 Q Now, you're coming to learn later on, of course, that
18 **Victim 3** was at the church service, right?

19 A Yes, sir.

20 Q And this church service would be the first time that
21 you and Cynthia are present from the cookout; isn't that
22 true?

23 A From the cookout?

24 Q From the cookout about a week earlier. Remember, you
25 had been calling and **Victim 3** answered the phone, you're not

DAVID CARMICHAEL, JR.

1 sure if she got the message but this church service --

2 A I was at their house for dinner that Sunday. That week
3 before I was at their house for dinner that Sunday. I left
4 their house before everything was over with, I went to go
5 play for another service which was in -- they was doing a
6 memory part for my cousin, Latonia Boykins. After that
7 service I went to Clarence Sim's house, which his house is
8 on the way back to that side of town.

9 Q To get the CD.

10 A To get the CD.

11 Q Yes, sir. I'm not talking about that. I'm saying when
12 you dropped Kayla and [Victim 3] off, and, of course, you
13 already said you were going to tell Cynthia [REDACTED] and her
14 father about this.

15 A Right.

16 Q You made calls during that week for them.

17 A Right.

18 Q [Victim 3] answered the phone.

19 A Right.

20 Q You told her to tell them to give you a call.

21 A To give me a call.

22 Q Was this a conversation you wanted to have face-to-face
23 or by phone?

24 A I wanted to have the face-to-face because the last time
25 I had to talk to them about a situation I had with her I saw

DAVID CARMICHAEL, JR.

1 it worked out real good.

2 Q Okay.

3 A So I felt like if I had a face to face on this one this
4 time it would work out like the last time.

5 Q Okay. And then when you're at church after this trip
6 from North Carolina and Cynthia is there, she is present,
7 you're present and **Victim 3** is present, is that the first
8 time that you are in the presence of Patrick and his wife
9 since --

10 A Yes, since that previous action.

11 Q Since -- right.

12 A With **Victim 3** yes, sir.

13 Q Okay. And then you hear a commotion.

14 A Right. Now you're getting to the commotion. As the
15 service is going on and we're doing praise and worship and I
16 lead from the keyboard sometimes and that Sunday I led
17 praise and worship from the keyboard. I got up -- I didn't
18 get up just yet -- because in the back of the -- in the
19 front of the sanctuary, which I call the back because I'm
20 always sitting in the musicians area, the pit we call it,
21 there are two glass windows and we can see everything in the
22 lobby, just about everything. And as the commotion was
23 going on I saw Cynthia, you know, being restrained and then
24 I noticed Patrick had done walked out.

25 Q At this time do you know what's going on?

DAVID CARMICHAEL, JR.

1 A No.

2 Q Do you know why there's a commotion?

3 A No. All I know is I needed to get out there and check,
4 you know, because all I'm thinking about, I see Cynthia
5 acting you know, distraught and I'm like, "What's going on?"

6 Q Yes, sir.

7 A So at this time, after praise and worship they go into
8 scripture reading and prayer and the announcements and stuff
9 like that. I proceeded to go off the keyboard to find out
10 what was going on. I go down the hall, I see Patrick and he
11 looked at me and he just shook his head.

12 Q Okay.

13 A And I'm like, "What's going on? What's all this going
14 on out here?" And they was like, "Go back in the church."
15 And so Cynthia was like she -- they was restraining her and
16 when I came out it was like they were still retraining her,
17 they went straight past me into the nursery part in the back
18 of the church. So I stood there and I started walking
19 towards them and I said, "Let her go. What's going on?"
20 They released her and she said what the -- can I say it?

21 Q Yes.

22 A "Hell."

23 Q Okay.

24 A And so I'm looking and they was like, "Mr. Carmichael,
25 it's good for you to go back in the church." So I was like,

DAVID CARMICHAEL, JR.

1 "Nobody is going to tell me what's going on? Are you all
2 right?" So, I was like okay.

3 Q Okay.

4 A And so I went back in the church and proceeded through
5 service.

6 Q And then you went on -- did y'all finish service or did
7 it end?

8 A Well, service went on, the pastor got up and preached,
9 the choir sung, everything else. After service was over
10 with I immediately started texting Patrick saying, "Is
11 everything all right?" I text him, didn't get a response
12 for a while.

13 Q Okay.

14 A I texted Cynthia, didn't get a text for a while. I
15 called her to make sure she was all right or to get the gist
16 of what was going on, nobody would tell me what was going
17 on.

18 Q At this stage did you know if it involved **Victim 3**

19 A I have no inkling -- I saw **Victim 3** crying but I also
20 saw my Aunt Ursula, I saw my Aunt Shirley, I saw Angela
21 Bishop, I saw Robert Bishop, deacons, everybody and nobody
22 is telling me nothing so I proceeded to text them. My
23 female friend comes into church and I'm like, "Well, we're
24 going to go with the single's ministry to the movies," but
25 it wasn't just the singles ministry, it was the youth

DAVID CARMICHAEL, JR.

1 ministry as well as the singles ministry going together and
2 we were going to see the maid movie, I forgot the name of
3 it.

4 Q Okay.

5 A So we went to Applebees first over there off of Bush
6 River Road. After we left there we went to the movie
7 theater, me and my female friend sat together, everybody
8 else sat in their own different areas.

9 Q Okay.

10 A After that we came back to the church. I proceeded in
11 the parking lot and I remembered asking Angela Bishop, "Is
12 everything all right?" She is like, "Yeah, everything is
13 all right." She said, "How long have y'all been dating?" I
14 said, "We've been stating for a little while." She said,
15 "Oh, okay. Well, all right, I'll see you then." I said,
16 "Okay then." I said, "Are you sure everything is all
17 right?" I proceeded to continue to text and call.

18 Q Okay. And then --

19 A By the time I got home -- no before -- yeah, by the
20 time I got home Patrick had sent back -- well, before we
21 even went on the date, the dinner -- let me back up.
22 Patrick had sent back and said, "It is best for you not to
23 even call or text me or Little Mama no more." And I said,
24 "Well why?" And it proceeded --

25 Q You've got it right there.

DAVID CARMICHAEL, JR.

1 A Yeah. I said, "What? How, man? We was just together
2 yesterday." Then he texted back and said, "You're going to
3 pay for what you did."

4 Q What day is that, though?

5 A This is sent on 9/1/2011 at 1:12 p.m.

6 Q Okay.

7 A So that was right at church, that's right after I was
8 texting him.

9 Q No, not at nine --

10 MS. CAMPBELL: Objection, Your Honor, I don't think he
11 can --

12 THE COURT: What's the objection?

13 MS. CAMPBELL: -- correct the witness.

14 THE COURT: Oh, I'm going to allow it. He can ask
15 another question. Ask another question, Counsel.

16 MR. SHADD: Thank you, Your Honor.

17 Q When you said we were just together yesterday, what
18 date is on that document?

19 A Oh, that's 8/28.

20 Q Okay.

21 A 2011. Now, once he stated that --

22 Q Once you said we was just together yesterday did you
23 hear from him the rest of that night according to that?

24 A No.

25 Q Okay.

DAVID CARMICHAEL, JR.

1 A No. Now, that whole night I still didn't know nothing
2 until I received a call.

3 Q Don't say what was said.

4 A Right, I'm not going to say what was said. I received
5 a call.

6 Q And at this stage do you know what the allegation is?

7 A Yes. Once I have received a call from that particular
8 person who was not even at church --

9 Q Okay.

10 A -- that Sunday. So word was already out.

11 Q And so then four days later that's when you get a
12 response from him.

13 A Right.

14 Q And you're aware of the allegations --

15 A Yes, I'm aware of it then.

16 Q -- by September 1st.

17 A Say that again.

18 Q You're aware by September 1st what the allegation is.

19 A Right.

20 Q And is that why you responded the way that you did,
21 sir?

22 A I did, and I was furious because that wasn't the only
23 time. Once we found out we had a phone conversation, him,
24 myself and my sister, words were exchanged and it began to
25 get into threats and then it was like okay, that's it.

DAVID CARMICHAEL, JR.

1 Q This is from between September -- I mean, August 28th
2 of '11 and September 1st when this phone conversation
3 occurred?

4 A If I'm not mistaken, yes, sir, because it was during
5 the day.

6 Q Okay.

7 A It was during the day. And so I proceeded not to ever
8 contact him no more, his house, never went by there. As a
9 matter of fact I had a female friend, another female friend
10 who I was seeing, she was just a female --

11 Q Who?

12 A A female friend. And I wouldn't even go to her house
13 because she stayed out there by their house.

14 Q And so then --

15 A Word was so far out there, people was writing, texting
16 me and calling me.

17 Q Sure. Sure. There was concern.

18 A Yeah, concern and --

19 Q Now, let's back up. There was concern six years
20 earlier when you first found out that there was allegations
21 against you by **vic 1** and **Victim 2**

22 A Uh-huh.

23 Q I think I'm saying it right, Jamise or **Victim 2**

24 A **Victim 2**

25 Q **Victim 2**

DAVID CARMICHAEL, JR.

- 1 A Cynthia's daughter is Jamise, Victim 2 is Victim 2 [REDACTED]
- 2 Q And you came to learn that from Keisha Edmonds?
- 3 A Yeah, I was on a bus.
- 4 Q Why were you on a bus?
- 5 A Well, we was on a mini-tour, we were on an instate -- I
- 6 can't remember where we went, but my executive producer came
- 7 to the back of the bus --
- 8 Q And had a conversation with you.
- 9 A -- and had a conversation with me.
- 10 Q And what was your response? What did you do? Don't
- 11 say the conversation but what did you do?
- 12 A And my response was, "You got to be lying."
- 13 Q Okay.
- 14 A "I know you're lying." And so I proceeded to call
- 15 Shanda [REDACTED]
- 16 Q Why?
- 17 A Because she is the mother.
- 18 Q Okay.
- 19 A I didn't have Sabrina's number like that but I had
- 20 Shanda [REDACTED] number.
- 21 Q And were you able to reach Shanda right then?
- 22 A Yes.
- 23 Q And you had a conversation with her about it?
- 24 A I had a full conversation with her.
- 25 Q Any apologies being made?

DAVID CARMICHAEL, JR.

- 1 A None.
- 2 Q Was that the only conversation you had with her?
- 3 A No.
- 4 Q Okay. Tell us about any other ones you had.
- 5 A We -- I talked to her later on in the week because
- 6 everybody was still trying to figure out what was going on.
- 7 Q Including you?
- 8 A Including me.
- 9 Q Okay.
- 10 A And it was like nothing can get together.
- 11 Q Okay.
- 12 A Then what's when we had the conversation with Keisha,
- 13 Shanda and myself. Keisha did not answer the phone.
- 14 Q Okay.
- 15 A Shanda answered the phone.
- 16 Q Was there any apologies in that conversation?
- 17 A No, I didn't admit to doing anything.
- 18 Q Did you say anything about the Mack family is just
- 19 jealous of me or they're just jealous, anything like that?
- 20 A As far as jealous about -- yeah. I said jealous, yeah.
- 21 Q Why would you say that?
- 22 A Because of the fact that everybody was saying the way
- 23 they're acting and the way you're acting something ain't
- 24 adding up. If y'all are willing to talk to figure out
- 25 what's going on and they're not something -- people were

DAVID CARMICHAEL, JR.

1 saying a whole lot of stuff so I made the allegation that
2 they're just jealous right now because they're not trying to
3 make things come to common ground.

4 Q But you're saying jealous of you?

5 A Jealous of me and the situation right now because it
6 was out. In October/November when the allegations were made
7 and when I called Shanda [REDACTED] everything was out but
8 everybody was calling, "You keep your headed up, don't worry
9 about it, commotion and confusion is always going on with
10 them in that church." I was like, "Okay."

11 Q Okay.

12 A And even when it comes to Bishop Belton at the bond
13 hearing all he did was, "I'm Bishop Belton, I'm the pastor
14 of both parties."

15 Q Aaron Bishop was the pastor of both parties when it
16 came to [REDACTED] Victim 3 [REDACTED] family and you, correct?

17 A Yes. He didn't even -- well --

18 Q Don't.

19 A Yeah. But he stayed neutral, let me say that much.

20 Q Aaron Bishop stayed neutral.

21 A He stayed neutral and there was no confusion with that,
22 Bishop Belton from my belief stayed neutral. But the
23 confusion came because there's a lot of dislike for Bishop
24 Belton and I'm going to put it out there. And for the
25 record there is a lot of dislike for Bishop Belton when it

DAVID CARMICHAEL, JR.

1 came to the Mack family.

2 Q And Bishop Belton had appointed you.

3 A The head director, not minister of music, not even over
4 the music department, I was the headed director for the
5 church choir, or might I say leading director.

6 Q Which was formerly --

7 A Misty Mack's position.

8 Q You're also touring at this time, right?

9 A Yes.

10 Q You're music career is evolving.

11 A Going somewhere. I won't say evolving, it was still
12 local, Atlanta and Charlotte, it's not far for me.

13 Q Okay. But you all -- you don't have any conversations
14 with Sabrina Mack Sanders?

15 A No. And when it the first started I had no
16 conversation with them. As a matter of fact Bishop Belton
17 called to set up a meeting between the Mack family and
18 myself and my mother, they would not agree to the meeting,
19 they did not want to. This was before it was gone to the
20 police.

21 Q Okay.

22 A So because they did not come he did not meet with us,
23 there was no one-side meetings. And so me and my mother
24 said all that we're going to do is we're just going to sit
25 and wait and see what's going to happen.

DAVID CARMICHAEL, JR.

1 Q Did you have a conversation with anyone from her
2 family, from Sabrina Mack Sanders' family?

3 A On the phone, yeah.

4 Q Who?

5 A Depending on what period of time you're talking about.

6 Q But this would be after you learned that there was some
7 allegation that you had done something to --

8 A After I went to jail and all? You want me to
9 fast-forward to that time?

10 Q Yes, sir.

11 A Yes. After that period of time I had a conversation
12 with Sabrina's husband, Douglas, on the phone.

13 Q Don't tell us what on the phone.

14 A I'm not going to say what he said but I am going to say
15 it did not match.

16 Q Okay.

17 A And my response was, "I don't believe this." And at
18 the time he called me I was in church at Grace, so I said,
19 "Let me call you right back." I went to my present pastor
20 which was Aaron Bishop and I said, "What should I do?" He
21 said, "Well, call him back and just see what's going on." I
22 said, "I'm not fixin' to call out of the blue." So I
23 recorded the phone call when I called back. And I can't go
24 into what he said, but when it did not add up to the
25 specific information I proceeded to allow my mother to hear

DAVID CARMICHAEL, JR.

- 1 the recording, my aunt, because I was upset.
- 2 Q Yes, sir.
- 3 A And --
- 4 Q Okay.
- 5 A Now, I left that recording with my mother, she was
- 6 supposed to have put it up, but my mother died in 2009,
- 7 December 1st and I don't know where that phone is right now.
- 8 Q She died with you still having these pending charges
- 9 against you right here.
- 10 A Yes, sir.
- 11 Q Now, we've talked a little bit about **Victim 2** What's
- 12 your response about pulling her underwear to the side and
- 13 moving your fingers around her private area?
- 14 A This is the first time I've ever heard that part, I
- 15 don't know what's going on.
- 16 Q Well, about her -- you telling her to bend over and her
- 17 pulling up her pink Barbie nightgown.
- 18 A No, sir.
- 19 Q Or you getting her on your lap.
- 20 A No, sir.
- 21 Q Or you having your pants down and your penis exposed.
- 22 A No, sir.
- 23 Q And trying to put it inside of her.
- 24 A No, sir.
- 25 Q Mr. Carmichael, you know you've been charged with three

DAVID CARMICHAEL, JR.

1 very serious charges.

2 A Yes, sir.

3 Q You've been accused of -- you are aware that you have
4 been accused of improperly touching victim 1 [REDACTED].

5 A Yes, sir.

6 Q Is that true?

7 A Is that true that I committed the crime?

8 Q Yes.

9 A No.

10 Q Is it true that you improperly touched Victim 2 [REDACTED]
11 and committed a crime.

12 A No.

13 Q Is it true that you improperly touched and committed a
14 crime against Victim 3 [REDACTED]

15 A No.

16 MR. SHADD: Please answer any questions defense counsel
17 may have.

18 THE COURT: The State may cross-examine.

19 MS. CAMPBELL: Beg the Court's indulgence.

20 (Break in proceedings.)

21 CROSS EXAMINATION

22 BY MS. CAMPBELL:

23 Q You just talked at length about a recording that was
24 made of a phone call that you placed to your mother that was
25 very important to you in your case.

DAVID CARMICHAEL, JR.

1 A Yes.

2 Q And you don't know where that recording is today?

3 A No. Because I got my mother to put the phone up so
4 that I can put my hands on it.

5 Q You didn't think it was important to give to your
6 lawyer?

7 A Give it to my who my who?

8 Q Your lawyer?

9 A At that time I took it to my public defender but my
10 public defender -- no. She told me to retrieve it and I
11 couldn't get it at that time because my mother was trying to
12 get it for herself. She moved out of the house that she hid
13 it for me and she could not get back in because her and my
14 stepfather was not together no more.

15 Q So you don't have that recording that you talked about.

16 A I don't.

17 Q Your relationship with these families, how would you
18 characterize your relationship with the [REDACTED]

19 A With the [REDACTED] very personal.

20 Q Were you close?

21 A Yes.

22 Q They considered you like family?

23 A Yes.

24 Q You were free to go over there whenever you wanted?

25 A Yes.

DAVID CARMICHAEL, JR.

1 Q Their children refer to you as uncle.

2 A Yes.

3 Q And they trusted you completely.

4 A Yes.

5 Q Your relationship with the Macks, up until the whole --
6 and I'll get back to the Bishop Belton happening.

7 A Uh-huh.

8 Q How would you characterize that?

9 A My relationship with the Macks was not too much
10 lovey-dovey as far as the whole family. Misty, yeah.

11 Q What about --

12 A Brina, we didn't have too much of a relationship
13 because I didn't have no reason to deal with her like that.
14 Misty, I had dealings with her because of the choir but
15 there was no "come on, let's gets up together and go out to
16 eat," relationship, or, "we can go out and chill like this,"
17 or "you call me and I'll call you" type of relationship, no.

18 Q How about Davetta's relationship with her?

19 A With who?

20 Q With Sabrina.

21 A Well, she sung in a group with them so I don't know
22 what kind of relationship she would have.

23 Q You weren't aware that your sister who lived with you
24 all of those years, one of her best friends was Sabrina?

25 A No. Like I said, my relationship is not personal with

DAVID CARMICHAEL, JR.

- 1 her.
- 2 Q Were you aware that one of her other good friends was
- 3 Ms. [REDACTED]
- 4 A Michelle?
- 5 Q Uh-huh.
- 6 A Who is Michelle?
- 7 Q Mrs. [REDACTED] Lashanda [REDACTED]
- 8 A Oh, Ms. [REDACTED]
- 9 Q Excuse me, Ms. [REDACTED]
- 10 A Oh, I knew they was best friends at the time.
- 11 Q And do you remember -- and you refer to [REDACTED] by her
- 12 nickname, [REDACTED] so you knew her.
- 13 A Right.
- 14 Q And she was around you a lot.
- 15 A At church.
- 16 Q And other times.
- 17 A Church.
- 18 Q And then finally you're relationship with Mr. Robinson?
- 19 A Like a brother.
- 20 Q Like a brother.
- 21 A Yes.
- 22 Q He adored you.
- 23 A He did.
- 24 Q And you adored him.
- 25 A Yes, I did.

DAVID CARMICHAEL, JR.

1 Q And he trusted you completely just like all the others.

2 A Yes.

3 Q And there's no disputes that when all these allegations
4 came up that you didn't have anything personal against the
5 [REDACTED] family.

6 A No.

7 Q You didn't have anything personal against the Robinson
8 family.

9 A No.

10 Q You didn't have anything personal against Sabrina
11 Sanders and her daughter.

12 A No.

13 Q And your testimony today is this all came out because
14 the Bishop and this eight year old girl's aunt had a dispute
15 over the music?

16 A No. That's -- first and foremost I did not say
17 anything happened because of a dispute happened between the
18 aunt and the family, that did not come out of my mouth.

19 Q What did come out of your mouth was they are jealous.
20 "The people in the church are jealous of me."

21 A The people of the church was jealous of me? That's not
22 true. I said they were jealous in this situation because
23 the people were talking and made it seem like that they were
24 able to reach out to me more than reach out to them in the
25 situation, that's what I was talking about.

DAVID CARMICHAEL, JR.

1 Q Do you remember your testimony on direct?

2 A Yes.

3 Q When you talked about how you told people that you were
4 jealous -- that they were jealous?

5 A Yes.

6 Q And you were referring because of this whole -- we
7 heard a whole lot about it -- of your being promoted to a
8 director of music or some program within the church. Do you
9 remember the reference to that?

10 A Yeah. But the most part I was talking about was how
11 everyone was saying that they were able to reach out to me
12 in this situation and it was like a closed door, closed deal
13 on their end of the bargain -- not bargain, situation.

14 Q The Bishop was in touch with you constantly after these
15 allegations came out, wasn't he?

16 A What you mean constant?

17 Q The Bishop wanted to sit down with you and he tried to
18 get Ms. Sanders to sit down with you.

19 A Oh, no, ma'am.

20 Q Ms. [REDACTED]

21 A No, ma'am. The situation is the Bishop wanted to sit
22 down with both families to really find out what's going
23 on --

24 Q Because --

25 A -- and to get a better understanding of the situation.

DAVID CARMICHAEL, JR.

1 Me and my mother -- when he called me and my mother, I
2 stated, "Yes, sir, I'm willing to come and talk to you with
3 the Mack family." He said, "All right. I'll get back to
4 you." Later on when he called me back he stated, "We will
5 not have this meeting because they are not willing to come
6 and talk about it." That's what I said.

7 Q Because the Bishop wanted the church to handle this,
8 didn't he?

9 A Not necessarily. He wanted to get this thing cleaned
10 up and situated where if anything needed to be revealed it
11 would be revealed and if it needed to go any further it
12 would go further.

13 Q Because you were his kind of shining star, he just
14 promoted you.

15 A No, ma'am. I wasn't the shining star, I'm sorry, you
16 can't paint it like that because I am not his shining star.
17 I'm no one's shining star.

18 Q You got arrested after **Victim 2** came forward.

19 A Because of the whole situation I got arrested.

20 Q By Investigator Metz.

21 A Yes.

22 Q And after you had been served with the warrants he
23 advised you of your rights?

24 A He did.

25 Q And you waived those rights?

DAVID CARMICHAEL, JR.

1 A I did.

2 Q And you spoke to him briefly, did you not?

3 A I did.

4 Q And when he asked you about these allegations do you
5 remember what your response was?

6 A Yes.

7 Q What was it?

8 A They were jealous.

9 Q And that was your explanation for why two younger women
10 separately would come forward and accuse you of these
11 heinous crimes.

12 A No. See, you have to understand, as far as me not
13 getting any deeper -- that's why I didn't go any deeper with
14 him. I said I needed my lawyer first before I could go any
15 deeper in the situation with him, that's why I stopped when
16 I was talking to him.

17 Q But you would agree with me that's what you told him.

18 A Who?

19 Q You would agree with me that's what you told him as the
20 reason for these two young women independently coming
21 forward and accusing you of similar crimes.

22 A I won't just say that it -- yeah, that's what I said to
23 him. But my thing is as far as the explanation it's deeper
24 than what it is.

25 Q Did you need some time to get your explanation

DAVID CARMICHAEL, JR.

1 together?

2 A No, I didn't need no time get my explanation together.

3 The fact is I can't say what people said so I'm limited to

4 what I can say in my explanation.

5 Q Then you were arrested on the latest charges back in

6 November of 2011, right?

7 A I was arrested all that -- oh, you're talking about

8 **Victim 3** now? Yeah.

9 Q And you were charged in her case and brought in and
10 arrested; is that correct?

11 A Yes.

12 Q And you were also advised of your rights at that time?

13 A Yes.

14 Q And at that point you waived your rights and spoke to
15 the investigator voluntarily; is that correct?

16 A Yes.

17 Q And you gave him this statement at that time, right?

18 A I did.

19 Q And you were aware of what the allegations were.

20 A Yes.

21 Q And, in fact, you tried to get in contact with the
22 family.

23 A Yes, I did.

24 Q And you were aware of everything and that was your
25 version at that point of what happened.

DAVID CARMICHAEL, JR.

1 A It was. But I can say as far as this statement here at
2 the end of it when I wanted to tell him -- because it was
3 earlier in the morning and after he had finished I said,
4 "Wait a minute, there is a situation" -- when he asked me,
5 "Is there any reason why **Victim 3** would be mad at you?" And
6 I said, "Not to my knowledge," at the end I said, "Wait a
7 minute, there is a reason because she got upset that I got
8 on her -- and I didn't just get on her, I embarrassed her
9 and these two little boys. My intentions were to tell her
10 mother and father. But as far as me not wanting the outcome
11 to be what it was, I kind of just shunned away from it and
12 thought it wasn't going to be nothing. But that's the only
13 way I would think that she would make any allegations
14 against me like that.

15 Q Okay.

16 A But this wasn't the first time I went to them about
17 this young lady doing anything towards me that is
18 disrespectful. One thing I don't take is disrespect from a
19 child. As an adult I don't take no disrespect and I don't
20 disrespect no one and her mother don't accept that neither.
21 In fact, when I wanted to go to her and let her know that
22 because of the last time when me and her mother and her
23 father had a talk in the truck they got on her, so this time
24 I know it's had been a little different because it's older
25 guys at the age of 19 and 18. And because I can't say who

DAVID CARMICHAEL, JR.

1 said what that's all I can say right now.

2 Q Yes, sir. Let me ask you this: This statement, you
3 found out what **Victim 3** was accusing you of right after it
4 happened, you just testified to that, you got a phone call.

5 A Who? What are you talking about?

6 Q When you testified on direct examination you indicated
7 that you left the church later that day, you got a phone
8 call from someone and you found out what the allegations
9 were; is that correct?

10 A No. I got a phone call late that night on that same
11 Sunday.

12 Q On that same Sunday.

13 A Yes.

14 Q And, in fact, we know that you knew what the
15 allegations were because in those text messages you address
16 them on September 1st when you talk about, "I didn't do
17 anything to **vic 3**, I was asleep in the front seat."

18 A When I found out that's what I responded to him.

19 Q So at that point what's going through your mind is why
20 would she make this horrible allegation up about me.

21 A No. At that time I'm not sitting there trying to
22 figure out.

23 Q You aren't trying to figure out why your brother's
24 child who you spend tons of time with just in that -- we can
25 look in the week period before --

DAVID CARMICHAEL, JR.

1 A Yeah. Tons of time is the correct word.

2 Q -- would make this heinous lie about you?

3 A That question right there was not on my mind, I'm going
4 to be honest with you. Do you want to know what was on my
5 mind? Do you want to know what was on my mind? If they --

6 THE COURT: Sir, she's asking the questions, you have
7 the right to respond --

8 THE WITNESS: I apologize.

9 THE COURT: -- and respond fully if you would like to
10 do that. If you would like to respond more fully please do
11 but don't question the lawyer.

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you.

14 Q It did not occur to you, "Why would this child just
15 like those other ones make up these heinous allegations
16 about me?" That didn't go through your mind?

17 A No.

18 Q And as September turned into October and then October
19 turned into November prior to your arrest you didn't once
20 think about why she would do this?

21 A I didn't question it until after the fact that he
22 brought the -- what is that?

23 Q Your statement?

24 A My statement -- after he asked me my statement, that's
25 when I revealed to him, that's when it was brought up to me.

DAVID CARMICHAEL, JR.

1 At first I didn't even remember her age and then when I said
2 13 bear the end, that's when I said wait a minute, that's
3 what triggered me to even have that problem with her because
4 I didn't really remember she was 13 until after the fact.

5 Q Well, according to your testimony you told those older
6 boys that were 18 and 19 that she was 13 --

7 A Right.

8 Q -- and she didn't look like a 17 year old.

9 A But that was after the fact.

10 Q That happened according to your testimony again a week
11 before this ever occurred.

12 A No, ma'am. When this statement was given, when I
13 talked to those boys I knew she was 13 then. This is early
14 in the morning when I gave that statement -- I'm not a
15 morning person so when I gave this statement I was not even
16 thinking clear.

17 Q Early in the morning is at 9:08 a.m.?

18 A Yes. I don't have to work a 9:00 to 5:00 like
19 everybody else, I'm sorry, I'm a full-time musician.

20 Q Okay. Did it wake you up when you got arrested?

21 A Yeah. It woke me up but I still wasn't thinking clear.

22 Q Did it wake you up when you got handcuffed and taken to
23 headquarters?

24 A Yeah. It woke me up but I still wasn't thinking clear.

25 Q According to your statement you knew what you were

DAVID CARMICHAEL, JR.

1 being arrested for, were you thinking, "Why would **Victim 3**
2 make this horrible heinous lie about me?"

3 A Yeah. Because when he came in he had to let me know
4 what I was getting arrested for, so in this statement, yes,
5 I knew then.

6 Q And at that point wouldn't it be important to tell that
7 investigator she made this up because I was going to tell
8 her mama about her talking to the 18 and 19 year olds?

9 A When I told him -- after the statement was over with he
10 made the statements, "You know what, I'm not going to go
11 back and put that in there because that's not important, I
12 don't see no reason to put that in there." That's what he
13 said to me.

14 Q So now Investigator Carter is in this huge conspiracy
15 to frame you of all these heinous crimes?

16 A Wow. Wow. Wow.

17 Q That's your testimony.

18 A That's what he said to me. He said he was not going
19 back to add that in there.

20 Q Do you --

21 A He said there was no need to add that in there.

22 Q Do you remember him asking you a question, "Did you and
23 **Victim 3** get along with one another."

24 A Yes.

25 Q And do you remember him asking the question, "Was

DAVID CARMICHAEL, JR.

1 **Victim 3** upset and mad at you for any reason? Not to my
2 knowledge, no, sir."

3 A Not to my knowledge meaning to me that I'm not thinking
4 clear. Right now I couldn't even get my head together.
5 It's early in the morning, I'm upset that I'm sitting in the
6 detective's office getting arrested, getting ready to go to
7 jail, I can't think of no reasons, nothing. Right now I am
8 dealing with the fact that I'm about to go to jail.

9 Q He followed up with a question, "Why do you think
10 **Victim 3** would say you touched her in the car on the way
11 back to North Carolina?" Your answer was, "I don't know."
12 Is that what you answered?

13 A Yes.

14 Q And then, "Does **Victim 3** have anything to gain from you
15 by making up that you touched her? No, sir, I don't think
16 so." And it goes on.

17 A Again, it's early in the morning, I could not get
18 myself together. The only thing that was going through my
19 head at that moment was the fact that I'm going to jail for
20 something I did not do.

21 Q Your testimony was earlier -- you said this was earlier
22 in the morning and you couldn't get your thoughts together.

23 A I couldn't.

24 Q But you just testified it wasn't unusual, in fact, very
25 usual for you to go at 8:00 a.m. and play at a service

DAVID CARMICHAEL, JR.

1 across town.

2 A You're right.

3 Q And did you have your head together when you would do
4 that?

5 A When it becomes a habit, yes.

6 Q The trip, I want to talk just a second about that.

7 When you went to North Carolina you got up there and you
8 admit you were drinking some.

9 A Uh-huh.

10 Q And you had at least one drink.

11 A Yes.

12 Q And Mr. Robinson had at least one drink.

13 A Yes, ma'am.

14 Q In fact, I think he testified he had a couple.

15 A Uh-huh.

16 Q And you would agree with that.

17 A Yes, ma'am.

18 Q Because that's the reason the next morning you were
19 like "Ha ha, hope you don't have a hangover from that one
20 drink or two drinks;" is that correct?

21 A Right.

22 Q And you mention that on the trip back that you were in
23 the front seat and you had your -- now your testimony is
24 here today that you had your seat all the way back; is that
25 correct?

DAVID CARMICHAEL, JR.

1 A Yes.

2 Q But in your statement you were very specific when he
3 asked you about how you were in the car, do you remember
4 that?

5 A Yes. I told him my seat was back.

6 Q He asked you the question, "Did you lean the back of
7 the seat down that you were seated in," Do you remember
8 that?

9 A Yes.

10 Q Do you remember your answer?

11 A No.

12 Q "Just a little." Why is it different back then before
13 you've heard all the testimony in this case?

14 A What do you mean? My seat was back.

15 Q Just a little, but now you're saying it was all the way
16 back.

17 A The seat was back.

18 Q When you were coming down the road I noticed you didn't
19 testify as to when exactly you woke up. Do you remember
20 when you woke up?

21 A I woke up when he got his phone call from Jamise.

22 Q And when was that?

23 A He got his phone call when -- right as we were getting
24 off on the exit to go to Percival Road to go to the Shell
25 gas station.

DAVID CARMICHAEL, JR.

1 Q When you were getting off at the Shell station right at
2 Percival Road?

3 A I believe so, it was right around that area there.

4 Q Do you know why you would tell the police back when you
5 were arrested when you were asked when did you wake up and
6 stay awake, you said the Ridgeway area which would be above
7 Blythewood.

8 A Above Blythewood?

9 Q Yeah. That's what you told them then before you heard
10 all of the testimony.

11 A Okay.

12 Q Tammy is a friend of yours.

13 A She is.

14 Q Is Clarence Sims also like a brother to you?

15 A He is.

16 Q What's his current standing in the church now? Is
17 there an issue there?

18 A His current standing in what church?

19 Q Grace.

20 A He's no longer at Grace from what I've been told.

21 Q Were you aware that there was some bad blood from him
22 towards some of the members of Grace?

23 A Bad blood between him and some members of Grace?

24 MR. SHADD: Objection, Your Honor, relevance, any bad
25 blood with Clarence and Grace Church.

DAVID CARMICHAEL, JR.

1 THE COURT: Can you tell me if this is going to tie
2 together with something?

3 MS. CAMPBELL: Yes, Your Honor. Tammy came in here and
4 testified to certain facts we haven't heard before and her
5 credibility would be at issue and part of it is that her
6 fiancée has bad blood with the church.

7 THE COURT: I'm going to allow her to go into it for
8 credibility purposes.

9 MS. CAMPBELL: And it would be limited.

10 A So what are you saying?

11 Q Are you aware that Clarence has -- I don't know if a
12 grudge is the right word, but he has some bad blood with
13 members of the Grace Church now?

14 A What are you saying? What are you asking me?

15 Q Are you aware of that? He is no longer there.

16 A I'm aware he is no longer there.

17 Q Were you aware that he didn't leave on good terms?

18 A I would reckon, yes, ma'am.

19 Q Okay. You mentioned also that you never told

20 Victim 3 mother about her behavior with those boys.

21 A I didn't.

22 Q And Tammy also testified and you're aware of and she
23 told you something about those -- and I don't want to use
24 her terminology of how she referred to those girls, but both
25 of the girls were acting inappropriately in her opinion.

DAVID CARMICHAEL, JR.

- 1 A Yes.
- 2 Q So did you go back to Ursula, you're cousin, and tell
3 her about her child's inappropriate behavior?
- 4 A I can't go to Ursula as my cousin but I didn't go back
5 to Ursula is my aunt.
- 6 Q I'm sorry, she's your aunt.
- 7 A Yeah.
- 8 Q Did you go and tell her about her daughter's bad
9 behavior?
- 10 A No. Her daughter didn't have any bad behavior as far
11 as what I knew about the car, Tammy came to me about
12 something else in the house.
- 13 Q But Tammy was very specific about what she had
14 witnessed.
- 15 A She was specific about what she witnessed. I went off
16 the hinges about what I knew as far as what happened outside
17 in front of my car with **Victim 3** out of the car talking to
18 an 18-year-old and the 19-year-old, telling them that she
19 was 17 when she is 13.
- 20 Q I understand that's your story here today.
- 21 A Oh, that was my story then.
- 22 Q Back when supposedly all this happened that -- and
23 Kayla was her name, right?
- 24 A Uh-huh.
- 25 Q -- and **Victim 3** were both -- and I don't know what

DAVID CARMICHAEL, JR.

1 terminology to describe this supposed bad behavior that
2 we've just learned about today, you didn't go back to your
3 Aunt Ursula and go, "Listen, my" -- I guess it would be your
4 niece?

5 A My cousin.

6 Q Kayla is your cousin?

7 A Yes.

8 Q You didn't think it was important to let her know that
9 her child was behaving inappropriately just like the other
10 one?

11 A I didn't talk to my aunt. And the only thing that was
12 out of order to me was the fact that she was out of the car
13 talking to the 18 or 19 year old lying about her age saying
14 that she was 17.

15 Q Let's go back to [Victim 2] and the first set of charges.
16 When they came forward you told investigators that they were
17 jealous of you.

18 A Uh-huh.

19 Q How on earth were the [redacted] jealous of you, those
20 people in the church?

21 A I told Shanda [redacted] that, as well. But when I told the
22 detective I was saying that the Mack family was really
23 jealous of me, but I also told Shanda [redacted] the same
24 statement.

25 Q And you are fervently denying that you tried to get

DAVID CARMICHAEL, JR.

1 this all swept up under the rug and apologized to Lashanda

2 [REDACTED]

3 A I never tried to deny anything and trying to sweep
4 anything under the rug. The only thing I told her I did not
5 do is what they say I did and that was touch her daughter in
6 any kind of way or manner that was inappropriate.

7 Q Well, the [REDACTED] family considered you again like a
8 brother.

9 A Okay.

10 Q Is there any motivation there --

11 A What are you saying?

12 Q -- that you're aware of or they're just jealous too?

13 A If I didn't touch their daughter I don't feel like I'm
14 violating them in any kind of way.

15 Q You mentioned specifically that there was a young woman
16 there the one night that you stayed with [REDACTED] victim 1.

17 A Uh-huh.

18 Q So you were admitting you stayed with [REDACTED] victim 1 that
19 night.

20 A No. I was there, I was there but not for long. There
21 was a light skinned young lady that I did not know who she
22 was there, there was a light skinned lady that she worked at
23 Applebees that I knew nothing about.

24 Q And how long was everybody gone while you and the light
25 skinned lady were there with the child?

DAVID CARMICHAEL, JR.

1 A Sabrina wasn't gone long because she had stepped out to
2 meet somebody. There wasn't no women's conference that's
3 going on.

4 Q So that's not true too.

5 A No. There was no women's conference going on.

6 Q So now this light skinned lady that worked at
7 Applebees, you didn't even talk to her or get her name or
8 anything?

9 A Listen, she may have told me her name but I don't
10 remember her name.

11 Q Okay.

12 A I just stated I couldn't even remember who she was.
13 All I know is she worked at Applebees why do I remember that
14 so distinctively? Because I asked her if I come there could
15 you hook me up? Why I remember that is if I find out you
16 work at a restaurant I'm going to ask for a hookup, and
17 basically she worked at Applebees that's why I remembered it
18 was Applebees. And did I see her at Applebees? No.

19 Q So all this arose out of three little girls who were --
20 whose families were either jealous or had no reason or who
21 you were trying to get in trouble making up independently
22 these heinous allegations?

23 A I was not trying to get nobody in trouble. You can
24 paint it the way you want it but that's not how I'm trying
25 to do it.

DAVID CARMICHAEL, JR.

1 MS. CAMPBELL: Beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 (Break in proceedings.)

4 MS. CAMPBELL: Thank you. I don't have anything
5 further, Your Honor.

6 THE COURT: Redirect?

7 MR. SHADD: Very briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. SHADD:

10 Q When Ms. Campbell is asking you about -- let's first go
11 to this. When she asked you about when you go at 8:00 in
12 the morning and go play at another church, do you remember
13 that?

14 A Uh-huh.

15 Q When you said, "I'm not on anybody's 9:00 to 5:00,"
16 this is during the week.

17 A On a Sunday.

18 Q You're a musician, you travel?

19 A Uh-huh.

20 Q You have events in the evening?

21 A Uh-huh.

22 Q You come home and you go to sleep.

23 A Uh-huh.

24 Q You don't operate under an alarm clock.

25 A 8:00 in the morning, yeah.

DAVID CARMICHAEL, JR.

1 Q Oh, for 8:00 in the morning?

2 A Oh, yeah.

3 Q When it's time to earn your money.

4 A Oh, yeah, I still have to be woken up.

5 Q And you were woken up when you got arrested and had to
6 see this officer at 9:00 in the morning, correct?

7 A Yeah, after a knock on the door.

8 Q Now, this 8:00 in the morning and you're working,
9 you're not being interrogated by an officer and you're
10 handcuffed and you are woken up, are you?

11 A Say it again.

12 Q At 8:00 in the morning when you're going to church to
13 work, that's not in the same setting as being handcuffed and
14 talking to this officer who you don't know who is asking you
15 information about these heinous crimes.

16 A No.

17 Q So you were sleeping that day.

18 A Sleeping that day? What are you talking about?

19 Q The day you got arrested, sir.

20 A Oh, yeah, I was in bed.

21 Q When you go to church at 8:00 in the morning you are
22 preparing to go to church at this 8:00 in the morning,
23 correct?

24 A Right.

25 Q On this particular morning you were not preparing to be

DAVID CARMICHAEL, JR.

1 arrested on that day; is that correct?

2 A Right.

3 Q So you get interrogated by this officer and he asked
4 you when did you actually wake up and stay awake and you
5 said, "Around the Ridgeway area." Were you sleepy when you
6 was talking to this officer?

7 A Yes, I was.

8 Q You're not sleepy now when you say it was actually
9 around Percival Road when you got off the exit, correct?

10 A No, I'm not, and that's correct.

11 Q Everybody got up when the phone call came and he got up
12 on the exit to get gas, correct?

13 A That's right.

14 Q Now, this officer asked you -- and this is the
15 officer -- you've already been arrested and he is asking you
16 about information regarding **Victim 3** correct?

17 A Uh-huh.

18 Q And he asked you, "Did you lean the back of the seat
19 down that you were seated in?" And your answer was, "Just a
20 little."

21 A Just a little.

22 Q And you were sleepy when you were giving this statement
23 to him, correct?

24 A Uh-huh.

25 Q Now, you have heard all of this testimony, you've been

DAVID CARMICHAEL, JR.

1 sitting here this whole time, right?

2 A I believe I was.

3 Q Okay. Hopefully you've been paying attention.

4 A Hopefully I was.

5 Q Okay. And you're saying now that you was back.

6 A Yes, my chair was back.

7 Q You wanted to go to sleep --

8 A Yes, I wanted to go to sleep.

9 Q -- on the ride back.

10 A Yeah. I wouldn't go to sleep sitting up.

11 Q Are you saying that you were asleep and had the seat

12 back because you done heard what they said here?

13 A No.

14 Q When you were confronted by this officer you said,

15 "Just a little," right?

16 A That was early in the morning.

17 Q Did he ask you, "Was your arm ever behind Patrick?" Do

18 you recall him asking you that?

19 A I can't remember.

20 Q All right. Take a look through this four page

21 statement. Tell me if he even asked you that.

22 A It don't look like he did.

23 Q He did not ask you if you had your hand behind

24 Patrick's seat?

25 A No, sir.

DAVID CARMICHAEL, JR.

- 1 Q But he did ask you --
- 2 A Did I have my seat leaned back.
- 3 Q Yeah. But let's go to page five at the top. Are you
- 4 there?
- 5 A Yes.
- 6 Q And he asked you, "Is it possible that you touched --
- 7 is it possible that you touched **Victim 3** while you were
- 8 asleep in the vehicle and you did not realize it?" And what
- 9 did you say?
- 10 A "No, sir."
- 11 Q And then he goes on and specifically asks, "Did you
- 12 place your hand on **Victim 3**'s butt," right?
- 13 A Uh-huh.
- 14 Q And you said what?
- 15 A No, sir.
- 16 Q He asked you if you -- did you place your hand anywhere
- 17 on **victim 3**'s leg or thigh, so he's moved away from the
- 18 butt. But you said what?
- 19 A "No, sir."
- 20 Q And then after you give this statement to him, after
- 21 you look at it and after you sign it then you tell him why
- 22 **Victim 3** may have said this.
- 23 A Yes, sir.
- 24 Q Is that in this statement?
- 25 A No, sir.

DAVID CARMICHAEL, JR.

1 Q He controlled what questions to ask, didn't he?

2 A Yes, sir.

3 Q He controls whether he's going to take any additional
4 information from you, correct?

5 A Yes, sir.

6 Q Did you offer additional information regarding with the
7 boys, the 19 and 13 and that sort of thing?

8 A Yes, sir.

9 Q Okay. Now, how old is Kayla [REDACTED]?

10 A Thirteen. Now?

11 Q Yes.

12 A Fourteen.

13 Q When he asked you did you know the age of [REDACTED] Victim 3
14 you're answer -- looking at page two, your answer was -- and
15 this was early on in the statement, you're answer was, "I
16 didn't know how old she was. I knew she went to Dent Middle
17 School;" is that right?

18 A Yes, sir.

19 Q What age are you when you go to Dent Middle School?

20 A To be honest with you I guess your early teens?

21 Q Well, how old were you when you went to middle school?

22 A I can't even remember, not right now, that ain't even
23 in my thought.

24 Q And I just -- just to touch on this, when your response
25 to Investigator Metz that they were jealous of you and your

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1 statement to Lashanda [REDACTED] that they were jealous of you,
2 that was only directed to the Mack family; is that correct?

3 A Yes, sir.

4 Q And this was because of --

5 A The situation itself.

6 Q Meaning the people who --

7 A Were trying to --

8 Q -- it appeared was taking your side rather than theirs.

9 A No, sir. It wasn't so as far as they were taking my
10 side, it was as far as they were saying you trying to give
11 some kind of explanations, some kind of common ground.
12 You're not sitting here just quiet and not saying nothing so
13 just keep praying or keep doing this and encouraging me
14 right now. I felt as though they were jealous, the fact
15 that these people were trying to encourage me to just stay
16 strong.

17 Q All of y'all's fellow church members was encouraging
18 you to stay strong.

19 A Yes.

20 Q And they saw that.

21 A Yes.

22 Q They were aware of that.

23 A Yes.

24 Q And for that your comment was they were jealous of
25 these folks encouraging you.

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1 MS. CAMPBELL: Objection, Your Honor, to the leading.

2 THE WITNESS: Yes.

3 MR. SHADD: That's all I have.

4 THE COURT: Sustained. Recross?

5 MS. CAMPBELL: No, sir.

6 THE COURT: You may step down.

7 THE WITNESS: Thank you.

8 THE COURT: The defense may call its next witness.

9 MR. SHADD: Your Honor, at this time the defense rests.

10 THE COURT: Does the State intend to call witnesses in
11 rebuttal?

12 MS. CAMPBELL: No, sir.

13 THE COURT: All right. At this time, ladies and
14 gentlemen, that completes the proof in this cases. I'm
15 going to ask that you step back to the jury room, there's
16 some matters that I have to take up with the attorneys at
17 this time, it shouldn't take very long. I'll ask that you
18 not begin any discussions until I've asked you to do so.
19 You may retire. Every one remain seated while the jury
20 retires.

21 (The jury left the courtroom.)

22 THE COURT: We'll be in recess for about five minutes,
23 I'm going to ask that the attorneys meet with me in the back
24 hall. Thank you.

25 (WHEREUPON, a short break was taken.)

DAVID CARMICHAEL, JR.

1 THE COURT: Yes, sir?

2 MR. SHADD: Now that we're at the close of the case
3 we'd like to renew our motions that we had at the end of the
4 State's case in chief.

5 THE COURT: All right. The motion is noted. I would
6 make the same ruling I had earlier, the motion is denied.
7 All right. Is the State ready to proceed with closing?

8 MS. CAMPBELL: I can start, yes, sir.

9 THE COURT: I'll wait just a second until we can get
10 everything in here. All right. I do want to put on the
11 record that in chambers I discussed with counsel the length
12 of arguments. I have asked -- the State is going to open on
13 the law and the law only briefly, after that I will allow 20
14 minutes for each side for general arguments. Is that your
15 understanding, Counsel, for the State?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: And for the defense?

18 MR. SHADD: Yes, sir.

19 THE COURT: All right. And I'm going to try to hold
20 you to that, I will warn you when we have gotten to the
21 warning.

22 MS. CAMPBELL: Thank you.

23 THE COURT: Let's bring the jury in.

24 (The jury returned to the courtroom.)

25 THE COURT: Ladies and gentlemen of the jury, that

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1 completes that presentation of evidence in the case and I
2 told you when we've reached this stage of the proceedings
3 the lawyers will be allowed to make closing arguments or
4 statements, thereafter it will be my job to charge you the
5 law in the matter. At this time the State will be beginning
6 the closing arguments with the discussion of the law,
7 followed by the defense's closing argument, followed by the
8 State's final argument on the facts. At this time the State
9 may proceed.

10 MS. CAMPBELL: May it please the Court?

11 THE COURT: Yes, ma'am.

12 MS. CAMPBELL: Good afternoon. This is the first time
13 that I'll have the opportunity to actually stand up and
14 address each of you as jurors. The first thing I'd like to
15 do on behalf of the State of South Carolina, on behalf of
16 the family of [victim 1] [REDACTED] [Victim 2] [REDACTED] and [Victim 3]
17 [REDACTED] is to thank you for your service in this case. I
18 know when you showed up for jury duty on Monday morning you
19 probably didn't have any idea that you would even be on a
20 case much less what type of case it would be. And as the
21 testimony has unfolded in the last three or four days you've
22 come to understand that this is an important case to the
23 State of South Carolina, to the citizens of Richland County,
24 to the defendant himself, and most importantly to the
25 victims in this cases who did have the courage to come

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1 forward and testify despite their age. I'm going to have an
2 opportunity to talk to you about the law and then you will
3 hear from the defense attorney and then I will have the
4 opportunity to get back up and address some of the issues of
5 facts that may or may not be pertinent in this case. If I
6 misquote anything as I am talking to you, if I tell you
7 something that is different from what the law is take the
8 law as the Judge gives you it is not intentional on my part,
9 take the law as the Judge gives it to you. In that same
10 vein if either side mischaracterizes the facts, you remember
11 them because the rules in this courtroom are defined for a
12 very specific reason, you are the sole finders of what the
13 facts are, you are the sole determiners. Each of you
14 individually and then once you get back in the jury room
15 collectively must determine what happened those many years
16 ago and then back in 2011, that is your role and your role
17 alone. So if you hear facts that's different from what you
18 remember, you are the sole judges of the facts and that is
19 your role. Now, I want to apologize if during the course of
20 this cases we have offended anybody, Ms. Simpson or I have
21 in our quest to try to get out the evidence. At times my
22 questioning has been inartful, clumsy, sloppy even. At
23 times there's been evidence that was admissible, not
24 admissible, there have been objections, you've been sent
25 back to that jury room I know more times than you ever

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1 wanted. Please don't hold that against the State, please
2 don't hold it against these young victims in this case, it
3 was not intentional on our part, so any kind of sloppiness
4 on our part was unintentional. The defense has a right
5 under our constitution as they should to confront each and
6 every witness that comes before them, criminal cases are
7 somewhat unique in that vein. The reason for that, ladies
8 and gentlemen, is very simple, you have the opportunity to
9 hear the testimony, to hear from the doctors or The ARC
10 people, the experts, so that you can judge credibility. You
11 haven't heard -- or you've heard references to other
12 statements, some videotaped ARC interviews, some medical
13 records, but you've heard from the actually witnesses
14 themselves with one exception because in certain cases when
15 a child is under the age of 11 then the actual interview
16 itself is able to be put into evidence and come into court,
17 that's why you were able to see [victim] [victim 1]
18 videotape from The ARC. But if a child is 12 or more that's
19 not allowed by our laws so that's why you heard the live
20 testimony, and even in that case the witness itself must
21 testify, the child must come before you and testify in order
22 to make that admissible. You've heard references to reports
23 taken by police officers to medical reports, to other
24 statements from the witnesses, and those are turned over to
25 the defense and they are able to use them for impeachment or

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1 other purposes if it is appropriate. But the testimony
2 itself must come before you, and the reason for that is very
3 simply because the defendant has the right to confront each
4 and every witness, you must have the right to judge the
5 credibility. And I submit, ladies and gentlemen, in this
6 case perhaps more than any other credibility is crucial.
7 Now, as the Judge has told you the burden is on the State of
8 South Carolina as it should be to prove this defendant's
9 guilt on each one of these charges independently and then
10 together guilty beyond a reasonable doubt. And you've heard
11 people refer to that level of proof and what it means, and
12 listen carefully as the Judge charges you because he will
13 charge you on a guide to determining whether or not we have
14 met our burden, and I submit, ladies and gentlemen, that is
15 in this case with these facts and this defendant a burden
16 the State welcomes in this case. What is proof beyond a
17 reasonable doubt? Our courts have held over time that proof
18 beyond a reasonable doubt, the simplest definition of it
19 might be proof that makes a reasonable person hesitate to
20 act. But our courts have gone a little bit further in
21 defining it, in helping you in determining whether or not we
22 have met our burden, because despite what anybody may say it
23 is not an unsurmountable burden. The courts in our
24 jurisdiction have said proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the defendant's

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1 guilt. There are very few things in this world that we know
2 with absolute certainty and in criminal cases the law does
3 not require proof that overcomes every possible doubt. If
4 based on your consideration of the evidence you are firmly
5 convinced that the defendant is guilty of the crime charged
6 you must find him guilty. If on the other hand you think
7 there is a real possibility, a real possibility that he is
8 not guilty, then you must give him the benefit of the doubt
9 and find him not guilty, so proof that leaves you just
10 firmly convinced of the defendant's guilt. The law even
11 will tell you, we don't have to overcome every possible
12 doubt. However, ladies and gentlemen, I submit in this case
13 with these facts, with these witnesses we have, but that is
14 not the level we have to prove, proof that leaves you firmly
15 convinced. There are going to be three separate indictments
16 and the Judge will instruct you you must consider each of
17 the indictments separately in determining whether or not the
18 defendant is guilty or not guilty, in other words, there is
19 just a separate verdict on each and every count or
20 indictment. Now, the one charge, though, that is consistent
21 in this case is lewd act, this defendant is charged in three
22 separate instances with lewd acts. And you have heard about
23 how there are time periods involved in these indictments.
24 These are children. The law recognizes when dealing with
25 child cases that time periods may be vague, memories may

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1 come back later, there may be delayed reporting. The law
2 recognizes that time is not a material element of committing
3 a lewd act on a minor. In other words you'll hear from the
4 Judge there were timeframes when these occurred. In the
5 case of [victim] [victim 1] the time starts when they moved
6 in their house in 1999 and runs until her 9th birthday which
7 includes that time period, that's the reason for the time
8 periods involved. But what we must prove is it is unlawful
9 for a person over the age of 14 years -- and the defendant I
10 don't think anybody is going to argue was over 14 years when
11 all these acts were committed -- willfully and lewdly
12 committed or attempted -- there doesn't even have to be an
13 actual touching, even an attempt is enough -- a lewd or
14 lascivious act upon and with the body of its parts of a
15 child under the age of 16 years with the intent of arousing,
16 appealing to or gratifying the lust or passions or sexual
17 desires of the person or of the child. Even stimulating the
18 child is enough. Ladies and gentlemen, no one is going to
19 get up here and argue that these acts -- I could be wrong --
20 no one should get up here and argue that these acts as
21 explained to you by these children are anything but lewd and
22 lascivious. There is no reason that a grown man has to
23 expose his penis, to put another child's hand on his penis,
24 to rub another child in the vaginal area, to try to get into
25 the pants of a child sleeping in the backseat or to try to

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1 wake-up a child when she is placed by him on his lap or his
2 penis. There is no reason other than lewd and lascivious
3 that anyone tries to penetrate a child with his penis in
4 order to satisfy his lust. I submit that no one will argue
5 that these acts are not lewd acts under our law. And what
6 does the term lewd or lascivious mean? Very simply, use
7 your common sense, to satisfy the sexual passions of a
8 person, that's what you must consider. Now, there are two
9 types of evidence that you can consider in every case,
10 circumstantial evidence and direct evidence. The Judge will
11 tell you that neither type of evidence upon which you must
12 give greater credence, both are admissible. Direct evidence
13 is the testimony of a person who asserts or claims to have
14 actual knowledge of a fact such as an eyewitness. The three
15 children in this case were all direct evidence of what
16 happened, they were the victims, that is direct evidence.
17 In cases such as a murder case, we may not have a victim to
18 testify, therefore we may not have that. Circumstantial is
19 proof of a chain of facts or circumstances indicating the
20 existence of a fact. The law makes no distinction between
21 the weight or value to be given either direct or
22 circumstantial evidence. In this case you have
23 circumstantial evidence. When the defendant calls up and
24 apologizes, the inconsistencies in the statement are
25 circumstantial evidence. In this case what you have is

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1 solid direct evidence of the crimes that were committed that
2 is totally and completely corroborated by the circumstantial
3 evidence that you have before you. You can consider either
4 and in this case it's not just one or the other, this isn't
5 a case where you just have one person come forward and make
6 allegations about what happened to them. You can use any
7 and all of the evidence before you to corroborate each and
8 every one of these victims and I would ask you to do so.
9 Now, you've also heard from expert witnesses, and the Judge
10 will tell you that some people because they have certain
11 training and education are able to come before you and
12 testify as experts. The Judge will also tell you you
13 consider their credibility in the same realm as any other
14 person's testimony. And the final thing that I want to talk
15 to you about the law in this case is credibility, because
16 ladies and gentlemen, this case boils down to credibility.
17 And this case has some different involvement say with the
18 church and different people in this case. Credibility,
19 believability, listen to the Judge, he'll tell you you can
20 believe one witness against many, many against one. You can
21 believe all of what a witness says, none of what a witness
22 says or even a small portion of what a witness says. You
23 can consider when a witness testified what was their
24 demeanor? Were the forthright or hesitant? Did they have
25 something to gain or lose? It's called bias or prejudice,

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1 and I submit ladies and gentlemen, and I beg you, judge

2 [Victim 3] [redacted] judge [Victim 2] [redacted] judge [victim 1]

3 [redacted]. What do they have to gain or lose by coming in
4 here and getting to get up in front of all these people and
5 talk about these horrific crimes? Judge them. I submit if
6 you do their testimony is ultimately and completely
7 credible, believable. Thank you.

8 THE COURT: I'd ask the attorneys to approach briefly.

9 (WHEREUPON, a bench conference was held.)

10 THE COURT: All right. Mr. Shadd, you may proceed.

11 MR. SHADD: Ladies and gentlemen of the jury, it is my
12 opportunity now and this will be my final time to talk to
13 you regarding my client, Mr. David Carmichael, Junior. I
14 also echo the sentiments of Ms. Campbell in thanking you all
15 for being here. And we don't do that to try to curry any
16 favor with you but we do that because we are extremely
17 appreciative that you all are here to judge a fellow
18 citizen, in fact, a number of fellow citizens, and that's an
19 awesome responsibility and so we don't take that lightly and
20 for that we thank you. You all came in here on Monday and
21 we judged you. We made the determination, and you heard us
22 keep certain people out and we allowed some people to come
23 on and we wanted to make sure that we had a jury that was
24 unbiased. That's why the Judge asked some questions, first
25 Judge Manning and then Judge Couch, to make sure that there

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1 was no bias, to make sure that there was no undue influence
2 by the jury, that was to make sure you all are protected
3 from coming in and out of the courthouse because we wanted
4 to make sure that the only thing you all focus on is what
5 comes from this witness stand and the evidence that you all
6 will have in the back. It's human nature to have bias.
7 It's human nature when someone tells you something you judge
8 whether what they're saying is true or not. We do that with
9 our children, we do that with our peers. But you all took
10 an oath to say I'm leaving the biases at the door, I'm
11 coming in with a fresh mind, I don't know anything about the
12 case, I'm going to listen to the evidence, I'm going to
13 apply the law as the Judge gives it to you, not what I give
14 to you, not what Ms. Campbell gives you but what the Judge
15 says. And once you apply the law to the facts and you all
16 get together and deliberate, the Judge will instruct you you
17 all have to have a unanimous verdict, a unanimous verdict.
18 Now, I tried to take notes the best way I could, I
19 understood that some people wanted to take notes and took
20 notes, but His Honor will tell you that the notes that you
21 take are to help you remember and recall what you heard, not
22 to influence other members of the jury. Each individual
23 juror must reflect upon what they have heard and what they
24 have seen and our hope is that you will come back with a
25 unanimous verdict, that is our hope. We believe in this

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1 American Justice System that reasonable minds can come to an
2 agreement. We also agreed that reasonable minds can differ.
3 I've known Ms. Simpson and Ms. Campbell for quite some time,
4 we differ on this. We all have roles to play in this. His
5 Honor is the judge of the law and you heard us make
6 objections, perhaps I may have offended someone and I
7 apologize as well, but we are both supposed to be zealous
8 advocates for our respective positions. There's a few
9 things that we agree upon. We agree that there was a
10 church. We agree that there was two churches. We agree
11 that there was connection between my client and the Mack
12 family, the [REDACTED] family and the Robinson [REDACTED] family.
13 What we definitely disagree on is whether these three
14 accusers have come in here and told you the truth. That's
15 not for Ms. Campbell to decide, that's not for me to decide,
16 that's not even for His Honor with all the awesome power
17 that the State of South Carolina has given to him to decide,
18 he can't make that decision, you all can. And so as the
19 judges of the facts that is your role. And the objections
20 that we made is to make sure that the evidence that came to
21 you whether it was admissible or not would be able to go to
22 you or should stay out. And so we are almost done with our
23 roles and now it's going to be yours. I said earlier about
24 the stories, the Hollywood stories, the scripts that are
25 written, once these stories go up they should not be

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1 changed. Once the viewers look at it, it should not be
2 changed. **Victim 2** [REDACTED] as I recall the facts, six years
3 ago told Investigator Metz and told Heather Smith -- I'm
4 sorry, not Heather Smith, had told I believe her counselor
5 that she was touched by David Carmichael. She told you all
6 that she was touched by David Carmichael on three occasions.
7 The first occasion was supposedly at her house and that
8 Mr. Carmichael was watching her. However you heard who they
9 called, Janie [REDACTED] "I don't allow anybody by my kids," and
10 these are her kids. You heard the aunt Shannon [REDACTED] who
11 they called said one of the last things I asked her, Janie
12 [REDACTED] is not going to allow these kids alone. Not even for
13 a second." So when His Honor tell us your about judging the
14 credibility of the witness then you can believe some of what
15 a witness says or nothing or you can believe some witnesses
16 over one or one over many. When you have a conflict -- it
17 can't happen both ways, either he was there in the house
18 alone or he was not. We have two witnesses that said Janie
19 [REDACTED] never allows that to occur. Now, evidence comes
20 through circumstantial evidence and through direct evidence.
21 I would submit there's a third kind and that's no proof.
22 The fact that there's a lack of proof should be important to
23 you as well. Janie [REDACTED] -- I'm sorry, not Janie [REDACTED]
24 **Victim 2** [REDACTED] started off six years ago saying that he had
25 her turned around, she was in her pink nightgown, Barbie

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1 nightgown, he had sent off her brother and her sister -- I
2 don't think the youngest was born at that time -- to the
3 back. Now, David Carmichael doesn't know how long according
4 to her Janie [REDACTED] and Shannon are going to be out, but
5 according to her he has her bend over and touching her
6 around her vagina. She admits she did not say six years ago
7 that he digitally penetrated her, meaning using his fingers
8 inside her vagina, but two weeks before we come into court
9 that comes out. And when I asked her why now, I think she
10 said something about -- y'all remember and y'all just rely
11 on your own memory or maybe your notes, "I'm stronger now."
12 And then they try to protect her on what she's saying on the
13 stand under the oath like everybody else has to take this
14 oath and says, "Well, she may have been embarrassed talking
15 to a male." If that's the case why didn't Investigator Metz
16 bring a female in there and talk about it? Why didn't
17 Investigator Metz follow-up and ask her if there was
18 anything else that she wanted to add? But it's only when
19 we're going to trial that Victim 2 [REDACTED] adds digital
20 penetration. I would submit based on what she said six
21 years ago if that is true, if that is to be believed is a
22 lewd act under the State of South Carolina, but she went
23 further, they went further. No way, no how, reasonable
24 doubt. victim 1 [REDACTED] vic 1 [REDACTED] she tells you that she --
25 now she tells you, this week she tells you that she woke up

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1 and was on her -- was on his lap. She was I would submit
2 robotic in her responses to Ms. Campbell. Yes, no, but then
3 she laughed when she was asked what his penis felt like.
4 But Heather Smith said she was nervous, she was embarrassed,
5 y'all saw that. So ask yourself and ask each other was she
6 embarrassed on Tuesday? What I gathered was that she said
7 she was on his lap. When I questioned her, she said she was
8 facing left, facing this way, if I was David Carmichael,
9 what did she say on the tape? She was facing right. I
10 think that's important. Details are important. And this
11 was way back, not now when we're going to trial. She said
12 on Tuesday that he was in her lap (sic), in her lap, and I
13 wanted to be sure this wasn't towards the bottom of his --
14 at the top of his knees but in his lap and she said yes,
15 tried to give her a chance to change that but she stayed
16 firm with her story and she said that she was in his lap.
17 But his penis is exposed, her hand is on his penis, he's
18 right-handed, his left hand is on top of her hand on his
19 penis while she's sitting on his lap. Not by the knees, not
20 by the thighs, in his lap I would submit over his penis.
21 Well, what didn't she say? And she's questioned by a very
22 good prosecutor, she was questioned by me, and she never
23 said that his penis was anywhere else but her hand. But you
24 will have the tape and you will recall on the tape that she
25 says that his penis was on her stomach. Ask yourselves, ask

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1 each other, how is that possible when she is sitting on his
2 lap? And I asked her, "You sat on his lap the entire time?
3 Yes," until according to her Tuesday, he says, "Go, shh, get
4 out of here." What I recall seeing on the tape, talk
5 amongst yourselves, was there a, "Go, shh, gets out of
6 here," or was it just go? And this is way back then. No
7 way, no how, reasonable doubt. Then we get to **Victim 3**
8 **[REDACTED]** And we need to focus on them because they are the
9 accusers, they're the ones that we both want you to judge
10 because those are really the ones that you need to pay most
11 attention to. However, they paraded a number of people in
12 here, a number of parents, they didn't call all the parents,
13 they didn't call all the stepparents but they called some
14 parents and talked about their reaction, talked about how
15 they responded in different ways, and I would submit they
16 did respond in different ways. Ms. Mack-Sanders had no
17 conversation with David Carmichael, Shanda **[REDACTED]** did. Now
18 Ms. Mack-Sanders says I forgave him, at least she said she
19 thought she forgave him but we had at least five years later
20 invited him back to the church that she and her daughter was
21 attending and wanting him to play at youth night. Are those
22 the actions of a mother who believes her daughter, exposing
23 who she feels harmed her daughter and harmed her? Or Ms.
24 **[REDACTED]** who comes to a wedding uninvited, not alone, not with
25 her girlfriend, but her daughter? Are those the actions of

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1 a protective parent like Cynthia [REDACTED] She was very
2 impressive about boys, about her girls with boys and what
3 would happen in that situation. But [REDACTED] Victim 3 [REDACTED] who
4 had just gotten scolded by David Carmichael just a week
5 earlier, who had threatened to tell her mama who she said
6 seen or at least been exposed to, I would submit how she
7 beat a 16 year old girl about boys and other matters. And
8 this is the first opportunity that David Carmichael is in
9 front of Cynthia [REDACTED] and [REDACTED] Victim 3 [REDACTED] says this, she
10 didn't say it when she went home with her stepfather. I
11 believe she said that she -- well, no, I'm sorry -- Patrick
12 Robinson -- no. She said that she got in the front seat,
13 David got in the back, Patrick said they took David home
14 first -- I'm sorry, they took [REDACTED] Victim 3 [REDACTED] home first, then he
15 went and took David. [REDACTED] Victim 3 [REDACTED] didn't even say that,
16 [REDACTED] Victim 3 [REDACTED] said, "Yes, we took David home first." But they're
17 asking you to see that there is corroboration in the
18 stories. Ladies and gentlemen, when you want to know how
19 the wind blows you don't look about the trunk of the tree,
20 you look at the leaves, the details. And we believe that we
21 have pointed out to you that these details don't add up. No
22 way, no how, reasonable doubt. Now, it's true, they don't
23 have to reach the burden of having you overcome all possible
24 doubt, but if there is doubt that doesn't leave you firmly
25 convinced of his guilt then you must find him -- and the

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1 Judge will tell you, you must find him not guilty. In fact,
2 there are actually two ways to find him not guilty. One is
3 if you are not sure, you're not sure of the evidence, you're
4 not sure of how the law applies to the evidence and whether
5 they have presented their case beyond a reasonable doubt,
6 you resolve that in his favor because that meant that they
7 didn't do their job. The other way is that after viewing
8 the evidence and once you get together and come to a
9 unanimous decision you say that he is just not guilty. He
10 is not guilty. And as I come to a close not guilty does not
11 mean that you are in favor of or condone fondling from a man
12 to a young lady. Not guilty does not mean that you -- that
13 you condone improper touching. Not guilty does not mean
14 that it is okay to commit a lewd act. In this case you all
15 get to write the final summary. In this case you can say
16 not guilty means no proof or not enough proof. In this case
17 you get to write that final act. Now, for some time David
18 Carmichael, Jr. has had this burden, and then I got involved
19 in his situation and I carried that burden as well. And now
20 once I sit down this will be the last chance I get to talk
21 to you, we put that burden in your lap. And we are
22 confident that after you judge what came from the witness
23 stand, whether there was corroboration, whether the
24 witnesses were telling the truth which is judged by you all,
25 whether they were hesitant, whether they were evasive, we

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1 are confident that you all will come to one conclusion
2 (indicating). Thank you.

3 THE COURT: The State may close the argument.

4 MS. CAMPBELL: Thank you, sir. In preparing for trial
5 we always try to anticipate in a criminal case what kind of
6 defense may come up because we don't know. And in lewd act
7 cases, criminal sexual conduct cases involving children,
8 "Oh, it was a mistake, he didn't mean to touch her that
9 way." Or, "Well, it did happen but it just wasn't him."
10 But this case has a whole unique flavor to it because this
11 is the case of a grand conspiracy, a grand conspiracy that
12 was initiated by little girls who were 11 and 12 by the time
13 they told what happened to them in elementary school, who
14 were clever and cunning enough to frame this poor man, David
15 Carmichael, Jr. Uncle Junior. They were clever and cunning
16 enough to anticipate that even when the police became
17 involved that the police would just become complicit in the
18 conspiracy, and when they questioned him they just didn't
19 give him enough time to come up with the church is jealous.
20 And they were clever enough to know that six years later --
21 excuse me, five years later that another young woman who was
22 13, she would have been seven at the time they reported it,
23 would decide that, "Oh, great idea for Uncle Junior," this
24 clever, cunning, lying little girl would then join in the
25 conspiracy and, Oh my God, just happen to come up with

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1 allegations that is just happened to mirror what he did
2 before. And again, this poor victim just happened to be
3 implicated by this police officer who was willing to put his
4 professional career on the line by lying to you, the jury,
5 and not include this explanation that he came up with a year
6 later after listening to all the evidence. And, Oh my God,
7 they were even so clever as to know that six years later
8 when he's interviewed and he signed this and he admits that
9 these are his words that he would screw it up because he
10 hadn't thought it through carefully. He thought some things
11 through carefully. He knew he needed to be awake by the
12 time they hit Ridgeway because the touching occurs after
13 that. Remember, it's right there where you pass the
14 University of Phoenix right there at Farrow Road coming in.
15 He knew that it was going to be important at the time until
16 he found out the evidence was overwhelming that that car
17 seat only be back a little bit. He knew it was important to
18 put in other details, but then he had to contradict when he
19 took the stand, and he wants to talk about credibility? I
20 submit -- and these children -- and you heard from the
21 experts about how hard it is for children to come forward,
22 how delayed disclosure is normal, they're scared. Is that
23 normal? Use your common sense, I beg you. That there is
24 tentative disclosure, that some additional facts may come
25 out as the child gets older and is no longer scared of what

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1 may happen to her. And think about it, even **Victim 3**
2 **████████** when she disclosed, what were the first words out of
3 her mouth? "Mom, I'm sorry." The enate blame and guilt
4 that goes on with these crimes is overwhelming. But ladies
5 and gentlemen, luckily for the State of South Carolina, for
6 the citizens of Richland County in this case, three young
7 women did have the guts to come forward, they did have the
8 wherewithal to stand up to him and to tell and they told
9 back then, and I'll address what he says about their
10 inconsistencies, and they told what happened to them, and
11 they got up here and told you the same thing. And they went
12 to the police and they gave statements be it to The ARC, to
13 the police, whoever and they could have been impeached on
14 any of that. They are consistent. Yeah, did **victim 1**
15 **████████** forget that he said shh, meaning to be quiet?
16 Consistent? Ladies and gentlemen, the guilt in this case is
17 overwhelming. These cases inherently are of secrecy and his
18 theory is that **victim 1** **████████** said that she was on his
19 lap? He was six foot-two, larger than he is now, how big is
20 his lap? But their defense is there wasn't enough room for
21 this seven or eight year old girl to fit on his lap and put
22 her hand on his penis. That's ludicrous. That's the best
23 defense they can come up with? It's ludicrous. And I
24 submit, ladies and gentlemen, once they choose to put up a
25 defense you judge it the same way you do the State's

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1 witnesses. You've judge their credibility, bias or
2 prejudice, because this defendant, as the Judge will tell
3 you in a minute, he comes in this courtroom cloaked in
4 innocence as he should under our constitution. It is up to
5 the State to prove his guilt beyond a reasonable doubt, not
6 every doubt, beyond a reasonable doubt. And I submit,
7 ladies and gentlemen, in this case as you've become patently
8 aware over the last several weeks (sic) he was also cloaked
9 with a robe he curried. He's charming, he's likable and the
10 reason for that is he then gets himself into these families,
11 he gains their trust. The common theme in this case, "We
12 trusted him." It's the ultimate betrayal to purposely
13 insert yourself into the family life and then take advantage
14 of the children, it doesn't get any worse than this. And
15 did you see a pattern in what he did on some of it? He was
16 more comfortable with **Victim 2** he had known her longer, been
17 around her, he was more blatant with her than the others.
18 He starts when they're sleeping. Did that happen to **Victim 2**
19 too? It's a grooming process. They wake up, see how far he
20 can get, what's going on, and part of the thrill in these
21 cases is the fact that the parents could be right beside
22 him, in the next room, driving up at any moment, that's part
23 of the thrill. Their defense is because it happened in
24 those circumstances, I submit that's the reason it happened.
25 And notice, the time period that lapsed, he had been caught,

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1 charges were pending, goes out, starts drinking, inhibitions
2 get a little looser. She's asleep in the back, he's big,
3 sprawled out. He asked -- the guy asked if his hand was in
4 the backseat, he asked if he touched her butt in the
5 backseat, see how far he can get. It went on for awhile.
6 She estimated 10 minutes, it probably seemed like a lifetime
7 when you're 13 years old and your uncle is trying to get in
8 your pants. She was scared to do anything. Rubbing,
9 plucking, trying to get under her clothes. Credibility.
10 Were his inhibitions a little loose? The thrill of it? Do
11 it right there while his brother, Patrick Robinson, drove
12 down the road. Who was going to say anything? "Oh, my hand
13 is back there." I want to talk to you about the evidence in
14 this case and what the victims testified to. You heard from
15 **victim I**. The defendant was babysitting her and her brother,
16 she was about -- it was some time period when she was eight,
17 nine, ten years old. She was watching TV on the couch, her
18 brother fell asleep, the defendant told him to go to his
19 room. **victim I** was asleep, she was asleep on the couch, she
20 woke up, she was in his lap, his pants and underwear were
21 pulled down, his penis was out, she was in his lap. He had
22 her lying to his side with her head against his chest, he
23 had his hand over her's on his penis rubbing it against her
24 stomach, it felt soft and lumpy, he told her, "Shh, go."
25 She ran down the hall, pulled up her pants which had come

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1 down and then went back and greeted her mother with a smile
2 because she didn't know what to do. It was Uncle Junior.
3 You also heard from [Victim 2] [REDACTED] The first time she can
4 recall, "He made me believe that I would get in trouble and
5 no one would believe me," that's how he kept her under
6 control. The grandmother's house on [REDACTED] [REDACTED] -- I'm
7 sorry, [victim 1] was around eight when it happened.
8 Grandmother's house on [REDACTED] [REDACTED]. Family left to go to
9 the store for a short time, the defendant was watching her
10 and her siblings. He sent the siblings to their rooms and
11 made her stay behind. Remember, she was the oldest. The
12 defendant told her to get a tissue for his snot nose. She
13 was wearing her favorite pink Barbie gown that her
14 grandparents had given her. He made her stand up and face
15 forward and he began rubbing the top of the gown, made her
16 lean forward and began fondling underneath, started at her
17 thigh, then on her butt over and then under her panties, and
18 they were little girl panties. She looked back and saw his
19 private part sticking out straight, he slid her panties to
20 the side using his fingers and began rubbing on her vagina
21 with his fingers, sat her on his lap trying to get his penis
22 inside of her but it would not go in, but he wasn't through
23 with her. [Victim 2] The apartment on [REDACTED] [REDACTED] [REDACTED], her
24 mother was in the middle of moving, oldest and younger
25 brother were outside. He touched her boob and said nasty

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1 things to her. He said, "Let me talk to that cat." At the
2 time she didn't know what he meant. No one else was in the
3 room. The mother came back fairly quickly. The third time
4 at Davetta's home where according to Davetta Graham who got
5 up here her best friend was **Victim 2** (sic) **Victim 2** and
6 according to Davetta, **Victim 2** was never at her house on any
7 occasion. Is that even credible? And I will get back to
8 her. Davetta was watching her until her Aunt Shirley could
9 come get her, Davetta went to sleep, **Victim 2** went to the
10 defendant's bedroom to watch TV. He was not home at the
11 time. And remember her description of the bedroom which
12 just totally happens to corroborate what Davetta's
13 description was? And no one would know what that
14 description was unless you had been in that bedroom, but
15 according to her **Victim 2** has never been in the house. Woke
16 up, defendant was there beside her trying to unzip her
17 pants, she told him to stop. Remember, she's a little bit
18 older at this point. Was able to get a finger in her
19 panties and proceeded to rub on her vagina. Continued to
20 say stop quietly because she didn't want to wake Davetta up,
21 she thought Davetta would blame her. And, ladies and
22 gentlemen, I submit after you have seen the bond between
23 Davetta and David Carmichael no wonder she thought that.
24 Aunt toots the horn, she's leaving and as she's leaving, "If
25 you tell anyone I will kill you. I was just scared." But

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1 luckily in this case, [Victim 2] [REDACTED] as she got older got up
2 the courage, it was something she just couldn't live with
3 anymore and she came forward and the first person -- this is
4 what makes sense -- she told was her good friend, [victim 1],
5 the girl she knew through the church. And to go back to
6 that cloak of innocence that surrounds this defendant, I
7 submit in this case ladies and gentlemen, he went a step
8 further to try to make himself look good, he absolutely
9 surrounded himself with this cloak of the church, he has
10 used the church to try to resolve this. The church has come
11 up behind him. The church went so far as to preach against
12 reporting this to the congregation in order to save him.
13 And remember, it was Bishop Belton who had just promoted him
14 according to him, Bishop Belton who had great faith in him
15 protecting his protege, preaches from the pulpit not to do
16 it. And I submit, ladies and gentlemen, watch the video of
17 the child, she even talks about this it. When she was 11
18 years old after attending that sermon she knew what was
19 wrong. She even states in that statement, "He preached from
20 the pulpit." And what did he say? "Don't go to the police,
21 let the church handle it." Even an 11-year-old knew that
22 was wrong. That's what he surrounds himself with, that's
23 what he counts on, his likability, his trust and this church
24 are the things he hides upon to prey upon children.

25 THE COURT: Five minutes, Counsel.

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1 MS. CAMPBELL: Thank you, Your Honor. When he's
2 arrested, he gives statements, you just heard them. I went
3 through them with him as far as what he said in his
4 statement and what he didn't say. And it's amazing that he
5 minimizes what happened in the car that day -- and I'm
6 jumping back and forth, I'm sorry, ladies and gentlemen, I'm
7 limited on time -- what he says and everything in the car.
8 What is significant are also the text messages. And it's
9 amazing because he got up here and testified that he was at
10 the church that day when the allegations come out, he says
11 he runs out and sees his best friend, the family, his
12 brother's wife, out here and she's upset. He sees **Victim 3**
13 crying according to his testimony here today and then he
14 sees other people saying, "Go back in, go back in." And
15 according to him nobody tells him what's going on.
16 Everybody knows what's going on at that point and according
17 to him nobody tells him? They just go back in the church?
18 According to the credible witnesses he just keeps coming out
19 because he knows what is going on, he needs to get a twist
20 on it, he needs to get there and do some damage control and
21 he knows he needs to find out. But he's going to play it
22 off like, "I don't know what you're talking about." Look at
23 his text that day on the 28th. "Man, are you okay? Little
24 didn't look good." She was so upset that according to every
25 credible witness in this case she was screaming bloody

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1 murder, she was having to be restrained, she had run out of
2 her shoes, she was sobbing hysterically, [Victim 3] sobbing
3 next to her and his comment is, "Little didn't look good."
4 Testing the waters, trying to find out how much damage had
5 been done, trying to figure out what [Victim 3] had actually
6 come forward with. Ladies and gentlemen, I submit that when
7 you consider all the evidence in this case you have but one
8 verdict, and you can write it as big as you want and you can
9 make the not much bigger than the guilty, but it doesn't
10 take away from the sworn credibility testimony. Are there
11 certain variability in terms of credibility? Do they
12 remember who took one home? I submit that's what makes it
13 credible, it is not a script. This is real life, these are
14 real crimes, these are real children. And by the way, you
15 aren't supposed to believe this conniving [Victim 2] And I
16 don't know where he gets this information where suddenly she
17 says there was digital penetration where he stuck his finger
18 inside of her, remember the testimony, she said he rubbed
19 around it just like she has always said, that's not what the
20 testimony was. As much as he says it it doesn't make it
21 true. These are real crimes, these are real witnesses. I
22 beg you to judge these young women who in this case had the
23 wherewithal to come forward. And, you know, I saw David
24 Carmichael take the stand and I submit you just saw that and
25 I thought, you know, he's likable and it made sense to me so

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1 much and then the light bulb went off, of course he's
2 likable, he has to be to gain the trust of the parents and
3 the children. Because I thought in my head when I started
4 this trial what does a child molester look like? What is
5 the face? And unfortunately we know from our own common
6 sense it can be a catholic priest, it can be your nextdoor
7 neighbor, it can be a football coach, it can be any people.

8 THE COURT: One minute, Counsel.

9 MS. CAMPBELL: All the State asks, judge the
10 credibility of their witnesses and when they came forward
11 and once you have looked at all the evidence in this case
12 please hold him responsible for his actions. He's hidden
13 behind the church long enough. Hold him accountable on
14 behalf of the State of South Carolina, the citizens and the
15 children. Thank you.

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, that completes the closing arguments of counsel, and I
18 have told you that when we had completed those arguments it
19 would be my responsibility to charge you concerning the law
20 to be applied in this case. When we started this case a
21 couple of days ago, several days ago, I went over with you
22 the indictments in this case. I'm going to go over those
23 indictments with you again at this time and you will be
24 allowed to have these indictments in the jury room during
25 your deliberations. The first indictment is in case number

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1 2007-GS-40-3372, it is for the act of -- the alleged act of
2 lewd act upon a child. The indictment states that David Lee
3 Elijah Carmichael, III, did in Richland County on or between
4 July 1999 and May 1st of 2004 being over the age of 14 years
5 willfully and lewdly commit or attempt a lewd or lascivious
6 act upon or with the body or its parts of one **victim 1**
7 **██████████**, a child under the age of 16 years with the intent
8 of arousing, appealing to or gratifying the lusts, passions
9 or sexual desires of himself or such child all in violation
10 of South Carolina Code of laws 16-15-140 against the peace
11 and dignity of the state and contrary to the statute in such
12 case made and provided. That's the first indictment. The
13 second indictment is in case number 2007-3373. It alleges
14 the same offense against the same defendant. It states that
15 these events did occur in Richland County between January
16 of 2002 and December 30th of 2005. I won't go through the
17 elements again, I've explained that to you and I'll go
18 through that when I charge you on the law. This allegation
19 involves the alleged victim, **Victim 2** **██████████** again a child
20 under the age of 16 years and allegations the violation of
21 the same act. The final indictment is in case number
22 2012-4135, again for the same offense. It alleges that the
23 same defendant again committed those acts on or about
24 August 28th of 2011. In this case the alleged victim is
25 **Victim 3** **██████████** age 13 and again it alleges the violation

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1 of the same statute or act. Now, the indictments charge the
2 defendant with a lewd act on a minor, and I remind you that
3 the fact that a defendant has been arrested, charged and
4 indicted in the case is not evidence in the case, it can't
5 be considered by you as evidence in the cases. It does not
6 constitute evidence of guilt, nor does it create any
7 presumption of guilt. Those are the documents that bring
8 the case before this court. They're the formal written
9 instruments which contain the charges against the defendant.
10 They inform this court of the charges to be tried, they
11 inform the defendant of the charges that have been placed
12 against him. Now, in a case where there are multiple
13 indictments each indictment is a separate and distinct
14 charge or offense and you, the jury, must decide each
15 indictment separately on the evidence and law that's
16 applicable to that indictment uninfluenced by your decision
17 as to any other indictment in the case. Therefore a
18 defendant may be either convicted or acquitted on any or all
19 of the indictments that are before the court, and you're
20 going to be asked to write a separate verdict as to each
21 indictment in this case of either guilty or not guilty on
22 those indictments. The defendant has pled not guilty to the
23 indictments and that places the burden of proof solely upon
24 the State, and that burden of proof is to prove the
25 defendant's guilt beyond a reasonable doubt. A person who

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1 has been charged with the commission of a crime in South
2 Carolina is never required to prove himself innocent. I
3 charge you that it is an important rule of law in a criminal
4 trial no matter what the seriousness of the crime might be
5 that the defendant will always be presumed to be innocent of
6 the crime for which the indictment has been issued until and
7 unless guilt has been proven to you, the jury, by evidence
8 satisfying you of that guilt beyond a reasonable doubt.
9 Now, the presumption of innocence is not going to end when
10 you begin your deliberations. The presumption of innocence
11 goes throughout the trial and into your deliberations. It
12 has sometimes been described as the robe or similar to the
13 robe that I wear into the courtroom. That means that
14 presumption of innocence remains about the defendant's
15 shoulders throughout the trial and into your deliberations.
16 It remains about the defendant's shoulders until such time
17 as it has been stripped from him by proof that satisfies you
18 of the defendant's guilt beyond a reasonable doubt. The
19 presumption of innocence is not just a legal phrase and it's
20 not just a legal theory, it's a substantial right that every
21 defendant is entitled to until and unless you, the jury, are
22 satisfied from the evidence of guilt beyond a reasonable
23 doubt. Now, you've heard me already refer to proof beyond a
24 reasonable doubt several times. You may ask yourself well,
25 what is legally meant by a reasonable doubt? What is a

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1 reasonable doubt? It's been defined under the law as that
2 kind of doubt which could cause a reasonable person to
3 hesitate to act, and the State has the burden of proving the
4 defendant's guilt beyond a reasonable doubt. Now, many of
5 you were involved in civil cases, and civil legal cases
6 involve cases where someone is seeking monetary damages. It
7 could be because of a car wreck, it could be because of a
8 failure to pay a debt or a breach of contract, things of
9 that nature. In those cases the standard of proof is by the
10 greater weight or the preponderance of the evidence, that
11 means the scales of justice just tilting so slightly one way
12 or the other would entitle that side to a verdict, now
13 that's a civil cases. In a criminal case the standard of
14 proof is more powerful than that, it's proof beyond a
15 reasonable doubt. Now, there's very few things that go on
16 in our lives that can be proven beyond any doubt whatsoever
17 and the State is not held to a burden of proving its case
18 beyond any possible doubt whatsoever. Proof beyond a
19 reasonable doubt would be that kind of proof that leaves you
20 firmly convinced of the defendant's guilt. I will tell you
21 that if after you're consideration of the evidence you are
22 firmly convinced that the defendant is guilty of the crimes
23 that have been charged, you must find the defendant guilty.
24 However, on the other hand, if you think there's a real
25 possibility that the defendant is not guilty, you must give

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1 the defendant the benefit of that doubt and find him not
2 guilty. I'm going to remind you that during the trial we've
3 had certain duties to perform separate and distinct from
4 each other. As my job as the presiding officer of this case
5 I've had to rule on certain issues and questions that came
6 up during the trial, and I will tell you that you should
7 only consider the competent evidence that was allowed into
8 the record. If I ruled anything out of order or I ruled
9 something stricken from the record, those matters should not
10 be considered at all by you in reaching a verdict in this
11 case. You should only consider the testimony which has been
12 presented from the witness stand and the evidence that came
13 in through that testimony that is a part of the record in
14 this case. I have the additional duty of charging you
15 concerning the law in this case, and I told you earlier I am
16 the sole judge of the law in this case. It's your duty to
17 take the law as I give it to you, apply that law to the
18 facts as you determine them to be. And if you came into the
19 courtroom with an idea of what the law is or what it ought
20 to be, leave that notion outside of the courtroom. Again,
21 it is your responsibility to take the law as I give to it
22 you, apply it to the facts as you find them to be and that
23 will put you in a position to reach a just, true and fair
24 verdict in this case. You see, in every case before this
25 court the jury is the sole and exclusive judge of the facts.

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1 And as the trial judge I cannot in any way comment on or
2 indicate or make any statement concerning those facts.
3 Please don't take from anything that I have done in the
4 discharge of my duties in this case and even during this
5 discharge concerning the law to indicate to you in any way
6 that I have an opinion one way or the other as to how you
7 determine the facts in this case, the law doesn't allow me
8 an opinion on that subject. I can assure you, I have no
9 opinion as to how you determine the facts in this case.
10 It's your duty as jurors to determine the effect, the value,
11 the weight and the truth of the evidence that you've heard
12 during this trial. In doing so you have the right to
13 consider two types of evidence, and you may ask yourself,
14 "Well, what do you mean by two types of evidence?" Well, we
15 classify evidence into two types, one is direct evidence,
16 the other type of evidence you can consider is
17 circumstantial evidence. Direct evidence is testimony from
18 a person who claims to have direct knowledge of the facts
19 about which they testify. In other words, they directly
20 experienced the matters that they are testifying concerning.
21 Circumstantial evidence on the other hand is proof of a
22 chain of facts or circumstances that indicate the existence
23 of a fact. It has sometimes been described as evidence
24 which immediately establishes collateral facts which a main
25 fact could be reasonably inferred. Now, that's a lot of

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1 lawyer talk, a lot of legal talk and I try to give a simple
2 example as to what I mean by proof of a fact by
3 circumstantial evidence. Let's say when you went to bed
4 last night you looked outside your window, the stars were
5 shining, it's a beautiful night, you laid down, went to bed
6 and slept well all night. You got up the next morning, sun
7 is shining and looked out the same window, now as you looked
8 out the window you noticed there's water dripping from the
9 trees, there's puddles in the driveway, the road in front of
10 the house is wet. You slept well all night so you didn't
11 hear it rain and you didn't see it rain but from the
12 collateral facts that you know to be true, those facts I
13 just described you could reasonably infer a main fact and
14 that is sometimes during the night it rained. Now that's
15 what we mean by proof of collateral facts from which a main
16 fact could be reasonably inferred. Circumstantial evidence
17 therefore is based on inference and not on personal
18 knowledge or observations. And the law makes no distinction
19 between the weight or the value that you, the jury, can give
20 to either direct or circumstantial evidence because you're
21 the sole judges of the fact, you determine the weight or the
22 value of all the evidence. There's no greater degree of
23 certainty that is required of circumstantial evidence than
24 that of direct. I'm going to ask you, the jury, to weigh
25 all of the evidence in this case and if after weighing all

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1 of the evidence if you're not convinced of the defendant's
2 guilt beyond a reasonable doubt, you must find the defendant
3 not guilty. In doing your job of weighing the evidence it's
4 going to be necessary as I told you at that beginning of the
5 trial to determine the credibility or the believability of
6 the testimony you've heard during this case, that's what
7 credibility means, it means believability. In determining
8 the believability of a witness you should use your good
9 common sense. You have a right to believe one witness over
10 all or all over one and you can believe all of, part of or
11 none of what a witness has told you. You can consider
12 whether or not a witness exhibited some interest, bias,
13 prejudice or other motive to testify. You may have also
14 consider the appearance and the manner in which the witness
15 has testified from the witness stand. Now, during the trial
16 I allowed you to take notes and you were allowed to take
17 notes during the trial of this case, but I'm going to charge
18 you and ask you to remember that some people are better note
19 takers than others. Jurors' notes should not be given any
20 greater weight than the recollection of others. The
21 recollection of individual jurors should be considered as
22 reliable as notes taken by any other jurors, and I warn you
23 that when you were taking notes you may not notice the body
24 language of a witness and those types of things. So again
25 notes are primarily for your own recollection and not --

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1 should not be used in an effort to try to sway the
2 recollection of any other juror in the case. Now, in this
3 case a statement alleged to have been made by the defendant
4 was admitted into evidence and the Court has determined that
5 the statement was admissible and I instruct you that you,
6 however, have the ultimate decision as to whether or not the
7 defendant made the statement. If the defendant did make the
8 statement you must determine whether it was done voluntarily
9 and of his own free will. That means the statement was not
10 caused by pressure, force, fear, threats, coercion,
11 intimidation, hope or promise of leniency or any other
12 reward. In determining whether the statement was voluntary
13 you can consider both the characteristics of the defendant
14 and the details of the questioning. Some of the factors you
15 can consider would be the age of the defendant, the
16 defendant's education or lack thereof, the defendant's
17 mental abilities, the defendant's intelligence, the
18 defendant's background, environment, place or length of
19 detention, nature of questioning, the advice or lack thereof
20 of his constitutional rights including but not limited to
21 the right to remain silent, that any statement could be used
22 against him in a court of law, the right to have a lawyer
23 present, that if he could not afford a lawyer a lawyer would
24 be appointed to represent him without cost and that he could
25 stop making a statement at any time. You must consider

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1 carefully all of the surrounding circumstances before you
2 give any weight to an alleged statement. The State has the
3 burden of proving beyond a reasonable doubt that the
4 statement was voluntarily given. If you determine that it
5 was you may give the statement any further consideration
6 that you as the finders of fact deem proper. If you
7 determine that the statement was not freely or voluntarily
8 given you should not consider the statement at all. Now, I
9 told you as we went through the testimony we qualified some
10 witnesses as experts. An expert -- and I told you I would
11 talk to you about that in a little more detail during my
12 charge. Ordinarily the Rules of Evidence do not allow
13 witnesses to testify about opinions or conclusions, an
14 exception to the rule is for witnesses we call expert
15 witnesses. That's witnesses who because of their education
16 and experience have become experts in some art, science or
17 profession. They are allowed to state opinions as to any
18 relevant or material matters in that field of expertise and
19 may state the reasons for that opinion. I'll tell you, the
20 jury, that you should consider the testimony of an expert
21 like any other witness' testimony or evidence, you give it
22 the weight you think it deserves. If you think the opinion
23 is not based upon sufficient education or experience or if
24 you concluded the reasons given in support are not sound, or
25 that the opinion was outweighed by other evidence, you have

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1 the right to disregard the opinion. An expert's testimony
2 is to be given no greater weight than any other witness'
3 simply because the person is an expert. Also you're not
4 required to accept an expert's opinion simply because it's
5 not been contradicted by other evidence. In other words,
6 you weigh the testimony in the case including the statements
7 made by experts. Also during the trial you've heard
8 testimony from a child. Where a witness is a child you must
9 determine whether or not the testimony is believable. In
10 deciding believability you may consider not only matters
11 that I've already discussed with you but you may also
12 consider the age of the child, the child's ability to
13 observe and remember facts, the child's ability to
14 understand and answer questions. Because young children may
15 not fully understand what's happening here it's up to you to
16 decide whether the child understood the seriousness of
17 appearing as a witness in a criminal trial, whether the
18 child understood the questions, whether the child had a good
19 memory, whether the child understands the differences
20 between lying and telling the truth. In addition young
21 children can be influenced by the way questions are asked.
22 So one of the factors you should consider and you should
23 decide is whether or not the child understood the questions
24 that were asked. Now, quite often in a criminal charge one
25 of the elements or parts of this crime is what we call

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1 intent. And when I go over the actual charge in just a
2 moment there will be words in there concerning the intent of
3 a person charged under that particular statute. And quite
4 often in order to establish criminal liability criminal
5 intent is required, that's the mental state that's required
6 by the statute to be proven by the State for a particular
7 crime, and that might be purpose, intent, knowledge,
8 recklessness, criminal negligence. Now, criminal intent
9 must be proven beyond a reasonable doubt, and criminal
10 intent is always a matter, however, that has to be
11 determined by a jury from the circumstances, the facts and
12 circumstances of the situation. The reason for that is we
13 have no scientific way of opening up a person's head and
14 looking at their brain and decided what they intended to do
15 in any given situation. So therefore a criminal intent is
16 always a matter that is proven from the facts and
17 circumstances as you find them to be at the time of any
18 particular incident that occurred. Now, therefore it's not
19 necessary to establish the intent element by direct or
20 positive evidence, again, it can be established by
21 inference, the same way as any other fact taking into
22 consideration the acts of the parties and the facts and
23 circumstances of the case. Now, criminal intent is a state
24 of mind, it's a conscious wrongdoing. It's up to you to
25 determine what the defendant intended to do in any situation

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1 based upon the facts and circumstances that have been shown
2 to exist at that time. Now, the charge in this case, and
3 all three indictments involve the violation of the same code
4 section, and that is 16-15-140, and that charge is
5 committing a lewd act on a minor. Now, a minor is a person
6 under the age of 18. The State must prove beyond a
7 reasonable doubt that the defendant, that's the alleged
8 perpetrator, was over the age of 14. Next the State must
9 prove that the defendant willfully and lewdly committed or
10 attempted a lewd or lascivious act on or with the body or
11 its parts of a child under the age of 16 years with the
12 intent to arouse, appeal to or gratify the lust, passions or
13 sexual desires of the defendant or the child. Now,
14 willfully in this case means voluntarily and intentionally
15 with a specific intent to do something the law forbids.
16 Lewd means obscene, lustful, indecent or lecherous.
17 Lascivious means intending to incite the lusts, lewd, or
18 intending to indecent, obscene or tending to deprave the
19 morals in respect to sexual relations. Now, ladies and
20 gentlemen of the jury, there's going to be three different
21 verdicts that you need to reach, one for each of the
22 indictments in this cases. And I told you earlier that your
23 verdicts must be unanimous, that means each and every one of
24 you must agree upon the verdict on each and every indictment
25 before it is the verdict of the jury. Ms. Means, raise your

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1 hand. Ms. Means, raise your hand. You're going to be the
2 foreperson of the jury, that means it will be your
3 responsibility to preside over the deliberations of the
4 jury. Also should the jury have a question during the
5 deliberations you will write that question on a piece of
6 paper, knock on the door and the bailiff will bring it to me
7 and I'll give whatever answer I think is appropriate. Now,
8 I'm going to caution you, I'm not allowed to answer each and
9 every question you might have during your deliberations.
10 I've told you, I can't get involved in your decisions
11 concerning the facts of this case, but I'm not going to ask
12 you to edit any question, simply write the question when the
13 jury agrees on it, send it out to me and I'll decide the
14 appropriate answer if that is necessary. Also once the
15 verdict has been reached you'll write that down on a piece
16 of paper, I'm going to give that to you in just a minute,
17 explain it to you. Once all the verdicts have been reached
18 you'll inform the bailiff again of your verdicts. Again it
19 must be unanimous, each and every one of you must agree upon
20 the verdict before it is the verdict of the jury. So none
21 of you, even the forelady has no greater say than any other
22 juror in reaching the verdict in this case. Now, what I'm
23 going to do now is send you back to the jury room one more
24 time, we have to get the exhibits together because you'll be
25 taking those into the jury room with you, I am going to go

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1 over the verdict form with the attorneys and make sure they
2 don't have any objection to that form going back to your
3 room and then I'll bring you back for final instructions in
4 just one moment. So again, Madam Forelady, take the jury
5 back to the jury room, don't allow them to start discussions
6 until I bring you back in just a few moments. Thank you
7 very much.

8 (The jury left the courtroom.)

9 THE COURT: Objections to the charge from the State?

10 MS. CAMPBELL: No, sir.

11 THE COURT: Any from the defense?

12 MR. SHADD: No, Your Honor.

13 THE COURT: I'm going to ask the attorneys to come
14 forward, let's meet with the court reporter, be sure you
15 agree on the exhibits to be submitted to the jury. I have
16 the verdict form at the bench, once you've agreed on the
17 exhibits come and review the verdict form.

18 (Break in proceedings.)

19 THE COURT: All right. Come to order, please. All
20 right. Has the State agreed upon the exhibits that have
21 been segregated?

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: And the defense?

24 MR. SHADD: Yes, sir.

25 THE COURT: Any objection to the verdict form as I've

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1 amended it by taking off the third?

2 MS. CAMPBELL: No.

3 THE COURT: And the defense?

4 MR. SHADD: No, sir.

5 THE COURT: All right, sir. We've agreed also on one
6 additional indictment amendment. The indictments refer to
7 the defendant as Mr. Carmichael, III on two of the
8 indictments, the other indictments just says Carmichael.
9 We've agreed to identify him in the indictments by removing
10 the designation as he being the third; is that correct from
11 the State's perspective?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: And is that the defense's understanding?

14 MR. SHADD: Yes, sir.

15 THE COURT: All right, so we have an agreement on that.
16 Let's bring the jury panel in.

17 (The jury returned to the courtroom.)

18 THE COURT: All right. Madam Forelady, the exhibits
19 have been segregated. Now, I don't believe there is any
20 means by which you could play that video back there
21 independently, if the jury wants to watch that video you
22 have a right to do so, let us know, we'll make arrangements
23 to play it for you. It's up to you how you want to review
24 the evidence, if you want to do that you have the right to
25 do that. The other exhibits will go back and you'll have

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1 those available to you, the indictments are included. And
2 I'll point out the indictments have been amended by the
3 agreement of the parties, I have made the amendments so if
4 you see some things scratched out and dates fixed, that sort
5 of thing, I did that, I'm aware of these changes having been
6 made. But you'll see those when you look at the
7 indictments. Now, Ms. Means, if you will look at that and
8 let me go over it some. At the top it has the state and
9 county that we're in and the court that we're in, do you see
10 that?

11 THE FOREMAN: Yes, sir.

12 THE COURT: And below that it indicates the caption of
13 the case, that is State versus Mr. Carmichael.

14 THE FOREMAN: Yes, sir.

15 THE COURT: The actual form of the verdict is three
16 questions, there's one question for each of the indictments
17 and that the indictments are separately numbered so you will
18 need to look at those and see which each of those
19 indictments refer to.

20 THE FOREMAN: Yes, sir.

21 THE COURT: And you'll have those indictments with you.
22 As to each indictment the choices are the same, either
23 guilty or not guilty. There's a blank line in front of the
24 choices and you'll put a x or check on the line once the
25 jury reaches a verdict on that indictment.

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1 THE FOREMAN: Yes, sir.

2 THE COURT: Once you have completed all verdicts you
3 would sign it, knock on the door and let the bailiff know
4 that you've reached a verdict and we'll bring you back into
5 the courtroom to receive the verdict from you. Now, I'm not
6 unmindful of the fact that we're late in the day and as we
7 go late into the day if you would like to have supper served
8 to you in the jury room it is available, takes about an hour
9 and 15 minutes to an hour-and-a-half to get it here. If you
10 decide that you want us to order you something to eat we can
11 do that, they can get crackers, cokes and things like that
12 so if you need that, that's available to you as well. Just
13 let the bailiff outside the door know what you need and
14 we'll try to satisfy those needs for you. If you do want to
15 have supper ordered we'll have to send a clerk's officer
16 into the jury room to take those orders from you. Now, when
17 that person -- if there's anybody who is not on the jury
18 panel in the room, stop deliberations when that person is in
19 there, take care of whatever it is you need to take care of
20 with that person and once they leave resume deliberations.
21 Don't discuss the case with someone not on the jury
22 present, do you understand, Madam Forelady?

23 THE FOREMAN: Yes, sir.

24 THE COURT: If there's someone you would like for us to
25 make a phone call to to explain where you are and what

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1 you're doing, if you would put your name, the person you
2 would like for us to call and the number you would like for
3 us to call on a separate sheet of paper, pass it to the
4 bailiff, we'll notify those folks where you are and what
5 you're doing so there's nobody calling the sheriff's office
6 sending someone out to look for you. At this point in time
7 I'm going to ask the jury, not the alternate, but the jury
8 can retire to begin your deliberations and the bailiff will
9 deliver the exhibits to you. Thank you very much.

10 (The jury left the courtroom to begin
11 deliberations and the alternate juror was
12 dismissed.)

13 THE COURT: Any objection to my final instructions from
14 the State?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Any from the defense?

17 MR. SHADD: No, sir.

18 THE COURT: All right. Court is in recess then until
19 such time as we receive a verdict. Thank you very much.

20 (The jury returned with a verdict.)

21 THE COURT: I've been informed by the bailiffs that a
22 verdict as been reached. Is the State ready to receive the
23 verdict?

24 MS. CAMPBELL: The State is ready.

25 THE COURT: Defense ready?

VERDICT

1 MR. SHADD: The defense is ready.

2 THE COURT: I will caution those in the gallery, I do
3 not tolerate any type of demonstration after the verdict is
4 read. If you have any problems in controlling your emotions
5 at such a time please leave the courtroom at this time.
6 Bring the jury in.

7 (The jury returned to the courtroom.)

8 THE COURT: Thank you. Madam forelady, I have been
9 informed by the bailiffs that a verdict has been reached; is
10 that true?

11 THE FOREMAN: Yes, Your Honor. We have reached a
12 unanimous decision.

13 THE COURT: Pass the verdict to the bailiff. Thank
14 you, ma'am. Madam Clerk, you may publish the verdicts.

15 THE CLERK: The State of South Carolina, County of
16 Richland, in the court of general sessions, the State of
17 South Carolina versus David Carmichael. We, the jury,
18 unanimously find the defendant as to indictment number
19 07-GS-40-3372 for lewd act on a minor, we, the jury,
20 unanimously find the defendant guilty. As to indictment
21 07-GS-40-3373 for lewd act on a minor, we, the jury,
22 unanimously find the defendant guilty. As to indictment
23 12-GS-40-4135 for lewd act on a minor, we, the jury,
24 unanimously find the defendant guilty. Madam Forelady, is
25 this your verdict and the verdict of the entire jury?

SENTENCING HEARING

1 THE FOREMAN: Yes, it is.

2 THE CLERK: Thank you.

3 THE COURT: Anything further from the State before I
4 release the jury?

5 MS. CAMPBELL: No, sir.

6 THE COURT: Anything further from the defense before I
7 release the jury?

8 MR. SHADD: No, sir.

9 (The jury was dismissed.)

10 THE COURT: Any motions from the defense at this time?

11 MR. SHADD: Not at this time, Your Honor.

12 THE COURT: All right. I assume that you have
13 sentencing sheets or you're about to have them prepared.

14 MS. CAMPBELL: She has not -- I'll make sure they're
15 prepared in the next five minutes.

16 THE COURT: All right. If you'll take care of that
17 we'll make sure we take care of this shortly.

18 (Break in proceedings.)

19 THE COURT: All right. I'd ask Mr. Carmichael to
20 stand. Come around, stand in front of the microphone. All
21 right. Mr. Carmichael, in cases number 2007-GS-403372, 3373
22 and 2012-GS-40-4135, a jury of your peers has found you
23 guilty on all three charges. At this time I'm going to hear
24 from your attorney concerning matters that would be involved
25 as far as sentencing, once he has completed his comments to

SENTENCING HEARING

1 the Court you will have an opportunity to speak to the Court
2 as well. Counsel?

3 MR. SHADD: Thank you, Your Honor. May it please the
4 Court?

5 THE COURT: Yes, sir.

6 MR. SHADD: Standing before you is Mr. David
7 Carmichael, Jr. he is 29 years old, as you heard in the
8 testimony he will be 30 in December. He is a lifelong
9 resident of Richland County. As you heard through the
10 testimony he was originally charged with these two lewd acts
11 on a minor in regard to Ms. [victim 1] and Ms. [victim 2] He did
12 not run, he did not flee, he was not a flight risk at all.
13 He remained here while he was very lengthy -- during the
14 lengthy period of time from that day and coming here to
15 court today. He was rearrested for the charge with [Victim 3]
16 [REDACTED] as you are aware of and he remained here in Richland
17 County. As you know, he was not -- he did not receive a
18 bond on that charge and the bonds were revoked on the two
19 prior charges. As I stated, he is a lifelong resident of
20 Richland County. He grew up in the Luck Estates, Highway 48
21 area, and he went -- he graduated high school, went to
22 Claflin College, did not finish but I believe done about
23 two and a half years and his major was music education. As
24 you've heard throughout he is a lover of music, he is a
25 performer and he has done quite well in that respect with

SENTENCING HEARING

1 regard to that business, as well as that ministry, he felt
2 like that was a ministry. He is a minister, a man of faith
3 and he will rest upon that faith, Your Honor. And while we
4 do not agree with the jury's verdict, of course, that's why
5 we went to trial, we do respect the jury's verdict and it
6 was a unanimous verdict, Your Honor. There was a dispute
7 with regard to the facts with regard to his position on
8 whether these things occurred, the jury has made a decision
9 on that, Your Honor, so now we're here with regard to the
10 sentencing phase. You heard some folks who were in support
11 come and testify on his behalf and testify factually about
12 things. You did hear from Davetta Graham who testified who
13 was his sister. I went outside, she was not here to hear
14 the verdict but I informed her what the verdict was. She
15 said that she was -- would like to address the Court if she
16 could.

17 THE COURT: All right. At the appropriate time I'll
18 give her a chance to do so.

19 MR. SHADD: As well, as his father David Carmichael,
20 Sr. But as you can see there are a host of some family and
21 friends and I believe some church members who have been here
22 in support of him, some have been here all week.

23 THE COURT: Who have appeared to be here throughout the
24 trial.

25 MR. SHADD: Yes, sir.

SENTENCING HEARING

1 THE COURT: Uh-huh.

2 MR. SHADD: So I would rather you hear from them and
3 also Mr. Carmichael before I make my final --

4 THE COURT: All right. One at a time, the people that
5 you mentioned, do you want to call on those for me,
6 Mr. Shadd?

7 MR. SHADD: Yes, sir. If we could start off with
8 Davetta Graham, Your Honor.

9 THE COURT: Ma'am, you may step down. Right there
10 would be fine. Just speak up so I can hear from you and
11 I'll be happy to hear from you.

12 THE SISTER: I wanted to tell my brother that I love
13 him and my heart goes out to those little girls. I love my
14 brother very much, I love him dearly, I do -- I really do
15 love you. And my mom was fighting for this day to come up
16 so much that she went to her grave trying to get this stuff
17 taken care of. I don't have nothing else to say. I just
18 want to tell my brother that I love him and I'll always be
19 there for him no matter what, I'll always be there for you.
20 Aria and Desharia and D.J. love you dearly. They love you
21 very dearly.

22 THE COURT: Thank you, ma'am. You need to address the
23 Court. Thank you, ma'am, you can be seated. Next?

24 MR. SHADD: Yes, sir, Mr. David Carmichael, Sr.

25 THE COURT: Yes, sir, I will be happy to hear from you.

SENTENCING HEARING

1 THE FATHER: Yes, sir, Your Honor. I just wanted to
2 say to everybody in the court, everybody sitting in the
3 courtroom, I know everyone just about everyone --

4 THE COURT: Sir, you need to address me and you can
5 speak loud enough so they can hear you.

6 THE FATHER: Yes, sir. I know everybody in here.
7 These guys know I've always been behind whatever, I've
8 always talked to them and let them know what is right and if
9 there is something is wrong the Lord will, if it's right God
10 still always will. And even through this situation God
11 still sits on the throne, he is still able. And I'm still
12 going to believe and trust and have faith and I'm still
13 going to love my brothers and sisters no matter what. I
14 have no hard feelings toward no one. I've been this way all
15 my life, 55 years and I'm going to keep this. And I love my
16 son, I love him. And I'm asking and I'm telling him still
17 no matter what keep your head up and stay strong.

18 THE COURT: Thank you, sir. Next?

19 MR. SHADD: Make sure you give your full name.

20 FRIEND: My name is Clarence Sims. I just want to -- I
21 guess I'm not asking for -- I guess because the verdict has
22 already been given and I would just ask that my brother
23 maintain himself and place him in the position where he can
24 have some type of counseling while he's in there. That's
25 all I ask for the Court. I don't have any control over

SENTENCING HEARING

1 anything else, Judge, Your Honor, we just ask that we
2 provide some type of counseling to be able to help while he
3 is in there.

4 THE COURT: Yes, sir.

5 MR. SHADD: And, Your Honor, the last thing would be
6 Ms. Dot Morant.

7 THE COURT: Yes, ma'am, I'm happy to hear from you, as
8 well.

9 THE AUNT: Your Honor, I'm David Carmichael's greatest
10 aunt. I just want him to know that the Lord is with him. I
11 know the majority of the people here in court from Piedmont.
12 He makes no mistake, we just continue to pray because he's
13 able. I thank the Court and I thank everybody.

14 THE COURT: Thank you, ma'am. All right. Anything
15 else, Counsel, you'd like to say?

16 MR. SHADD: Your Honor, Mr. Carmichael, Jr. would like
17 to say a few word to you.

18 THE COURT: Yes, sir. I told him I'd be happy to hear
19 from him.

20 THE DEFENDANT: Your Honor, I'd like to thank everybody
21 for their support that did come to support me. I can't go
22 over anything that's been said or done as far as the
23 verdict. As far as myself, I wanted to go back and -- I'm
24 suppose to go back to school in January before all of this
25 went down, I was accepted back in, that's out the door, I

SENTENCING HEARING

1 don't know for how long. As far as my music career, now
2 where is that going to go? As far as me having a chance of
3 having my own family, I don't know where that stands. I
4 still stand by what I say but I don't hold no grudge against
5 nobody because just like my family, I strongly believe God
6 is still at hand. Like my sister said, my mother fought and
7 I fought for so long to get this behind me and I told God
8 whatever way it goes it's going to be behind me one way or
9 the other, win or lose, I will fight for my life, and I'm
10 asking that if you could just help me fight for my life. I
11 don't believe this is the end, this is not the end for me.
12 If it pleases you just help me to not feel like this is the
13 end for me because I still stand where I stood at the
14 beginning of this. And I'm not going to sit here and break
15 down in front of nobody because I always told my mother that
16 I was going to be strong for her and my family knew that I
17 was strong for my mother when she was living so she is still
18 living because she is living with us. I don't hold no
19 grudges against nobody, I don't have no hate against nobody.
20 I just want to move on with my life and if this be God's
21 will I move on with my life.

22 THE COURT: Thank you, sir. And for the State? There
23 you are.

24 MS. SIMPSON: Thank you, Your Honor. May it please the
25 Court? As far as sentencing is concerned, we think the

SENTENCING HEARING

1 facts speak for themselves. Some of the family and the
2 victims would like to address Your Honor. I believe
3 **Victim 3** **[REDACTED]** **victim 1** **[REDACTED]** as well and her mother
4 Ms. Sanders, as well **Victim 2** **[REDACTED]**

5 THE COURT: All right. Where does that normally occur
6 from? Up there?

7 MS. SIMPSON: Yes, sir.

8 THE COURT: If you'll call the names again and stand as
9 your name is called. All right. Yes, ma'am.

10 THE VICTIM: Your Honor, as of today I'm still hurt and
11 I feel like what Junior did to me I never was deserved to
12 me. I thought I was your niece and we was bonding really
13 good and you turned around and you did this to me. Ever
14 since you did this to me my attitude towards people are
15 unlike me and it has changed me to a different person. I
16 never knew but as I was getting help from my advocate I
17 realized I can't let this situation you have put against me
18 affect me my whole life. As of today I don't know how to
19 forgive you. You not only hurt me, you hurt my whole entire
20 family. **Victim 3** **[REDACTED]**

21 THE COURT: Thank you. Next would be?

22 MS. SIMPSON: Your Honor, this is **victim 1** **[REDACTED]**

23 THE COURT: Thank you. Yes, ma'am?

24 THE VICTIM: Today we came here for justice. I never
25 thought this day would come because we have been waiting for

SENTENCING HEARING

1 nine years. We have thought that hearing this guilty
2 verdict would somehow make us happy or our heart would fill
3 with joy. But as I sat through this trial my heart grow
4 heavier and heavier because this burden did not affect just
5 our family but Junior's family as well. This is the hardest
6 thing to do because we loved this person, we spent time with
7 this person, my mom trusted us with this person and this is
8 how we were paid. But through it all we made it, we
9 survived through it all, the hurt, the pain, the lies, the
10 betrayal and your consistent denial. Our prayer is that God
11 have mercy on your soul that you confess of your sins,
12 repent and ask God for forgiveness and as my mama said
13 earlier, we forgive you.

14 THE COURT: Thank you, ma'am.

15 MS. SIMPSON: Finally, Your Honor --

16 THE COURT: -- this is?

17 MS. SIMPSON: [Victim 2] [REDACTED]

18 THE COURT: Thank you. Ms. [victim 2]

19 THE VICTIM: Your Honor, today we close a long overdue
20 chapter in our life. What the devil tried to take from us
21 God gave it back. The people in the churches were torn and
22 divided, friends became enemies and most important little
23 children was afraid and not able to stand and say the next
24 child that could have became a victim at the next church he
25 would have attended. I'm so thankful that you took the time

SENTENCING HEARING

1 to hear from us this week. What I've been through, as well
2 as these other victims I wish no other child would ever have
3 to go through. As of now you all judge the situation that
4 have been given on our life and personally in my life. My
5 family has been on my side through this whole difficult time
6 in my life for some long years just to hear this victory and
7 justice. My heart really couldn't bear anymore from this.
8 I know that this day will affect both families but justice
9 and the truth had to be served.

10 THE COURT: Thank you.

11 MS. SIMPSON: I believe that's all, Your Honor.

12 THE COURT: All right. I would ask the State, does
13 this individual have a prior record? I understand that
14 there was no impeachable offenses during the trial but I was
15 wondering if there is any other record you think the Court
16 should consider?

17 MS. SIMPSON: No, Your Honor. He has the arrests but
18 no prior convictions.

19 THE COURT: Can I get an agreement between the State
20 and the defense as to the time he may have served already?

21 MR. SHADD: Yes, sir.

22 THE COURT: How many days do you think he has served?
23 I think it's best if we can get an agreement and put it on
24 the sentencing sheet so that way there's no questions.

25 MS. SIMPSON: It's been since November 22nd of 2010.

SENTENCING HEARING

1 MS. CAMPBELL: We'll be calculating that.

2 THE COURT: Let them work that out and see if we can't
3 reach an agreement on that. The other question I have is
4 I'm looking at the sentencing sheets, I noticed it's checked
5 as nonviolent but when I looked up this CDR it says it's
6 classified as a violent offense.

7 MS. CAMPBELL: I apologize, Your Honor, I incorrectly
8 checked that box.

9 THE COURT: Then I will make that correction. My
10 understanding is that it is classified as a violent offense.

11 MS. CAMPBELL: Your Honor, by my calculations I have
12 323 days.

13 THE COURT: Does the defense agree with that credit?

14 MR. SHADD: Yes, sir.

15 THE COURT: 320 --

16 MR. SHADD: Three.

17 THE COURT: 323. All right. If you'll give me just a
18 few minutes.

19 MR. SHADD: Yes, sir.

20 THE COURT: Mr. Shadd, you were retained as counsel?

21 MR. ATTY3: I was retained, yes, sir.

22 THE COURT: All right. Mr. Carmichael, what I've
23 witnessed in the courtroom this week has been for you in
24 some respects encouraging, in some respects very
25 discouraging. You had a position of trust in the community,

SENTENCING HEARING

1 the jury has found that you violated that position of trust
2 in a very, very -- I don't know really a word to put on it.
3 I can't imagine a worse way to violate the trust of the
4 people who attended a church, a place of worship that you
5 served. However, the words of your family indicate you have
6 a great deal of support. They appear to be a very religious
7 people as they should be. And, of course, while there is
8 God there's always hope. And so I hope for you that this
9 sentence is one that will allow you to be in a position to
10 perhaps work on the issues that you have, come out a
11 stronger person and one who is not a danger to those around
12 you. To the victims, it's been a very difficult and trying
13 experience to say the least. I do hope that the community
14 comes together and tries to mend the differences that they
15 have and forgive and forget. I heard a lot about
16 forgiveness here during the trial and forgiveness is a word
17 that heals a lot, so I hope that continues. Nevertheless,
18 there is price to pay for the crimes that you've been found
19 guilty of. I have given you credit for all the days that
20 you served, 323 days. As part of this sentence it is
21 required that you be required to have mandatory GPS
22 monitoring and I have ordered that. I have also ordered
23 that you be required to register as a sex offender in this
24 matter. I've also ordered part of the sentence will include
25 a probationary period and I ordered that during the period

SENTENCING HEARING

1 of your probation you'll be required to follow that
2 department's sex offender rules and regulations. The
3 sentences I have run I have run them concurrently, that
4 means I've run them together, and in each case the sentence
5 is the same. The sentence is that you be confined to the
6 State Department of Corrections for a period of 15 years,
7 and I have suspended that to the service of ten years with
8 probation for five. Mr. Carmichael, good luck to you, sir.

9 MS. SIMPSON: Thank you, Your Honor.

10 THE COURT: Court is adjourned, thank you very much.

11 (End of court proceedings.)

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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case (as
6 reported by Karen Ambroziak), relative to appeal, in the
7 Court of General Sessions for Richland County, South
8 Carolina, on the 8-11 days of October, 2012.

9 I do further certify that I am neither of kin, counsel,
10 nor interest to any party hereto.

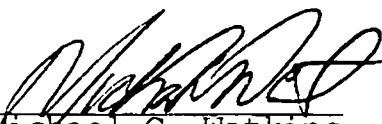
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November 22, 2013

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Michael C. Watkins
Court Reporter

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(Reported by Karen Ambroziak)

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

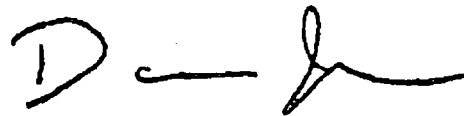
INDICTMENT

At a Court of General Sessions, convened on JULY 18, 2012, the
Grand Jurors of Richland County present upon their oath:

LEWD ACT ON A MINOR CHILD

That David Lee E Carmichael, being over fourteen years of age, did in Richland County on or about AUGUST 28, 2011, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: [REDACTED], age: 13, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, in violation of Section 16-15-0140, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Richard Carter – Richland County
Sheriff

ARREST WARRANT NUMBER

DP12153

ACTION OF GRAND JURY

TRUE BILL

Bill Krenitz
Foreperson of Grand Jury
Date: JUL 18 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS4004135

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2012

42

THE STATE
vs.

David Lee E Carmichael

Indictment for
LEWD ACT ON MINOR CHILD

SC Code: 16-15-0140
CDR Code: 2468

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

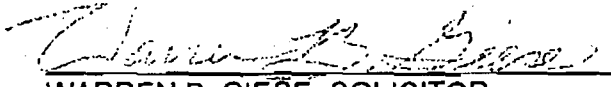
INDICTMENT

At a Court of General Sessions, convened on September 12, 2007, the Grand Jurors of Richland County present upon their oath:

LEWD ACT UPON CHILD

That DAVID LEE ELIJAH CARMICHAEL, ^{RC} did in Richland County on or between JANUARY 200²₃, AND DECEMBER 30, 200⁵₄, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of one [REDACTED] a child under the age of sixteen years, with the intent of arousing, appealing to or gratifying the lust, passions or sexual desires of himself or such child; all in violation of S.C. Code of Laws § 16-15-140.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLICITOR

WITNESSES

(S) B.A. METZ, RCSD

ARREST WARRANT NUMBER

I-936401

ACTION OF GRAND JURY
TRUE BILL

Sharon Spiller
Foreperson of Grand Jury

Date: **SEP 12 2007**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-3373

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007
116

THE STATE
vs.

DAVID LEE ELIJAH CARMICHAEL

Indictment for
LEWD ACT UPON CHILD

SC Code: 16-15-140
CDR Code: 2468
Class FEL/D

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA
SEP 12 2007

COUNTY OF Richland
STATE VS.

David L. Carmichael
AKA:
Race: B Sex: M Age: 32
DOB: 05-12-1979 SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 2012 GS-40-4135
AW#: DP 12153
Date of Offense: 3-28-2011
S.C. Code §: 16-15-140
CDR Code #: 2141618
☐ CASE RESTORED
☐ PLEA ☒ TRIAL
SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Lewd Act on a Minor
in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2141618
☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/11/12
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 323 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: ☐ set by SCDPPPS
Recipient: _____
*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114(BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ _____

PTUP _____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning \$ _____ paid to Public Defender Fund
Other: Sex offender registration required

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation COPY

Jeanette W. McBride Clerk of Court/ Deputy Clerk
Court Reporter: R. Ambrozak

PRESIDING JUDGE [Signature]
Judge Code: 2141618
Sentence Date: 10/11/12
SOUTH CAROLINA

COUNTY OF _____
STATE VSDavid Lee E. Carmichael

AKA: _____

Race: W Sex: M Age: _____DOB: 12/12/72 SS#: _____

Address: _____

City, State, Zip _____

SID# _____

INDICTMENT/CASE#

2007 - GS - 40 - 3372

AW#

I 936400Date of Offense: 2003-2004S.C. Code §: 16-15-140CDR Code #: 2 / 4 / 6 / 8☐ CASE RESTORED

SENTENCE SHEET

☒ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Lewd Act Upon Childin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2 / 4 / 6 / 8☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (CSC ☐ \$17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment of
\$ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for 5 months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/11/12☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections 303 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total \$ _____ plus 20% fee. \$ _____

Payment Terms _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine. \$ _____

§14-1-206 (Assessments 107 5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35-13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce Funding) \$25 \$ _____

§33-7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

PTUP _____

days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: 1. Sex offender registration in accordance2. Must comply with Probation Dept. rulesrequirements

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

Heanette W. McBride

Clerk of Court/ Deputy Clerk

Court Reporter R. Ambrozak

PRESIDING JUDGE

Judge Code: 2Sentence Date: 10/11/12

SOUTH CAROLINA

COUNTY OF _____
STATE VS.

David Lee E. Carmichael
AKA: _____
Race: B Sex: M Age: _____
DOB: 1982 SS#: _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____

INDICTMENT/CASE#: 2007 - GS - 40 - 3373
A/W#: I-936401
Date of Offense: July 19 - August 2 2002
S.C. Code §: 16-15-140
CDR Code #: 2 / 4 / 6 / 8
☐ CASE RESTORED
☒ SENTENCE SHEET
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Lewd Act Upon Child

in violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 2 / 4 / 6 / 8
☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment of \$ _____ plus costs and assessments as applicable*, the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/11/12

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 323 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS

Recipient: _____
*Fine: \$ _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ _____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning \$ _____ paid to Public Defender, Fund
Other: 1. See offender report for required
☐ Appointed PD or appointed other counsel: \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Heanette W. McBride ps
Clerk of Court/ Deputy Clerk
Court Reporter: R. Ambroziak

PRESIDING JUDGE [Signature]
Judge Code: 2
Sentence Date: 10/11/12

CMTI330D

OMCOMITA

SCDC# > 352788

CARMICHAEL, DAVID L

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN05/08/13
C023981

LOC: RIDGELAND

SCDC CLASSIFICATION...: VIOLENT

SEXUAL REGISTRY...: Y

SEXUAL PREDATOR...: PENDING

DNA STATUS...: COMPLETED

GPS REQUIREMENT...: Y

PREA DECISION...:

CONSECUTIVE SENTENCE ...: N

CURRENT SENT START DATE: 11/23/2011

CURRENT SENTENCE: 010-00-000

010-00-000

PROJECTED COMPLETION DATES

MAXOUT DATE: 01/23/2017

YOA SIX YEAR DATE: / /

INITIAL PAROLE DATE: 11/06/2015

CURRENT EWC ..: 2 F 5

CURRENT EEC ..: NOT CURRENTLY EARNING EEC

NEXT PAROLE HEARING DATE: 11/06/2015

TOTAL GT DAYS EARNED: 000340

TOTAL EARNED WORK CREDITS ...: 000054

TOTAL EDUCATION CREDITS: 000000

TOTAL EXTRA EARNED CREDITS ..: 000

TOTAL SERVICE TIME EARNED ...: 000532

LABOR CREW/WORK PROG DATE: 99/99/9999

LABOR CREW DISQ REASON:

CURRENT OR PRIOR SEX CONDUCT CONVICT

SUPERVISED REENTRY DATE...: 00/00/00

ISS.....:

PFKEYS:

5: HISTORY OF DATE CHANGES

4-@

1 Sess-1

167.7.50.33

SCDC1396

3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
RECORD SUMMARY REPORT DATED 05/08/13

CARMICHAEL, DAVID L FBI # 914128TB7 SID# SC01385289 SCDC # 352788 C0239

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
INSTITUTION ... RIDGELAND CORR INST
SECURITY/CUST.: 2 MINIMUM IN
CURR INCARC SENT....: 10 YRS 0 MOS 0 DYS
CENTRAL MONITORING.: YES
SOCIAL SECURITY #....: [REDACTED]DORM.....: GB0049B
RACE.....: B SEX....: M
PROJ MAXOUT DATE: 01/23/2017
PROJ PAROLE DATE: 11/06/2015
EWC JOB...: LIBRARY HELPER
EDUC PGM.: NO CURR EDUC PROGRAM
EWC LEVEL: 2F5 EEC LEVEL:
ASSIGNMENT...: EDUCATION DEPTCURRENT PROGRAM...: NO CURRENT PROGRAM
AGE....: 30 DATE OF BIRTH...: [REDACTED]/82

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES

SENTENCE	YRS	MOS	DYS	COUNTY	SENTENCE	START	V/NV	CATEGORY
LEWD ACT/CHILD UNDER 16	10	0	0	RICHLAND	11/23/2011	V		4
LEWD ACT/CHILD UNDER 16	10	0	0	RICHLAND	11/23/2011	N		4
LEWD ACT/CHILD UNDER 16	10	0	0	RICHLAND	11/23/2011	N		4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

CODE NOT IN TABLE

NO DETAINEES

HOLD

IRO

CATEG: 4

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

11/19/12 RIDGELAND

10/16/12 KIRKLAND

INCARCERATED

INCARCERATED

ADMINISTRATIVE
NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB	DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB
LIBRARY HELPER		04/16/13	0/ 0/ 0		LVL
INDUSTRIES TRAINEE		01/24/13	4/15/13	INMATE REQUEST	YF5
WARDKEEPER		12/07/12	1/23/13	INMATE REQUEST	YF5
WARDKEEPER		12/04/12	12/ 6/12	MI ELIGIBLE FOR LEVEL 2	YF5

HISTORY OF EARNED EDUCATION CREDITS:

SEC	DESCRIPTION	START DATE	END DATE	TERMINATION REASON
	NO SCHOOL ASSIGNMENTS*			

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF _____
STATE _____ VS.David Lee E CarmichaelAKA: _____
Race: B Sex: M Age: _____
DOB: 08-22 SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT / CASE#:

2007 - GS - 40 - 3372
A/W# I 996460
Date of Offense: 2003-10-04
S.C. Code §: 16-15-140
CDR Code #: 2 / 1 / 4 / 6 / 8
☐ CASE RE STORED
☒ SENTENCE SHEET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Lewd Act Upon Childin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2 / 4 / 6 / 8
☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (CSC ☐ \$17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kan Otk
SolicitorDavid Carmichael
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act no to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of 10 days/months/years and/or payment of
\$ _____, plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/11/12
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections. 303 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS

PTUP

_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
Other: 1. Defendant must complete all probation requirements
2. Must complete with Probation Officer

Recipient

*Fine:

\$14-1-206 (Assessments 107.5%)	\$
\$14-1-211(A)(1) (Conv. Surcharge)	\$
\$14-1-211(A)(2) (DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$100
\$35.13 (Public Def/Prob)	\$12
\$73.3, 1B TP (Law Enforce. Funding)	\$500
\$33.7, 1B TP (Drug Court Surcharge)	\$25
\$50-21-114(BUI Breath Test Fee)	\$100
\$56-5-2942(J) (Vehicle Assessment)	\$50
3% to County (if paid in installments)	\$40/ea
TOTAL	\$

Jeannette W. McBride
Clerk of Court/ Deputy Clerk
Court Reporter: R. Ambrozak

PRESIDING JUDGE

Judge Code: 2 / 1 / 3 / 13Sentence Date: 10/11/12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF _____
STATE _____ VS.

INDICTMENT/CASE#:

2007

GS-40

33721

David Lee E Carmichael

AKA:

Race: B

Sex: M

Age: _____

DOB: 11-82

SS#: _____

Address: _____

City, State, Zip _____

DL# _____ SID# _____

AW#: T 936400

Date of Offense: 2003-2004

S.C. Code §: 16-15-140

CDR Code #: 2 / 4 / 6 / 8

☐ CASE RES'ORED

SENTENCE 9 MONTHS

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ LEADS TO: Lewd Act Upon Child

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2 / 4 / 6 / 8

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (JSC) ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation or 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/11/12

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 353 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: 1. Sex offender registration requirement

2. Must comply with Probation Dept. conditions

reprobation

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Jeanette W. McBride

Clerk of Court Deputy Clerk

Court Reporter: K. Ambrozak

PRESIDING JUDGE

Judge Code: 2 / 1 / 3 / 13

Sentence Date: 10/11/12

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.AKA: David L. CarmichaelRace: B Sex: M Age: DOB: 82 SS# Address: City, State, Zip DL# SID#

IN THE COURT OF GENERAL SESSIONS

2012 INDICTMENT/CASE#
GS - 40 4135

AWY#

Date of Offense: 9-28-2011S.C. Code §: 16-15-140CDR Code #: 2141412☐ CASE RES'ORED

SENTENCE SHEET

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ LEADS TO: Lewd Act on a Minorin violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 141618
☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (SC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

Ran C. H.
SolicitorDavid L. Carmichael
Defendant

Att. for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/11/12
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 323 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Sex Offender Registration☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21Sentence Date: 10/11/12

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%) \$

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$

\$56-5-2995 (DUI Assessment) \$12 \$

\$35.13 (Public Def/Prob) \$500 \$

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$

\$50-21-114(BUI Breath Test Fee) \$50 \$

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (If paid in installments) \$

TOTAL \$

Court Reporter: K. Ambrosiak

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.

INDICTMENT/CASE#

2012 - GS - 40 - 4135David L. CarmichaelAW#: DP 12153

AKA:

Date of Offense:

Race:

Sex:

Age:

S.C. Code §:

16-15-140

DOB:

SS#:

CDR Code #:

2 / 4 / 6 / 8

Address:

City, State, Zip

DL#

SID#

☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Lewd Act on a Minorin violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2 / 4 / 6 / 8☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury: _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST

[Signature]
Solicitor[Signature]
Defendant[Signature]
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections. ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/11/12
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 323 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-130.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Six offenders representative agreement☐ Appointed PD or appointed other counsel. §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21Sentence Date: 10/11/12Court Reporter: K. Ambrozak

STATE OF SOUTH CAROLINA

COUNTY OF _____
STATE _____ VS. _____David Lee E. CarmichaelAKA: _____
Race: B Sex: M Age: _____
DOB: 8-2 SS#: _____
Address: _____
City, State Zip _____
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#
2007 -GS- 40 3973V
A/W#: I-936401
Date of Offense: July 99 - August 2002
S.C. Code §: 16-15-40
CDR Code #: 2 / 4 / 4 / 8
☐ CASE RES' ORED
SENTENCE S' EET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ LEADS TO: Lewd Act Upm Childin violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 2 / 4 / 4 / 8
☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (ASC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kan O H R
SolicitorDavid Carmichael
DefendantJ. Hester
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment of \$ _____ plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/11/12
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 323 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____Payment Terms:
☐ set by SCDPPPS

Recipient:

*Fine:
\$14-1-206 (Assessments 107.5%) \$
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$
\$56-5-2995 (DUI Assessment) \$12 \$
\$35-13 (Public Def/Prob) \$500 \$
\$73-3, 1B TP (Law Enforce. Funding) \$25 \$
\$33-7, 1B TP (Drug Court Surcharge) \$100 \$
\$50-21-114 (BUI Breath Test Fee) \$50 \$
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$
TOTAL \$

PTUP

days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: 1. Sex offender registration required
☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 28711315Sentence Date: 10/11/12Court Reporter: R. Ambrosiak

909

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF _____
STATE _____

VS.

INDICTMENT/CASE#

2007 - GS - 40 - 3523

David Lee E. Carmichael

A/W#:

I-936401

Date of Offense:

16-15-140

S.C. Code §:

2 / 4 / 6 / 8

CDR Code #:

☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA ☒ TRIAL

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Lewd Act Upm Child

in violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 2 / 4 / 6 / 8

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS (CSC ☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of 10 days/months/years and/or payment of

\$ _____ plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years

and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10/11/12☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 323 days☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35.13 (Public Def/Prob)

§73.3, 18 TP (Law Enforce. Funding)

§33.7, 18 TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Jeanette W. McBride ps
Clerk of Court/ Deputy Clerk

Court Reporter: R. Ambroziak

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender, Func

Other: 1. See offender's signature required

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 / 1 / 13 / 15
10/11/12

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

David L. Carmichael ³⁵²⁷³³
 Full name and prison number (if any) of Applicant,

vs.
State of South Carolina
 Name of Respondent.

APPLICATION FOR
 POST-CONVICTION RELIEF

JEANETTE W. MOSKOW
 C.P. & G.S.

2013 APR 16 PM 3:34

RICHLAND COUNTY
 FILED

INSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

- Place of detention Ridgeland Correctional Institution [RCI]
GB-49, POB 2039, Ridgeland, SC 29936
- Name and location of Court which imposed sentence Richland County Court of
General Sessions, Main Street, Columbia, SC 29201
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - 12 G540 4135 Lewd Act
 - 07 G540 3372 Lewd Act
 - 07 G540 3373 Lewd Act
- The date upon which sentence was imposed and the terms of the sentence:
 - October 12, 2012 15 years suspended to 10 conc 5 yrs pro.
 - " " " " " " conc
 - " " " " " " conc

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

NOT GUILTY

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No! James indeed informed applicant, there was ground for appeal.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. _____

Na

ii. _____

Na

iii. _____

Na

(b) the result in each such Court to which you appealed:

i. _____

Na

ii. _____

Na

iii. _____

Na

(c) the date of each such result:

i. _____

Na

ii. _____

Na

iii. _____

Na

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

Na

ii. _____

Na

iii. _____

Na

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

Na

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) _____

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) _____

(b) _____

(c) _____

Counsel failed to investigate the relevant facts and law; Wrongfully informed applicant about criminal direct appeal, possibly the maximum sentence on the table therefore, applicant did not intelligently know and voluntarily waived right to appeal, Wilson v. State) 559 S.E2d 561 (2002)

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Na
- ii. Na
- iii. Na
- iv. Na

(b) the name and location of the Court in which each was filed:

- i. Na
- ii. Na
- iii. Na
- iv. Na

(c) the disposition thereof:

- i. Na
- ii. Na
- iii. Na
- iv. Na

(d) the date of each such disposition:

- i. Na
- ii. Na
- iii. Na
- iv. Na

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Na
- ii. Na
- iii. Na
- iv. No

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

- i. Na
- ii. Na
- iii. Na
- (b) the proceedings in which each ground was raised:
- i. Na
- ii. Na
- iii. Na

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) All of the grounds set forth in (9) has never
- (b) been presented in any court(s) for this is
- (c) applicant's first appeal (direct or indirect)

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no-appeal
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. James Shadd, III
- P.O. Box 969
- ii. Columbia, S.C. 29202
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. All criminal proceed
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

Applicant urges this Court to grant a new trial

19. Are you now under sentence from any other court that you have not challenged?

No

County of TASPER

I, David L. Carmichael 352788, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David L. Carmichael

SWORN to and subscribed before me this 10day of April, 19 2013

Virginia Robinson (L.S.)
Notary Public

My Commission Expires: May 20, 2021

RIGHT AND COUNTY
FILED
2013 APR 16 PM 3:34
JEANETTE W. HODGINS
C.C.P. & C.S.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, David L. Carmichael, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

David L. Carmichael
Applicant

SWORN or affirmed to and subscribed before me this

10 day of April, 19 2013

Virginia Robinson
Notary Public

My Commission Expires May 20, 2021

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

David L. Carmichael, #352788,

Case No. 2013-CP-40-02293

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief Application filed April 16, 2013, Respondent would show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted during the September 2007 term of the Richland County Grand Jury for two counts of Lewd Act on a Minor Child (2007-GS-40-3372 and -3373). Applicant was also indicted during the July 2012 of the Richland County Grand Jury for another count of Lewd Act on a Minor Child (2012-GS-4-04135). James Shadd, III, Esquire, represented Applicant. On October 11, 2012, Applicant proceeded to a jury trial before the Honorable Roger L. Couch, where he was convicted as indicted. Judge Couch sentenced Applicant to fifteen years imprisonment suspended upon the service of ten years imprisonment followed by five years of probation for each charge, with all three sentences to be served concurrently. Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions and Applicant's records from the South Carolina Department of Corrections. Applicant's trial transcript has been ordered and will be forwarded

upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Denied the actual effective assistance of criminal defense counsel.
 - a. Counsel failed to investigate the relevant facts and law; wrongfully informed applicant about criminal direct appeal; possibly the maximum sentence on the table therefore applicant did not intelligently knowingly and voluntarily waived right to appeal. Wilson v. State, 559 S.E.2d 561 (2002).

Any claims not specifically enumerated in the Application or amendments will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCR.

III.

In his Application, Applicant alleges ineffective of assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that Applicant's allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a

reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held on the issue of ineffective assistance of counsel.

[Signature page to follow]

Respectfully submitted,

ALAN WILSON
Attorney General

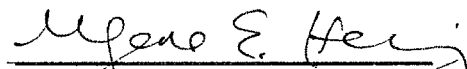
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondents

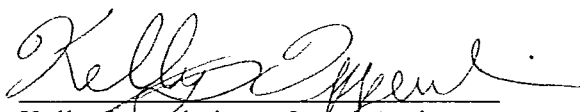
September 12, 2013.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2013-CP-40-02293
	)	
DAVID L. CARMICHAEL, #352788	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kristy G. Goldberg, Esq.
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 301
Columbia, SC 29201

DATED this 12th day of September, 2013.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-02293

DAVID CARMICHAEL)
 SCDC # 352788,)

Applicant,)
)
)

vs.)
)
)

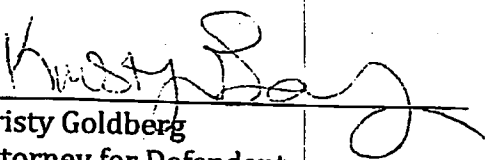
AMENDED APPLICATION
 FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA,)
Defendant.)

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- a) Ineffective assistance of counsel – Trial counsel failed to sufficiently prepare for trial and investigate the Applicant's case.
- b) Ineffective assistance of counsel – Trial counsel failed to request that the trial be severed.
- c) Ineffective assistance of counsel – Trial counsel failed to file notice of appeal.


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 301
 Columbia, SC 29201
 803-252-2299
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina
 This 5th day of August, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-02293

DAVID CARMICHAEL)
 SCDC # 352788,)

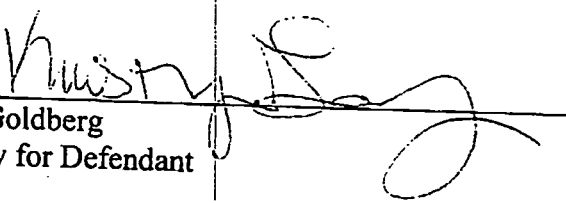
Applicant,)

vs.)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
Defendant.)

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 301
 Columbia, SC 29201
 803-252-2299
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 15th day of August 2014

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2012-CP-40-02293
	)	
DAVID CARMICHAEL,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

September 5, 2014
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

KRISTY GOLDBERG, ESQ.
Attorney for the Applicant

JOSHUA THOMAS, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S
INDEX OF WITNESSES:

DAVID CARMICHAEL

Direct By Ms. Goldberg 5

Cross By Mr. Thomas 18

JAMES SHADD

Direct By Mr. Thomas 23

Cross By Ms. Goldberg 37

Redirect By Mr. Thomas 44

Recross By Ms. Goldberg 46

> > > < < <

CERTIFICATE OF REPORTER 64

APPLICANT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Letter, 10/01/12	3	13
2	Letter, 07/31/12	3	
3	Facebook message	3	

1 (WHEREUPON, Applicant's Exhibits Nos. 1 - 3 were
2 marked for identification only.)

3 THE COURT: All right. We're on the record in David
4 Carmichael versus the State of South Carolina,
5 2013-CP-40-2293.

6 Are you Mr. Carmichael?

7 THE APPLICANT: Yes, sir.

8 THE COURT: Good morning.

9 Mr. Carmichael is present represented by Ms. Goldberg
10 and Mr. Thomas on behalf of the State; is that right?

11 MR. THOMAS: That's correct, Your Honor.

12 THE COURT: Okay. Let's go.

13 MR. THOMAS: Thank you, Your Honor. This is again
14 David Carmichael versus the State of South Carolina
15 13-CP-40-2293.

16 Mr. Carmichael was indicted in September of 2007 for
17 two counts of lewd act on a minor and again in July 2012
18 for a third count of lewd act on a minor.

19 He was represented on those charges by James Shadd.
20 He went to trial on October 8th through 11th, 2012. He
21 was convicted as indicted. The Honorable Roger Couch
22 sentenced him on all counts concurrent to 15 years
23 suspended upon the service of ten years of active sentence
24 and five years of probation.

25 He did not file an appeal from that conviction. He

1 did file this PCR April 16th, 2013. I believe the
2 allegations we're here on are failure to investigate,
3 failure to move or set a trial and failure to file an
4 appeal. He is represented by Kristy Goldberg, and the
5 State is ready to proceed.

6 THE COURT: All right.

7 MS. GOLDBERG: Thank you, Your Honor. May it please
8 the Court. For the record, we did file an amended
9 application on the Applicant's behalf. It was filed
10 August 18th, 2014.

11 The allegations that we are now proceeding on are --
12 the first would be ineffective assistance of counsel
13 generally. Issue number two would be trial counsel failed
14 to request that the trial be severed, and issue number
15 three would be failure to file notice of appeal.

16 THE COURT: All right.

17 MS. GOLDBERG: At this time, we would call David
18 Carmichael to the stand.

19 THE COURT: All right. Please come forward and be
20 sworn, sir.

21 DAVID CARMICHAEL, after being duly
22 sworn, testified as follows:

23 MS. GOLDBERG: Thank you.

24 DIRECT EXAMINATION:

25

1 BY MS. GOLDBERG:

2 Q Please state your full name for the record.

3 A David Carmichael.

4 Q Where are you housed?

5 A I'm housed at Ridgeland Correctional Institution.

6 Q And what sentence are you serving?

7 A Five years suspended to ten.

8 Q Did you have -- did you plead guilty, or did you have
9 a trial?

10 A I had a trial.

11 Q A jury trial?

12 A Yes, ma'am.

13 Q Is it all of your charges?

14 A Yes, ma'am.

15 Q Who was your attorney at trial?

16 A James Shadd.

17 Q You understand if a Post Conviction Relief case is
18 granted, that means that your case starts over, and you'd
19 have to decide whether you want a new trial again?

20 A Yes.

21 Q Do you understand your case isn't dismissed?

22 A Right.

23 Q Okay. And you want to go forward today, right?

24 A Yes.

25 Q Now, for background history, when were you first

1 arrested for these incidents, approximately?

2 A The first -- well, the first two -- 2000--- I want to
3 say 2006 if I'm not mistaken.

4 Q Okay. If I told you the warrants reflected it was
5 April 10th, 2007, would you disagree with that?

6 A I wouldn't disagree.

7 Q Okay. And that was for two charges?

8 A Yes, ma'am.

9 Q You were arrested at the same time?

10 A Yes, ma'am.

11 Q For both charges?

12 A Yes, ma'am.

13 Q What victims did that involve?

14 A Stephanie Imani Singleton and Shell. Her last name
15 is Shell.

16 Q When you were arrested, were you able to bond out?

17 A Yes.

18 Q What was your bond?

19 A 50,000 surety, if I'm not mistaken.

20 Q So you had to go through a bonding company?

21 A Yes, ma'am.

22 Q How long were you in jail before you bonded out?

23 A Maybe four days.

24 Q Who was your attorney at that time when you proceeded
25 in 2007?

1 A I had public defenders. My first public defender
2 was, I believe, Ms. Hines. Then after her came
3 Mr. Cooper.

4 Q When were you arrested again?

5 A 2011.

6 Q November of 2011?

7 A Yes, yes.

8 Q So four years later?

9 A Yes, ma'am.

10 Q Your original charges were still pending; is that
11 correct?

12 A Yes, ma'am.

13 Q What victim was that arrest for?

14 A Brittney.

15 Q And were you able to bond out that time?

16 A No. I was denied bond.

17 Q Denied bond. When did Mr. Shadd become involved in
18 representing you?

19 A I was arrested in November 2011. He came in 2012.

20 Q Do you know when in 2012?

21 A April, March -- I want to say maybe May or June.

22 Q Maybe?

23 A Yeah.

24 Q Was he newly appointed to your case, or did you hire
25 him?

1 A My family hired him.

2 Q His entire representation of you was while you were
3 in the jail?

4 A Yes, ma'am.

5 Q Did he come and visit you in the jail?

6 A He did.

7 Q How many times?

8 A Twice. And both times he came to see me, it was
9 basically -- we were at the beginning stages. I hadn't
10 have -- I hadn't received my motion of discovery yet. He
11 came the first time. He had just got the case maybe a
12 month or so later. He came back the second time. He
13 still didn't have my motion of discovery yet.

14 I had received it from Mr. Cooper, and that's when
15 I -- that's when he looked at it, but then he said he is
16 going to have his own copy e-mailed to him or something
17 like that. I actually had my motion of discovery before
18 he brought me -- well, he never brought me anything but
19 before.

20 Q When was your trial?

21 A My trial was October 2012.

22 Q Do you think Mr. Shadd represented you for more or
23 less than six months prior to trial?

24 A Less.

25 Q Do you believe Mr. Shadd was prepared to represent

1 you in trial?

2 A No.

3 Q What concerned you?

4 A What concerned me was during the whole trial, I'm
5 writing on a legal pad basically every question or concern
6 that came across from the victims and their families.

7 His questions came based upon what I wrote or what I
8 said was a lie -- or in my response to what they were
9 saying. Other than that, I didn't see no preparation.

10 Q You didn't feel like he was prepared?

11 A I didn't feel like he was prepared.

12 Q Do you have anything else specific to tell the court
13 as to why you believe he wasn't prepared?

14 A Well, to be honest with you, I didn't even hear from
15 him to know when I was going to court. I heard from a
16 family member. I was told by him after the second time
17 when I needed to get in contact with him to call him --
18 excuse me, after the first time.

19 When he came the second time, I tried to tell him, "I
20 tried to call you, but you didn't have any minutes on your
21 phone to receive any calls from the jail." I said, "I
22 have been calling, and I just couldn't get in contact with
23 you" to ask different questions about my case, where did I
24 stand and what have you. I just didn't have no contact
25 with him. The very next time I got in contact with him

1 was actually downstairs in the holding cell preparing to
2 come to court.

3 Q The date of trial?

4 A The date of trial beginning.

5 Q Did you know prior to trial that all three arrests,
6 all three charges, would be handled together in one trial?

7 A The second time he came to visit me in the jail, he
8 stated to me that he, you know, he asked me what did I
9 want to do. I said, "I don't really know what to do."

10 He said, "Well, I'm going to shoot for everything to
11 be done at the same time." I said, "Whatever is best
12 because I don't know what to do."

13 Q Did he tell you why he wanted to handle the three
14 cases together?

15 A No, ma'am.

16 Q When you were in court, did Mr. Shadd ever ask that
17 the charges be tried separately?

18 A No, ma'am, not to my knowledge, not that I could
19 think of, no.

20 Q Now, when you were convicted of all three charges,
21 were you surprised?

22 A Very much so.

23 Q That wasn't what you anticipated?

24 A No.

25 Q Had you ever been to prison before?

1 A No.

2 Q Had you ever had a felony conviction before?

3 A No.

4 Q Did you and Mr. Shadd discuss the possibility of
5 appealing the trial?

6 A Immediately after the trial, he took me downstairs.
7 He came to see me. The first thing I said to him was, "I
8 want to appeal." I did say I'm not with what just
9 happened, and I really wanted to appeal. He then stated
10 to me, "I don't think it's a good idea. I don't see no
11 reason for you to appeal. I don't think it's a good idea.
12 You could have got 45 years, but you only got 15 suspended
13 to ten, and plus they made it nonviolent."

14 At that time, I'm like okay, you know. I'm just like
15 still overwhelmed that I got guilty and upset.

16 Q As a part of your convictions, you're also on the sex
17 offender registry for life, too?

18 A Yes.

19 MS. GOLDBERG: Beg the Court's indulgence.

20 THE COURT: Yes, ma'am.

21 BY MS. GOLDBERG:

22 Q I'm handing the applicant Applicant's Exhibit No. 1
23 which has been premarked.

24 Mr. Carmichael, do you recognize that document?

25 A Yes, ma'am.

1 Q Did you -- what is that document?

2 A It's a letter from him thanking --

3 Q Who is him?

4 A Attorney Shadd.

5 Q Okay.

6 A Thanking me.

7 Q What does the letter?

8 A It's 3a letter thanking me for allowing him to

9 represent me in my case.

10 Q What is the date on that letter?

11 A The date on this letter is October 12th, 2012.

12 Q And when did your trial end?

13 A October -- it was on a Thursday.

14 Q Okay.

15 A I can't remember the specific date.

16 Q All right. Does that letter mention anything about

17 the appeal?

18 A It says you have a right to appeal your plea within

19 ten days of this hearing which is October 21st, 2012.

20 However, I do not feel there are any appealable issues,

21 and you expressed your wishes not to appeal. I wish you

22 well in the future.

23 Q Did you receive that letter?

24 A I did. I received it on a Saturday at Alvin S. Glenn

25 Detention Center. I wasn't transferred yet to Kirkland.

1 Q Saturday after trial?

2 A Saturday after trial because my trial ended on a
3 Thursday.

4 Q Did you write back to Mr. Shadd?

5 A I did thanking him. You know, thanking him for
6 everything he did, you know, just trying to say, you know,
7 I'll do what I can to -- to get through this.

8 MS. GOLDBERG: And, Your Honor, I would ask to admit
9 Applicant's Exhibit No. 1 into evidence.

10 MR. THOMAS: No objection, Your Honor.

11 THE COURT: All right. Applicant's 1 without
12 objection.

13 MS. GOLDBERG: Thank you.

14 (WHEREUPON, Applicant's Exhibit No. 1 was admitted
15 into evidence.)

16 BY MS. GOLDBERG:

17 Q Mr. Carmichael, when you wrote to Mr. Shadd thanking
18 him, did you mention anything about an appeal in that
19 letter?

20 A No, ma'am, not in the first letter. Now, I did,
21 however -- after writing that one, the day after, I just
22 took some time to just think on it. It was way less than
23 my ten days. I wrote immediately after that stating, "I
24 changed my mind. I want to go forward with the appeal."

25 Q Were you still at Alvin S. Glenn when you sent that

1 letter?

2 A No, ma'am. I was at Kirkland then.

3 Q Do you know when you went to Kirkland?

4 A I went to Kirkland that Tuesday after that, after the
5 last day of the trial, the next week, Tuesday.

6 Q Do you know when you would have written that letter?
7 Can you guess what day you would have written that letter?

8 A Yes. I wrote -- I wrote that letter -- I wrote that
9 letter on Thursday, on that Thursday.

10 Q Seven days after trial?

11 A Yeah; yes, ma'am.

12 Q You wrote telling Mr. Shadd you wanted to appeal?

13 A Yes, ma'am, as a matter of fact, it wasn't a
14 Thursday. It was that Wednesday, yes, ma'am.

15 Q Six days?

16 A Six days. The reason I know it was six, I had to go
17 back to it because I asked somebody for a calendar.

18 Q Did you ever attempt to file notice of appeal on your
19 behalf -- on your own behalf?

20 A I didn't know to.

21 Q Did you know how?

22 A No, ma'am.

23 Q Do you want this court to allow you the opportunity
24 to appeal your trial?

25 A Yes.

1 Q Do you feel that if your charges had -- all three
2 charges had not been tried together, do you think the
3 outcome of your trial could have been different?

4 A Very different.

5 Q Why do you think that?

6 A Because as far as time framing of how long they held
7 this case out, they dragged it out for more than just a
8 couple of years. It's been four years since I've been
9 arrested from the first two charges.

10 Even within the period of time, a lot of things had
11 happened. I had collected evidence on my end as far as
12 what was going on, what could have happened. And also in
13 between that time, my mother ended up dying who was a very
14 vital person in my case because she was the only person
15 who could prove, as well as my sister, who could actually
16 prove and say what was said when the victims came to my
17 house to talk to me.

18 There was a phone situation that was not able to come
19 up because the phone was not able to be found because my
20 mother up for me. It at that time Cooper was -- no, was
21 it her? No, Cooper was still my lawyer. Mr. Cooper was
22 still my lawyer.

23 And so he explained to me when we couldn't get that
24 phone, that would be hard to bring up in court. So I
25 understood that, but as far as my other family members who

1 had been in contact with these people who -- they had
2 never been called by him. It was just a lot of gaps.

3 Q And I think to clarify what you're saying is there
4 was a four-year separation between the two arrests; is
5 that correct?

6 A Yes, ma'am.

7 Q During that time, some witnesses and some evidence
8 was lost related to the first arrest?

9 A Yes, ma'am.

10 Q So you believe that case may have been weaker?

11 A Very weakened.

12 Q You think that trying it with the newer case
13 prejudiced you?

14 A Yes, ma'am.

15 Q Is that what you're trying to explain to the court?

16 A Yes, ma'am.

17 Q Is there anything else specific that this court
18 should know as to how Mr. Shadd may have been ineffective
19 in your trial?

20 A At this present moment, I can't think of anything
21 right now.

22 Q Is there any particular pieces of evidence that he
23 needed to -- that he needed to enter in your trial that
24 would have made a difference?

25 A Most of them that I was talking to him about was

1 considered hearsay, and I couldn't really get into that.
2 It just threw me all the way out. Like I said, my mom
3 played a vital role because she was living with me --

4 Q Okay.

5 A -- at that time. As they came to my house, I moved
6 to another room and asked her to, you know, dismiss.

7 Q Uh-huh.

8 A But before she would dismiss them, they would have
9 full conversations, and as far as bringing any of those
10 things up, it was considered hearsay. A lot of times
11 all -- all I wanted to be evidence was thrown out.

12 Q So you understand why something -- eventually things
13 that you wanted to get into may not have been allowed?

14 A Right, I do understand that. However, as far as just
15 really doing the research and talking to these people
16 himself, it could have gotten to the bottom line and even
17 separating the charges, even separating them, you could
18 have very well saw the loopholes where lies were being
19 exaggerated, time was added, all of the sudden things were
20 said that was -- you wasn't even saying it before, and it
21 was just said in court.

22 Q Okay.

23 A I mean, I remember him objecting to one thing at a
24 time -- one instance when they said penetration came in,
25 but all these -- that wasn't the only thing that I felt

1 was added.

2 It was a whole lot of things that were added. It was
3 not enough research that was done to really counteract
4 what they were saying and what was happening at that very
5 moment in 2012.

6 Q And again, is there anything else that you need to
7 add as far as to explain how he may have been ineffective
8 in your trial?

9 A Right about now, I can't.

10 Q Okay.

11 A I can't think of anything, no.

12 MS. GOLDBERG: Thank you, sir.

13 THE COURT: Cross?

14 MR. THOMAS: May it please the Court.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION:

17 BY MR. THOMAS:

18 Q Mr. Carmichael, you said you only had two meetings
19 with your attorney?

20 A Two.

21 Q You said you -- he didn't have any of your discovery
22 at that time, but you said you had already seen the
23 discovery from the first two cases from Mr. Cooper?

24 A Right. He didn't have it the first time he came.

25 The second time I had it when he came, and he said he had

1 already received the email, but he didn't bring it with
2 him.

3 Q So there's no question, though, that you knew what
4 the allegations against you were?

5 A Yeah. I'm not -- I'm not arguing about the
6 allegations.

7 Q And you got a chance to explain to Mr. Shadd your
8 version of what happened on all of those different
9 occasions. You basically told him what you wanted your
10 defense to be.

11 A Right.

12 Q And you said he was retained by your family not by
13 you.

14 A Right.

15 Q So you don't have any independent knowledge of how
16 many times he met with him. You weren't at any of those
17 meetings he had with him.

18 A No, but I would say if I'm supposed to be the person
19 he is defending, that I'm not the person he is supposed to
20 meet with and not my family.

21 Q Well, let me ask you this: Did you tell him who he
22 needed to go talk to?

23 A Yes.

24 Q And I know your family, your sister and your mother
25 were very important to your defense.

1 A Very.

2 Q Your sister did testify at trial, didn't she?

3 A She did.

4 Q You testified at trial, as well?

5 A I did.

6 Q And the version you told the jury at your trial was
7 basically the same version you told Mr. Shadd; is that
8 correct?

9 A Yes.

10 Q It's your testimony -- and I don't think anybody is
11 going to debate this -- you were very involved in the
12 trial itself, correct?

13 A Yes.

14 Q So you were constantly communicating with him these
15 were the things you needed to bring out. These were the
16 inconsistencies you did bring up. Things like that?

17 A Well, during the trial --

18 Q Okay.

19 A -- but before the trial, I mean, I gave him a list of
20 people who he can call to talk to to try to get things
21 done. When I asked a couple of them, they never received
22 a call. They never even received nobody coming to the
23 house or nothing.

24 Q And you said you met with him immediately after
25 trial?

1 A Downstairs, yes, sir.

2 Q You guys discussed an appeal to this case.

3 A Right. I asked him for -- I told him I wanted to
4 appeal. He said he didn't think it was a good idea, and
5 besides, I could have got 45 and all that good stuff he
6 started saying.

7 Q And as result of that meeting, you changed your mind
8 and decided you did not want to appeal?

9 A After he said that, I couldn't -- I wasn't really
10 thinking. I told him I just wanted to leave. I really
11 wanted to leave.

12 Q All right. But you -- as he -- what I'm trying to
13 say, you testified that you were like -- you were like
14 okay. Let's figure this out. Let's get out of here.
15 When he walked out of there, was it clear to him that he
16 didn't need to file an appeal for you because you were
17 ready to get it over with?

18 A I can't say what was clear to him.

19 Q Fair enough. That's fair enough, and I apologize for
20 that. He did -- you did say you sent a letter to him
21 asking for an appeal?

22 A Yes.

23 Q And that was after you got to...

24 A Kirkland.

25 Q Kirkland?

1 A Uh-huh.

2 Q And you arrived at Kirkland on 10/16?

3 A Yes, sir, on a Tuesday.

4 Q Do you have a copy of the letter you sent to him?

5 A I don't have that with me. Well, no, I don't have a
6 copy of it.

7 Q Regarding this phone -- I guess you -- let me -- just
8 to clarify it, you used a -- you recorded a telephone
9 conversation between you and one of the witnesses?

10 A I did.

11 Q And that was in your mother's possession, but that
12 somehow got lost?

13 A Well, she held onto it until case time, but then
14 where she put it at, I couldn't get that information from
15 her.

16 Q So there's no way you could have gotten that from
17 Mr. Shadd. You just didn't have it.

18 A No. I stated it to him. He clearly told it without
19 it being in his possession, it was hard for him to bring
20 that up.

21 Q You said you discussed with him maybe trying these
22 cases separately or trying them all together. That was
23 the conversation you all had?

24 A I did -- as far as -- when he brought it up to me, I
25 told him what do he think needs to be done? I don't know

1 what to do.

2 MR. THOMAS: That's all the questions I have. Thank
3 you, Mr. Carmichael.

4 THE WITNESS: Yes, sir.

5 THE COURT: Yes, ma'am.

6 MS. GOLDBERG: No further questions.

7 THE COURT: All right. You may have a seat.

8 THE WITNESS: Thank you.

9 THE COURT: Thank you. Call your next witness.

10 MS. GOLDBERG: No further witnesses in this case.

11 THE COURT: Okay. All right. Any witnesses from the
12 State?

13 MR. THOMAS: The State would call Mr. Shadd to the
14 stand.

15 THE COURT: All right. Come on up, Mr. Shadd.

16 THE WITNESS: Yes, sir.

17 JAMES SHADD, after being duly sworn,
18 testified as follows:

19 THE COURT: All right.

20 DIRECT EXAMINATION:

21 BY MR. THOMAS:

22 Q May it please the Court. Good morning, Mr. Shadd.
23 How are you doing today?

24 A Good morning, fine. How are you?

25 Q Good. Let's I guess start with some meat and

1 potatoes. Could you give us a brief overview of your
2 experience in practicing criminal law?

3 A Yes. I've been practicing come this November 14
4 years all of here in South Carolina. I'm a licensed
5 attorney here in South Carolina.

6 I began clerking for Johnson Toal & Battiste while I
7 was in law school here at the University of South Carolina
8 School of Law. They ended up hiring me as an associate,
9 and I worked there six years working primarily in criminal
10 defense.

11 I then decided to step out on faith in 2007 and hung
12 out my own shingle and I've been practicing with the Shadd
13 Law Firm ever since.

14 Q And if you could tell us how you'd come to be
15 involved in Mr. Carmichael's case.

16 A Mr. Carmichael's sister, Davetta, we had a mutual
17 friend and it's a person I went to high school with and
18 actually he was a mentor of David. He approached me. In
19 fact, I represented him as well, but he approached me
20 about assisting David with his case. Apparently David was
21 not very happy with his current attorneys. Mr. Cooper I
22 believe was his last attorney, might have been his second.
23 I think I was the third in his case.

24 There was a pending charge -- two pending charges
25 from several years before, and then he was out on bond,

1 was rearrested -- was arrested for another charge very
2 similar, and at that point I guess Mr. Carmichael decided
3 to see if his family would be willing to go out and hire
4 an attorney for him.

5 Q So I guess you were retained by the family.

6 A By his father.

7 Q After that, how many opportunities did you have to
8 meet with -- well, let's start with Mr. Carmichael. How
9 many times did you meet with Mr. Carmichael?

10 A Senior or junior?

11 Q Yes, I'm sorry. The defendant.

12 A Okay. Because at first I mess with his dad -- met
13 with his dad initially and he gave me a brief run-down of
14 what the case was about. Less than a month later I went
15 to the jail because Mr. Carmichael had not met bond on the
16 second ser -- well, the second charges, set of charges,
17 and his bond was revoked on the first.

18 I met with him extensively during that time. As I
19 recall, I thought he had already had some of his discovery
20 then. Mr. Cooper had given this to him at least for the
21 prior cases.

22 He may not have gotten the discovery on this last
23 alleged victim, Brittney. So, we had a good talk about
24 the old case, and then as a result of our conversation, we
25 agreed that I would file for a motion to set bond for him.

1 We thought that, you know, it would be reasonable for him
2 to have it. You know, other than this one charge, he had
3 been a model citizen even having these very serious
4 charges over his head. We thought that it may be
5 beneficial to see if the court would issue him a bond.

6 In the interim, I also filed my own discovery motions
7 on not only the old charges but also this new charge, and
8 it ultimately got that and then, of course, met back with
9 him with -- with that and we went over the discovery.

10 And at the bond hearing, which unfortunately was
11 denied, but at the bond hearing I had an opportunity to
12 meet with him then as well. And then, of course, you
13 know, the trial being in October, we met in preparation
14 for that, too.

15 Q If you could -- you said you received discovery and
16 you went over that with him?

17 A Yes.

18 Q Could you just give us a brief overview of what the
19 State's allegations were for each of the victims?

20 A They were very similar, but in a nutshell it was that
21 he was touching three young women inappropriately, at
22 least making attempts to digitally penetrate them with his
23 fingers, and also touching them -- I know one young lady
24 said that he touched her on her boob -- her boob, but that
25 was pretty much it for each one; the same pattern of

1 behavior by him with these young ladies.

2 Q So, not a lot of physical evidence -- no physical
3 evidence?

4 A No, no. In fact, i think at one point in the trial,
5 like he said, someone for the first time tried to claim
6 that he had actually penetrated them, and, of course, that
7 was -- I didn't see that anywhere in the evidence, and
8 obviously David never admitted that that had occurred, so,
9 of course, we made the proper objection to that. So, that
10 was it.

11 Q And so, I guess let's talk about your investigation a
12 little bit. What kind of -- what was his I guess
13 direction to you in terms of who you needed to go talk to,
14 what you needed to do?

15 A Well, I thought that this case would rest a lot on
16 his character. By all accounts, speaking to the mentor,
17 speaking to his sister, speaking to his father and
18 actually knowing someone else who knew him, he was a very
19 high-character person, and I think with these types of
20 charges, you have to introduce the information so that the
21 jury can see that this is not the person that the State
22 painted them to be. So of course, I asked David and
23 Davetta, his family members, what folks could we bring in
24 to say that this is not who he is.

25 Of course, we also had factual witnesses -- Davetta

1 that was one of them -- who would come in and testify
2 about the circumstances surrounding what occurred.

3 In fact, in my opinion, some of the witnesses that
4 the State had we could ultimately end up turning into
5 ours. For example, David was extremely close to
6 Brittney's stepfather. I can't recall his name right now.
7 But the allegation was that they had taken a trip up to
8 somewhere in North Carolina for a family event. And David
9 is part of the family.

10 Well, the claim is that they went up there all day,
11 they were on their way back. The stepfather was driving.
12 And supposedly while he was driving, David was using his
13 left hand -- David is right-handed, but he was using his
14 left hand to reach back behind himself and touch Brittney
15 inappropriately, go under her shorts or skirt or what have
16 you and -- at least around her underwear.

17 We thought that physically that could not have
18 occurred, nor would she not have raised some protest, and
19 the stepfather definitely would have heard something if
20 that had occurred.

21 The behaviors of the girls after these things
22 supposedly occurred were very contradictory, so they
23 would, you know, their behavior, their parents' behavior.
24 David is an accomplished singer and songwriter. And even
25 after these allegations occurred, these very parents were

1 asking him to attend -- come to church, even though he was
2 out on bond and, of course, he refused to do so, but they
3 were reaching out to him. So we were able to show that in
4 trial as well, but you know, i had to confirm some of the
5 things that -- from what David told me.

6 So, talking to potential witnesses, of course, we
7 don't call every single witness that, you know, they give
8 to us because a lot of times it's redundant and that
9 weakens the argument. So, if you can have one or two
10 people that can speak on his behalf, that's much better
11 than, you know, bringing in people that are going to say
12 the exact same thing.

13 Q And you feel like you were able to fully present sort
14 of your character defense at trial. You feel like you got
15 that out through all these witnesses you called?

16 A Oh yes, absolutely. And the defense also was that it
17 was a factual impossibility, especially with Brittney
18 Freeman.

19 Q And in fact, the stepfather actually testified that
20 he didn't see anything out of the ordinary during that car
21 ride.

22 A Absolutely.

23 Q And you also -- I think you had a friend of one of
24 the first victim's families basically testified that
25 Mr. -- I guess Mr. Carmichael and the families didn't have

1 any sort of -- basically to what you just said. They
2 testified that there was no animosity still between them?

3 A Right. Right.

4 Q And you introduced some Facebook messages. Tell us
5 about those.

6 A Yes, there was -- I can't remember. I think it might
7 have been Stephanie Singleton, her mother -- although, of
8 course, when there was some revelation, everyone is all up
9 in arms, they can't believe they would do that because he
10 is so trustworthy, which he was. But then there are
11 Facebook messages to him from the mother of this alleged
12 victim requesting he come and sing or his group come and
13 sing at her church.

14 Because you have to understand when this allegation
15 occurred, I believe David was advised by the pastor to,
16 you know, to no longer stay there, move on to another
17 church, which he did. He complied with that. Plus there
18 was a bond saying that he was not supposed to have any
19 contact with these victims. But this very mother sent
20 Facebook messages to him, at least two -- it may have been
21 more -- reaching out to him to try to get him to come
22 knowing that her child was going to be there.

23 And I think there was even some times where, you
24 know, these girls was coming up to him hugging him after
25 the fact, after he supposedly did this. So, we thought it

1 was a lot of coaching going on.

2 This last young lady, we thought she was motivated
3 through hatred of David because he was chastising her for
4 hanging outside with some older men that she shouldn't
5 have hung out with because he was like an uncle to her.

6 Q What were your discussions with Mr. Carmichael about
7 his right to testify?

8 A Oh, of course, we had a very extensive conversation
9 about that. We talked about the pros and cons, the risks
10 that would be involved but, you know, from day one, and he
11 has been consistent, only David could tell his story. The
12 jury would need to hear from him firmly, boldly denying
13 these allegations. You know, we could try to attack the
14 credibility and, you know, the credibility of the parents
15 and that sort of thing, but juries tend to want to hear
16 from the person who is being accused, and David was very
17 confident that he could go there and testify about what
18 occurred and, of course, the Court had a -- as I recall, a
19 colloquy with him, you know, in terms of the dangers of
20 doing it, and he said, yes, I'm going to testify.

21 Q Do you feel like his testimony covered everything you
22 needed to cover? You feel like you got his story out
23 there?

24 A Oh, yes. Absolutely. And of course, we had to go
25 through time to prepare his testimony as well, the

1 questions that I was going to ask, the potential questions
2 that he should expect from the State. I thought that he
3 made his presentation very well not only through my direct
4 but also through the cross-examination of some very
5 skilled assistant solicitors.

6 Q Looking back on it, do you feel like you were
7 sufficiently prepared for this case?

8 A Oh yes, absolutely.

9 Q And is there anything else you could have done
10 further just from hindsight? I know we're not here for
11 hindsight. Anything you think?

12 A No, no. And, you know, it was not a perfect defense
13 for us as David testified earlier. With the other two
14 cases based on what the young ladies said, there was some
15 discussion about his mother being a very good witness,
16 potential witness for him, but unfortunately the case went
17 so long that she, you know, she ended up passing away, so,
18 of course, we did not have the benefit of her coming into
19 trial and testifying.

20 Q Let me ask you this. I know he's testified. Did you
21 have a conversation with him about doing these all at once
22 or somehow severing the two older ones?

23 A I can't recall specifically if we talked about
24 severing them, but I know from day one that he was
25 consistent. We wanted to go ahead and move forward on all

1 of the cases. It was really a strategy decision on me.

2 I think in these kinds of cases, especially when
3 they're claiming some similar acts, the evidence is going
4 to come out in the first trial just as it would in the
5 second trial.

6 He was well aware that these cases were going to be
7 tried together. We had received notice from the assistant
8 solicitor -- I think it was Ms. Campbell -- that these
9 cases, these charges would be tried altogether. We had a
10 discussion about it; that this would be the case.

11 We talked about the order that we would have to
12 address, you know, which witnesses, but I didn't see any
13 apprehension by him at all that, you know, these cases
14 needed to be divided up. There is a danger in doing that.

15 You know, when I was a very young attorney, I always
16 looked to try to, you know, sever these cases, you know,
17 we don't want to have it piled on. But actually I've
18 learned through experience that that actually works better
19 because it's sort of an all-or-nothing thing. Plus if he
20 ends up being convicted of the first ones, that's hanging
21 over his head as he tries the other ones, and that, you
22 know, could potentially be, you know, pose some danger to
23 him especially with prior bad acts and that sort of thing.

24 Q Let's talk about your post-trial discussions. What
25 were your discussions after the trial?

1 A Yes. Obviously he was extremely distraught. He was
2 shocked because he had just heard from the jury that they
3 did not believe him at all, that they believed these
4 alleged victims.

5 We, of course, spoke to the family. I believe I
6 asked the -- and this was late in the afternoon, but I
7 believe I asked the officers to hold him at least until I
8 could come down there and meet him. And so I was granted
9 that opportunity to do so. I met with him down in the
10 holding cell in this courthouse, had a frank conversation
11 with him -- and I guess I have to back up.

12 Throughout this, he is a very strong Christian and he
13 always had faith in God that he would be exonerated
14 through this trial. Despite what the jury said, he still
15 maintained his faith and had -- I felt, as we were
16 leaving, that he had come to grips, come to peace with
17 what had occurred. I brought up the issue of appeal.
18 Judge Couch had already informed him about that as well,
19 as I recall, but I also informed him about it. I feel
20 that it's my duty to do so.

21 And I wrote notes as we were talking. And I
22 specifically wrote down -- I had to refer to my notes --
23 but I specifically wrote down that he said that he does
24 not want to appeal. In fact, I put, not, in all caps just
25 to make sure that I was prepared for what the next step

1 would be. But when he said that he did not want to
2 appeal, he was at peace, you know, he felt like, you know,
3 the truth -- he knew what the truth was and that there
4 would be no need to move any further with this case.

5 And as such, I wrote him a letter the very next day
6 at Alvin S. Glenn Detention Center confirming that he had
7 told me that he did not wish to appeal. But despite him
8 confirming that he did not wish to, I still told him he
9 had a right to appeal, although I felt -- because of
10 course, I'm seeing the case as I'm in it -- that I didn't
11 see any errors that the judge made that would be
12 successful in overturning his convictions.

13 And so, and then, you know, we also talked about the
14 sentence, that the sentence was -- going through a
15 three-day trial, having the victims testify, you know, it
16 was an emotional situation. He was facing a lot of time
17 going in. He knew that going in but still decided to go
18 to trial because, you know, he says he did not do anything
19 wrong. But hearing the judge sentence him and then
20 reducing that, I thought that Judge Couch was, you know,
21 extremely helpful with him in terms of what David was
22 looking at, the time -- the amount of exposure that he
23 had.

24 I like to believe that Judge Couch saw it for what it
25 was. I think he heard about the character of David

1 Carmichael and sentenced him to -- given all of the
2 facts -- a rather proper sentence because of his
3 character.

4 Q Just so we're clear, whose decision was it to not
5 appeal this case?

6 A Mr. Carmichael.

7 Q And you wrote him that follow-up letter.

8 A Yes.

9 Q Did you ever receive a response from him to that
10 letter?

11 A And he mentioned that he wrote two letters. I
12 don't -- unfortunately I don't remember and I don't see it
13 in my file that first letter, but I understand his
14 testimony is that he did write me just thanking me and not
15 even bringing up the appeal situation.

16 I do seem to recall that there was a letter, though,
17 a rather long letter talking about God and the truth and
18 saying that he wants something to occur to address this,
19 but I don't recall it specifically saying, I want you to
20 go out and appeal it. I just don't recall that.

21 But I do know that that -- even if there was some
22 gray area, that letter would have come past the 10-day
23 timeframe.

24 Q So you don't have anything in your file --

25 A No.

1 Q -- asking you for an appeal?

2 A No, no, no.

3 Q Beg the Court's indulgence one moment.

4 Thank you, Mr. Shadd. I'll let you answer any
5 questions Ms. Goldberg has.

6 THE COURT: Cross-examination?

7 MS. GOLDBERG: Yes, sir.

8 CROSS-EXAMINATION:

9 BY MS. GOLDBERG:

10 Q Mr. Shadd, just to clarify since some people walked
11 in, you do not have any letters from him in your file?

12 A I don't believe I do.

13 Q From post-trial?

14 A Right. Post-trial, right.

15 Q All right. Mr. Shadd, you testified that you do
16 believe you had sufficient time to prepare the case for
17 trial?

18 A Yes.

19 Q How long, based on your file, does it appear you
20 represented him prior to trial approximately?

21 A Approximately seven months.

22 Q And you testified you met with him on the initial
23 occasion --

24 A Yes.

25 Q -- your first meeting. You met with him at the bond

1 hearing.

2 A Yes.

3 Q And then you met with him to prepare for trial. Was
4 that one occasion? More than one occasion?

5 A Actually there was a time between the first time,
6 because that was in April, and then there was another time
7 we met in May. And then we had the bond hearing in June.

8 Q So, possibly you met with him four times?

9 A At least three, maybe four, yes. And of course,
10 during the trial we, of course, had conversations during a
11 break. After the day of trial we prepared for the next
12 day.

13 Q Did you speak with everyone that he asked you to
14 speak with in preparation for trial?

15 A I believe I did.

16 Q Anyone specific that you remember that you did not
17 talk to?

18 A No.

19 Q You said that the State gave you sufficient notice
20 that they wanted to try all three incidents in one trial.

21 A Yes.

22 Q And that it was your strategy decision to allow that
23 or not -- just not take issue with that.

24 A (There was no response).

25 Q I may have worded that very poorly. You knew the

1 State intended on trying all cases together; correct?

2 A Yes. Yes.

3 Q And you decided that you were okay with that.

4 A Yes, after conversations with David.

5 Q Now, you previously testified that the three
6 incidents were similar, and I'm going to kind of take you
7 through part of -- issues related to each of the three.

8 A Okay.

9 Q The arrests back in 2007, that was for two girls;
10 correct?

11 A Yes.

12 Q For each of those cases, nobody had any particular
13 idea when those incidents occurred; is that fair?

14 A Particular idea of when?

15 Q Specific, yeah.

16 A Yeah, because I think the indictments were -- there
17 was a range, I think from '99 to 2002, I think.

18 Q Each of those indictments covered a three to four
19 year time span; is that right?

20 A It could have been, yes.

21 Q And for each of those victims, they were allegedly
22 seven, eight, nine years old.

23 A That sounds right.

24 Q Depending on when this incident actually occurred; is
25 that right?

1 A That's correct.

2 Q Now, with Ms. Shell, one of the victims, she actually
3 alleged that there were three occasions where
4 Mr. Carmichael said or did something inappropriate; is
5 that right?

6 A I believe so, yes, three.

7 Q And with Ms. Singleton, there was only one; is that
8 right?

9 A Yes.

10 Q Were Ms. shell or Ms. Singleton related to the
11 defendant?

12 A It's been a few years, but I can't recall if they
13 were related to him.

14 Q To the best of your knowledge did they occur at the
15 same location?

16 A That's -- I think so. I think -- I think they -- I
17 may be wrong with this, but I think the claim was that
18 this occurred at his home which he shared with his mom, I
19 think.

20 Q Would the third incident with Ms. Freeman, she was
21 actually age 13 when this occurred; correct?

22 A Yes.

23 Q Allegedly occurred.

24 A Allegedly.

25 Q And the incident was alleged to have occurred in a

1 car.

2 A Yes.

3 Q With her stepfather present.

4 A Yes.

5 Q With the other two girls, the allegations were that
6 no other adults were home at the time or present; is that
7 fair?

8 A Yes, because -- and now that you've said that, I
9 think the claim was that -- well, I think it was that his
10 mother was home, they were home. The mother may have gone
11 to the store and then for that brief period of time,
12 that's when David supposedly was -- was home, yes.

13 Q All right. And so no adults were present when the
14 incident would have occurred.

15 A Right. Now going back to Ms. Freeman --

16 Q Uh-huh.

17 A -- I think the claim was -- well, Ms. Freeman alleged
18 I believe before trial that this occurred while they were
19 traveling. I think she remembered seeing the lights as
20 they were traveling down the highway on -- back on 77
21 South. But then by the time we got to trial, I believe
22 she alleged that when they stopped for gas, her stepfather
23 went inside and so then she was alone with Mr. Carmichael
24 and that's when he did it in the car, so that would have
25 been then similar to the first two alleged victims.

1 Q Can I get you to look at Applicant's Exhibit No. 1.

2 It's right on the...

3 A Yes.

4 Q Is that the letter you sent to Mr. Carmichael?

5 A It is.

6 Q You stated in that letter in part -- you stated other
7 things as well -- but in part that you did not believe
8 there were any appealable issues.

9 A Yes.

10 Q Is that right?

11 A Yes.

12 Q You understand that in order to appeal a trial,
13 counsel does not need to submit what issues are appealable
14 at the time of the notice of appeal.

15 A That's correct.

16 Q That's only required for guilty pleas.

17 A That's correct.

18 Q And you said that during your conversation with
19 Mr. Carmichael immediately after trial, he was shocked at
20 the conclusion?

21 A I probably would say more disappointed with it.

22 Q During trial you did object to various things on
23 multiple occasions; correct?

24 A I believe I did, yes.

25 Q One of which would be obviously the general

1 objections to hearsay, relevance, leadings. You generally
2 make those objections in due course; correct?

3 A When necessary, yes.

4 Q You also objected a rather lengthy objection to
5 offering the ARC video regarding Stephanie Singleton. Do
6 you remember that?

7 A Vaguely.

8 Q You also objected when the State amended the
9 indictment after the trial had already begun to include a
10 greater time range. Do you recall that?

11 A Yes.

12 Q You objected to Heather Smith, one of the ARC
13 counselors, testifying about delayed disclosures
14 generally. Do you recall that?

15 A I do.

16 Q And finally you objected when the court allowed
17 Sabrina Sanders to talk about the church's reaction and
18 whether or not she forgives the defendant.

19 A Yes.

20 Q Why do you make objections in a trial?

21 A Well, the Judge is the gatekeeper of the evidence.
22 Sometimes the evidence can be prejudicial to my client's
23 case and -- not just prejudicial because most evidence
24 against your client is prejudicial -- but the prejudicial
25 effect of it outweighs the probative value, if any.

1 Sometimes the State tries to enter evidence that may
2 be improper, so you object to that. And two things are
3 going on. Not only are you trying to assist the court in
4 making sure that the proper evidence gets in front of the
5 jury, but at the same time you're also preparing the
6 record for a potential appeal if that's something that,
7 you know, the client wants to do.

8 Q So there were occasions in this trial when you
9 believed that the evidence offered was either improper or
10 overly prejudicial --

11 A Right.

12 Q -- and you preserved the record in that regard.

13 A I believe I did.

14 Q All right. Nothing further.

15 MR. THOMAS: Briefly, Your Honor, if it pleases the
16 court.

17 REDIRECT EXAMINATION:

18 BY MR. THOMAS:

19 Q You talked a little bit on cross about sort of the
20 locations, the specifics of the allegations, but could you
21 tell us how Mr. Carmichael knew the first two victims?

22 A If I can refer to my notes.

23 Q Please.

24 A I'm sorry. I can't recall and I don't see it.

25 Q Well, let me ask you this question. Try it this way.

1 Did he know the victims' families through their church?

2 A Yes, oh yes. Just wasn't sure if there was -- they
3 were biologically family. These churches are small
4 churches and so it's very tight-knit, very close-knit, and
5 they -- not only are they spiritual brothers and sisters,
6 but they consider themselves family, and so therefore they
7 may see themselves in those roles. He may have been, you
8 know, an uncle or something.

9 Q And was that sort of the same situation with the
10 third victim?

11 A Yes, absolutely.

12 Q Ms. Shell, the young lady, her allegations, she
13 alleged three different instances?

14 A Yes.

15 Q Were all of those when she alone with him or was
16 there also an instance where maybe the sister was asleep
17 in the next room?

18 A Yes. At least one, one occasion the sister was in
19 the other room.

20 Q And that would be -- that would be Mr. Carmichael's
21 sister, Davetta.

22 A Right. All the more reason why we called her
23 because, first of all she -- and I think she even
24 testified that she would not -- if there was any
25 question -- I think she was a light sleeper. If there was

1 any question that this might have happened, you know, she
2 would have had an issue with David, of course, whether
3 it's brother or not, and so she said, you know, this
4 physically could not have happened. But yes, this was --
5 that was one occasion where his sister -- because yeah, it
6 was in her apartment -- the claim was that it was in her
7 apartment -- that she -- and I think they may have shared
8 that house together; the sister, Mr. Carmichael, and I
9 think maybe another sister. But supposedly she was home
10 at the time but asleep when Ms. Shell claimed this
11 happened.

12 Q Let me ask you this. What kind of concerns would you
13 have had if you tried the first two cases and lost and
14 then had to try the third case?

15 A The fact that there would have been prior convictions
16 before that, those prior bad acts potentially could have
17 come in to that third one potentially.

18 MR. THOMAS: Thank you, Mr. Shadd.

19 THE COURT: Yes. Anything else, Ms. Goldberg?

20 MS. GOLDBERG: One question, Your Honor.

21 RECROSS-EXAMINATION

22 BY MS. GOLDBERG:

23 Q Mr. Shadd, but those prior incidents did come in in
24 this trial anyway; correct?

25 A Absolutely.

1 MS. GOLDBERG: No further questions.

2 THE COURT: Have a nice day.

3 THE WITNESS: Thank you, Your Honor.

4 MR. THOMAS: Nothing further from the State, Your
5 Honor.

6 THE COURT: All right.

7 MS. GOLDBERG: Argument, Your Honor?

8 THE COURT: Yeah.

9 MS. GOLDBERG: Thank you, sir.

10 As to issue number A., part A that we have trial
11 counsel failed to sufficiently prepare, I think that we
12 will mostly rest on the testimony of the Applicant and
13 defense counsel. They only met three, maybe four times
14 prior to trial. Three counts of lewd act resulting in
15 lifetime sex offender registry. Mr. Carmichael testified
16 as to all the reasons he believed Mr. Shadd wasn't
17 prepared. I'll leave that at that.

18 As to the second issue, failure to request that the
19 trial be severed, I want to make a little bit of the law
20 clear for the record because there is kind of a process to
21 where we get to where we -- I think we need to be in the
22 decision you need to make.

23 Initially the -- and a lot of this comes from a case
24 called State v. Beakman, it's 2013 case that I find --
25 found. That is also a sexual-conducted related case. It

1 kind of goes through all of this. So, initially the
2 standard for requesting a severance is where the offenses
3 charged in separate indictments are of the same general
4 nature involving -- well, this is when they should be
5 tried together. So when they're of the same general
6 nature involving connected transactions closely related in
7 time, place and character.

8 When that happens, the judge has the power in his
9 discretion to order that the indictments be tried together
10 if the defendant's rights aren't prejudiced.

11 Now, in this particular case I think it's clear, and
12 I will elaborate on the facts of each case in a minute,
13 but they did not arise out of a single chain of
14 circumstances. They're not provable by the same evidence.
15 I'll submit based on the trial transcript testimony, every
16 single incident for the indictments had different
17 witnesses. The only overlap was that the two initial
18 victims had a conversation with each other about their
19 disclosure and they were investigated by the same
20 investigator. But there were different ARC counselors,
21 different evidence for all three indictments.

22 The second issue there is that those all occurred
23 somewhere between 1999 and 2004. No one knew a specific
24 date. This new particular incident, the third indictment,
25 had -- occurred on a very specific date that was allegedly

1 August 28th, 2011, so extremely different time. So, I
2 think as an initial matter there, they are not closely
3 connected transactions, they -- and therefore they
4 shouldn't have been brought together.

5 Now, the trial judge also would have to look at
6 prejudice. And that's where we need to go because
7 basically what a trial judge decides is, well, if these
8 other indictments, the factual basis for these other
9 indictments could still be admitted in the same trial
10 against the defendant as prior bad acts or other bad acts,
11 then there is no prejudice to the defendant.

12 So, really for the standard I think we need to look
13 at here for PCR purposes is actually a Lyle review to
14 determine if the indictments all being held at the same
15 time would be admissible as bad character evidence. So in
16 doing that, I will point out the differences in the cases,
17 and what I'm -- what I'm stating is from the transcript.

18 If the Attorney General has any disagreement with
19 these facts, obviously he can state that, but this is
20 specifically from the transcript.

21 The first indictment ending in 3372, that's with
22 Ms. Singleton, the incident occurred some time between the
23 age of four and nine, which is a prepuberty victim. He
24 did go to the same church, but they didn't -- they were
25 not good family friends. It allegedly occurred while he

1 was baby-sitting. There were no adults in the home.

2 There was no coercion or threats.

3 Basically that allegation was while she was asleep,
4 he placed her on his lap and put her hand on his penis and
5 made her rub it. When she woke up, her pants were not on,
6 but she never testified that she was aware of anything
7 happening to her, so it was more about her hand being on
8 his penis. It occurred some time between '99 and 2004.

9 Now, with the second indictment ending in 3373 with
10 victim Ms. Shell, that happens some time between the ages
11 of seven and 11. Again, prepuberty. They went to the
12 same church. They were very good family friends. There
13 were three different occasions; all of which there were no
14 adults in the room. They may have been outside of the
15 house or in the other room, but not in the room. There
16 was one instance where she stated that there was coercion,
17 threatening her not to tell anyone.

18 One of the incidents was that he told her to pull her
19 pants down, touched her vagina, rubbed on top of it and
20 then tried to put her on his lap. The second was that he
21 touched her boob area. And the third was that he tried to
22 unzip her pants and begin to go in her panties. And this
23 is some time between 2001 and 2005.

24 Now, there are similarities in that there were,
25 again, no adults around, they were church friends. But

1 the first instance was about him having her touch him.

2 The second would be about him touching her.

3 But to the extent that those may be -- may have been
4 sufficiently similar, the third instance with Ms. Freeman,
5 she was 13 years old.

6 THE COURT: This is the car incident.

7 MS. GOLDBERG: Right. She was 13 years old, arguably
8 post-puberty, although I don't think that was ever
9 specifically said in trial. It was in a car. The
10 stepfather was in the car at the same time. There was no
11 coercion, no talks at all. And actually the testimony was
12 that he rubbed her leg and plucked at her clothing like
13 trying to get in her pants but didn't actually touch her
14 in any inappropriate way. This was August 2011, so six
15 years after the most recent potential timeframe.

16 Mr. Shadd testified that his biggest concern with
17 want -- with not wanting them to be tried differently was
18 because if there were prior convictions, those convictions
19 are evidence of those bad acts, could be offered in the
20 trial. I submit that that's unreasonable. All three --
21 the facts regarding all three were all brought up in this
22 trial, so that makes no difference.

23 They were very different. They're not closely
24 connected. And I would submit that it was extremely
25 prejudicial to the Applicant to have them all tried

1 together, and this is why.

2 The Solicitor made a point of this in her closing
3 statement on three occasions. On page 818 the Solicitor
4 said: So all this arose out of three little girls whose
5 families were either jealous or had no reason or were
6 trying to get in trouble making up independently these
7 heinous allegations.

8 On page 835 the Solicitor said: You can consider
9 either in this case, it's not just have one person come
10 forward and make allegations about what happened to them,
11 you can use any and all of the evidence before you to
12 corroborate each and every one of these victims, and I ask
13 that you do so.

14 And then on page 845 the Solicitor said -- these are
15 all in the closing arguments: And they were clever enough
16 to know that six years later -- excuse me, five years
17 later -- that another young woman who was 13, she would
18 have been seven at the time they reported it, would decide
19 that, oh, great idea for uncle Jr, this clever, cunning,
20 lying little girl would then join in the conspiracy and oh
21 my God just happen to come up with allegations that is --
22 just happened to mirror what he did before.

23 Your Honor, the Solicitor I think was making every
24 attempt to point out that while these cases were not at
25 all closely connected in time, location, or anything like

1 that, they corroborate each other. That's the prejudice
2 here. I think at a minimum -- I would almost concede, not
3 quite -- but that the two original charges, because they
4 were so closely connected, those two girls had a
5 conversation together -- possibly would have been more
6 appropriate to try those together. But the new case,
7 completely different facts, completely different
8 allegations, post-pubescent girls, a witness in the car,
9 and such a long time after the first two, five to six
10 years after, I think that makes it -- is extremely
11 prejudicial and was improper. I think Mr. Shadd should
12 have requested a severance as to that one. All it did was
13 corroborate the first two victims which was improper in
14 this case.

15 And I've got argument on the appeal as well, but if
16 you want to go ahead and respond to that one.

17 MR. THOMAS: However the Court wants to do that.

18 THE COURT: Go ahead and do the appeal.

19 MS. GOLDBERG: All right. Your Honor, as to the
20 appeal, obviously on White v. State, they have to show --
21 or the Applicant has to show that the direct appeal was
22 not knowingly and intelligently waived. What we have here
23 is the testimony showed that Mr. Carmichael never been in
24 prison before, never convicted of a felony before, goes to
25 trial, asserts his rights, he is completely shocked at the

1 result, has a conversation in holding with his lawyer
2 after.

3 Mr. Carmichael testified that he said immediately, I
4 want a trial. He always asserted his innocence, always.
5 Mr. Shadd responded, well, I don't know that that's the
6 best idea for you because you could have gotten a longer
7 sentence, which while true, Mr. Carmichael does suffer the
8 consequences of sex offender registry for life.

9 Mr. Carmichael -- the testimony may have been hazy --
10 but may have not argued with Mr. Shadd. I think that's a
11 fair way to say it beyond that point. Mr. Shadd said he
12 left feeling confident that he did not need to file notice
13 of appeal, yet Carmichael did testify that within that
14 10-day period, he did reconsider. He did specifically
15 write a letter to Mr. Shadd requesting him to file a
16 notice of appeal. And whether Mr. Shadd received that or
17 not, whether he interpreted that letter or not, we don't
18 know. He doesn't have a copy of that letter in his file
19 anymore.

20 I don't think that there is -- I think that
21 Mr. Carmichael did testify that he did not knowingly and
22 intelligently waive his right to appeal within those ten
23 days, and therefore we would ask that this court grant him
24 that right.

25 THE COURT: All right.

1 MR. THOMAS: Thank you, Your Honor. May it please
2 the Court. Just regarding the first allegation, I think
3 the record stands for itself. Mr. Shadd said he was
4 prepared to go to trial. He investigated everybody that
5 Mr. Carmichael told him to investigate.

6 Regarding the second allegation, I think just briefly
7 looking at Beakman itself, Your Honor, and I have copies
8 of that if you'd like me to pass that up.

9 THE COURT: Sure.

10 MR. THOMAS: Just briefly looking at Beakman, Your
11 Honor, it says that there's no -- there's no abuse of
12 discretion.

13 Well, let me open with this, Mr. Shadd testified he
14 had strategic reason for not severing the trials. He want
15 to get -- you know, he wanted to address everything at
16 once. He thought maybe that the witnesses, he could
17 cross-examine them and get out some inconsistencies.
18 Clearly his defense to everything was the same thing.

19 I think we look at Beakman and it says, you know,
20 it's closely related in kind, place and manner. And I
21 think, you know, there were some dissimilarities, but I
22 think the argument Mr. Carmichael and Ms. Goldberg had
23 made is that these incidents were so similar that clearly
24 they were prejudiced by having them all tried at once.
25 But I think the case says that when there is such a

1 similarity in the incidences is when you are not entitled
2 to a severance.

3 I think looking at the facts, I mean, they all --
4 their relationship with all the victims was the same. He
5 developed them through close friendships at church. Sort
6 of the manner of the actual occurrence itself, it was the
7 same sort of inappropriate touching by him, on him, on the
8 victims.

9 As far as location, I mean, locations were different,
10 but there were some similarities in terms of sort of
11 whether there was someone there or not there. I don't
12 think that's really that big of a difference. There was
13 one incident where there clearly was another adult nearby.

14 And if you look at Beakman itself, it talks about
15 there are some differences in that case. I mean, it talks
16 about the difference between an eight-year-old stepson and
17 a 12-year-old stepdaughter. Mean, clearly that's what
18 we're looking at, sort of the same age range here. I
19 think Ms. Goldberg is correct there is nothing really in
20 the record that talks about the development of the third
21 victim, so we're not really clear on that.

22 And again, you know, in Beakman the court said that
23 that was not a case that should have been severed. But
24 again, there was a difference in the -- sort of the manner
25 of the threats that came after the abuse, and then there

1 was a difference in the actual type of abuse, but the
2 court still said that was an appropriate situation.

3 Beakman also goes on to talk about sort of the Lyles
4 and the Rule 404 analysis of would these things have been
5 admissible. Even if we had had the first trial on the
6 first few charges separated, would they have been
7 admissible in the second trial, and Mr. Shadd talked about
8 that. He said he did not think that that was a good
9 strategic decision to separate them because if he did get
10 convicted on the first two, he was looking at having to --
11 have to deal with those cases as prior bad acts in the
12 second trial.

13 So, we would just submit that it's a strategic
14 decision and there's been no prejudice shown because of
15 the similarity of the acts.

16 As to the failure to convey the plea offer, that's --
17 again, I think testimony is clear, Mr. Shadd said they had
18 a discussion. The decision -- later he advised him to not
19 appeal or to appeal, the decision was Mr. Carmichael's to
20 not file the appeal. And, you know, so he has met the
21 first standard of informing him, and there's been no
22 evidence that there was ever -- I mean, mention some talk
23 of a letter that was written to Mr. Shadd, but he
24 testified that he never received any such letter.

25 And so, we would just submit that Applicant has not

1 met his burden on any of these allegations and we would
2 ask that the Court deny the application.

3 THE COURT: Okay. All right. Here's what we're
4 doing. The notice of appeal argument is dismissed,
5 failure to investigate argument is dismissed. I want
6 proposed orders stating that and I want the severance
7 argument issue -- argument both sides.

8 And here is how I think the argument has to proceed
9 to make any sense. I think the way it's got to go is
10 this. We have to -- the order, proposed order from both
11 sides is going to have to go to had defense counsel made
12 an argument to sever the cases, what would the argument
13 have been. Okay?

14 Were the judge to go through the joinder analysis of
15 charges arises out of the same incident proved by the same
16 characters -- proved by the same witnesses, that kind of
17 thing, what would that analysis have been to determine
18 whether or not it was ineffective for -- ineffective
19 assistance of counsel and meets the two prongs of
20 Strickland in regards to Mr. Shadd making the decision to
21 not do so.

22 And then I think the order is going to have to then
23 go into is there any reasonable trial strategy that you
24 would not do that. Okay. So, the analysis of that would
25 be, you know, if you do the first two together and then

1 you do the -- the next one separate, you know, would that
2 come in, would that not come in.

3 I mean, I understand when Mr. Shadd says, well, you
4 know, if we did the first two together and he got
5 convicted, then they tried him on the third charge, could
6 the first two come in, and I understand that, but all of
7 it is in any way. It's just -- it would actually be more
8 powerful if it came in as a conviction than if it just
9 comes in as an allegation.

10 So, I think -- I mean, my mind right now on the
11 whether or not it was ineffective assistance of counsel to
12 not file the severance motion is just not made up. But I
13 want both sides to flesh that argument out in proposed
14 orders and go from there. Okay?

15 MR. THOMAS: Thank you, Your Honor.

16 MS. GOLDBERG: Yes, sir.

17 THE COURT: Forty-five days to do that.

18 MS. GOLDBERG: Thank you, sir.

19 THE COURT: All right. Mr. Carmichael, have a good
20 day.

21 THE APPLICANT: Thank you so much.

22 THE COURT: One more thing I want to put on the
23 record with you, Mr. Carmichael. Now, listen, I'm not
24 saying how I'm ruling on this severance issue, okay? I
25 have not made up my mind in any way, shape, or form.

1 I want to make sure you understand this, okay? Now,
2 and again, I'm not saying that I'm ruling for you or I'm
3 ruling for the State. This is merely my advice to you on
4 this issue.

5 If you win this PCR, okay -- and I'm not saying I'm
6 ruling for you or I'm ruling for the State, so this is not
7 about you getting your hopes up, okay? But I'm being very
8 real with you. If you win this P.C.R. and some appellate
9 court affirms that decision, you realize that you go back
10 to facing 45 years.

11 THE APPLICANT: Yes, sir.

12 THE COURT: I mean, it's not somebody is going to
13 reduce your sentence, it's not somebody is going to give
14 you a plea deal, it's not your case is going to be
15 dismissed. It's you go back to the county jail, your bond
16 gets reset. They could try all three together, two
17 together, or three at a time, and you could walk out of
18 this three, four, five years later with a 45-year
19 sentence, not a ten-year sentence.

20 You understand that, right?

21 THE APPLICANT: I understand that.

22 THE COURT: Okay. You understand that's the risk for
23 you in going forward with this.

24 THE APPLICANT: Yes, sir.

25 THE COURT: Okay. And how much time have you already

1 done? When is your max-out date?

2 THE APPLICANT: Oh, I max-out December 2016.

3 Actually January, 2017, but December 2016.

4 THE COURT: Okay. So you max-out. You know, I'm not
5 the one doing the time, so it's easy for me to say, but I
6 mean, you know, your appeal of this P.C.R. could still be
7 pending when you max-out.

8 Do you understand that?

9 THE APPLICANT: I understand.

10 THE COURT: And if you win it -- I'm not saying you
11 will or you won't or -- but regardless of how I rule, more
12 than likely there is going to be some other court that
13 tells me whether if I was right or wrong, okay? But
14 either way that goes, if it comes out that you win at the
15 end of the day, the only thing that you win is everything
16 starting over.

17 THE APPLICANT: Right. I understand.

18 THE COURT: You follow me on that?

19 THE APPLICANT: Yes, sir.

20 THE COURT: And I'm just telling you that. I know
21 Ms. Goldberg, and she appears in front of me a lot, and I
22 know she has told you that, too. But I just want to make
23 sure the record is clear that you understand that.

24 THE APPLICANT: May I address you?

25 THE COURT: Yes, sir.

1 THE APPLICANT: I'm aware -- I'm very aware of that.
2 This has been going on for years.

3 THE COURT: I know.

4 THE APPLICANT: And it drug me for so long. I'm
5 fighting for myself.

6 THE COURT: I understand.

7 THE APPLICANT: I can only depend on God. I told her
8 I'm not even depending on her. So, I'm well aware of that
9 and I'm --

10 THE COURT: And I just wanted to make sure you
11 understood that. And I know she would have explained that
12 to you. And I just want to be clear that you understood
13 that, you know. I understand why you want to go forward
14 and I understand your issues, and I'm going to spend a
15 significant amount of time studying your issues and going
16 through them before I reach any kind of decision on your
17 case. But, you know, I just wanted to make sure you were
18 aware of the risks --

19 THE APPLICANT: I'm aware of it.

20 THE COURT: -- of if everything goes your way -- and
21 I have no way of knowing that now in any way, shape, or
22 form, and neither does Ms. Goldberg or the State. But if
23 everything does go your way at the end of the day, what
24 you win is everything starting over.

25 THE APPLICANT: I'm aware of that.

1 THE COURT: Okay. Very good.

2 THE APPLICANT: I appreciate you.

3 THE COURT: Thank you very much. You can go.

4 (End of requested transcript of record.)

5 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 5th day of
September, 2014.

April 20, 2015

/s/ Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

DAVID L. CARMICHAEL)
SCDC # 352788,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)
Defendant.)

**IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT**

2013-CP-40-2293

**ORDER GRANTING
POST-CONVICTION RELIEF**

2014 DEC 22 AM 11:27
JAMILLE H. GIBBINS
C.C.P. & C.S.

This matter comes before the Court by way of an Application for post-conviction relief (PCR) filed April 16, 2013. The Respondent made its Return on or about September 12, 2013. Applicant thereafter filed an Amended Application on August 15, 2014. The matter was scheduled for an evidentiary hearing on September 5, 2014 at the Richland County Courthouse. Applicant was present and represented by Kristy Goldberg, Esq. Respondent was represented by Joshua Thomas, Esq. of the Office of the Attorney General. Also present was James Shadd, Esquire, trial counsel for the Applicant.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted at the September 2007 term of the Richland County Grand Jury for two counts of Lewd Act on a Minor Child (2007-GS-40-3373 and 2007-GS-40-3372) and at the July 2012 term of the Richland County Grand Jury Lewd Act on a Minor Child (2012-GS-40-413). James Shadd, Esquire represented him during his jury trial whereupon the Applicant was tried for all three indictments in one trial. Applicant's trial began October 8, 2012 in front of the Honorable Roger L. Couch and he was convicted as indicted on October 11, 2012.

Judge Couch sentenced Applicant to fifteen years imprisonment suspended upon the service of ten years imprisonment followed by five years of probation for each charge, with all three sentences to be served concurrently. A Notice of Appeal was never filed. The Applicant then filed his timely Application for Post-Conviction relief on April 16, 2013.

EVIDENTIARY HEARING

At the evidentiary hearing the Applicant testified on his own behalf. The Respondent called trial counsel James Shadd as a witness at the proceeding. In Applicant's current Amended Application for post-conviction relief the Applicant alleged he was being held unlawfully based upon the following allegations:

- a) Ineffective assistance of counsel – Trial counsel failed to sufficiently prepare for trial and investigate the Applicant's case.
- b) Ineffective assistance of counsel – Trial counsel failed to request that the trial be severed.
- c) Ineffective assistance of counsel – Trial counsel failed to file notice of appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668, 104 S.Ct. at 2064. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 286 S.E.2d at 625, citing Strickland, supra. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 286 S.E.2d at 625.

Ineffective assistance of counsel – Trial counsel failed to sufficiently prepare for trial and investigate the Applicant's case

The Court finds Applicant failed to meet his burden of proving trial counsel ineffective for failing to prepare for trial and investigate. Regarding this allegation, the Court finds trial counsel's testimony credible, and Applicant's not credible. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Applicant has not shown what further information trial counsel could have discovered with a further investigation. Here, trial counsel reviewed all the evidence

in the case, which consisted almost entirely of victim statements. He read these statements, reviewed the discovery, and was not surprised by the testimony at trial. Such an investigation was reasonable under the circumstances. Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011) (citing Daniels v. State, 676 S.E.2d 13 (Ga. 2009)). Trial counsel also spoke to Applicant's family members extensively before trial. He strategically presented testimony from Applicant's family to bolster Applicant's character. Applicant also alleged his mother had a recording of another victim's mother that exculpated him. However, trial counsel could not have been reasonably expected to discover and utilize the recording because it was lost prior to his representation. Thus, Applicant has not shown how trial counsel's investigation and preparation were deficient in any way.

Furthermore, trial counsel reviewed the State's evidence with Applicant prior to trial, including the forensic interviews of the victims. The testimony of the victims at trial was generally consistent with their prior statements. To the extent there were inconsistencies, trial counsel brought those out on cross-examination. Trial counsel also objected to one victim testifying about digital penetration where no such testimony was indicated by her prior statements. Trial counsel impeached a victim's mother with her Facebook messages to Applicant. Applicant presented no evidence of what information other witnesses would have provided had trial counsel interviewed them. Dempsey v. State, 363 S.C. 365, 369, 610 S.E.2d 812, 814 (2005) (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995))). Accordingly, the Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation.

Ineffective assistance of counsel – Trial counsel failed to file notice of appeal

The Court finds Applicant failed to meet his burden of showing counsel was ineffective for failing to file a notice of appeal. The Court finds trial counsel's testimony on this issue credible, and Applicant's testimony not credible. Counsel must ensure a criminal defendant is made fully aware of his right to an appeal. White v. State, 263 S.C. 110, 118, 208 S.E.2d 35, 39 (1974). However, a defendant may waive a direct appeal by making a "knowing and intelligent decision not to pursue the appeal." Simuel v. State, 390 S.C. 267, 271, 701 S.E.2d 738, 739-40 (2010) (quoting Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004)). Furthermore, "[a]cts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981) (citing 92 C.J.S. Waiver, p. 1063 (1955)). In the absence of a waiver by the defendant, counsel must either initiate an appeal or comply with the Anders¹ procedure. White, 263 S.C. at 118, 208 S.E.2d at 39.

Testimony presented by both parties' shows that trial counsel and Applicant discussed an appeal immediately after the trial. Applicant testified that he initially told his attorney that he wanted to file for an Appeal. In Response, Counsel informed him that he should not file for an Appeal because Counsel believed that the Applicant received a good sentence because he could have been sentenced up to 45 years. The Applicant essentially testified that he didn't push the issue further at that time. The Applicant testified that he mailed his attorney a letter on or about October 16, 2014 (five days after conviction) asking Counsel to file a Notice of Appeal. Applicant never received a response and a Notice of Appeal was never filed.

¹ Anders v. California, 386 U.S. 738 (1967).

Trial counsel testified similarly to the Applicant, except he believed that the Applicant legitimately made the decision not to appeal during their conversation immediately after sentencing. Counsel stated that the notes in his file reflect this. Counsel believed that the Applicant voluntarily made an informed decision not to appeal and he believed the Applicant made this decision because he was at peace with the decision of the jury due to his strong faith. However, Counsel wrote to Applicant on October 12, 2012 informing the Applicant of his right to appeal again. See, Applicant's Exhibit 1. Counsel recalled receiving a letter from the Applicant after trial but could not remember what it said and could not find it in his file, but he believes he would have received this letter more than 10 days after the trial.

Applicant argues that it is objectively and subjectively unreasonable for Counsel not to have filed Notice of Appeal based upon two considerations. First, several objections were raised in the jury trial which could have provided issues ripe for Appellate review. Second, while the Applicant's sentence to imprisonment may have been reasonable, the Applicant is subject to mandatory registration on the sex offender registry for the rest of his life. The Applicant argues that Counsel should have filed Notice of Appeal on the Applicant's behalf ensuring that his rights are preserved. If the Applicant wanted to withdraw this Appeal later, that would have been his right.

Despite these arguments, this Court finds Applicant had an in-person conversation with Counsel wherein he knowingly and voluntarily waived his right to a direct appeal. Accordingly, counsel was not ineffective in this regard.

Ineffective assistance of counsel – Trial counsel failed to request

that the trial be severed

The testimony and transcript reflect that trial counsel did not make a motion to sever any of the three indictments underlying the Applicant's convictions. Applicant asserts that trial counsel was ineffective for not requesting a severance in his case, and that if he had made this motion it is probable that the Court would have severed the indictments. Further, Applicant asserts that it is probable that the outcome at trial (or trials) would have been different and he would not have three convictions had all three indictments not been tried together in one trial.

The testimony presented at the evidentiary hearing was that Applicant and trial counsel discussed the possibility of severance prior to trial. Applicant testified that he relied on trial counsel to make the decision in this regard. Applicant asserts this was reasonable as Applicant is not an attorney and is not familiar with the law and the standard required for severance. Trial counsel Shadd testified that he believed it was in the Applicant's best interest to have all indictments tried together. Shadd stated that he was afraid that if one or two of the indictment trials resulted in convictions, the conviction(s) and their underlying facts could be offered against the Applicant in his subsequent trial(s) against Carmichael. However, Shadd conceded that the underlying facts of all three indictments were presented in this trial.

Applicant asserts that this was an objectively unreasonable strategy by trial counsel. There were three possible outcomes trial counsel should have considered in making his determination regarding a severance request. 1) All indictments are tried together and

resolved simultaneously; 2) Indictments are tried separately and the first trial is free² from contamination of any other allegations – and if it results in a conviction it could be used in the subsequent trial(s) pursuant to 404(b), SCRE or 609, SCRE, or 3) Indictments are tried separately and the first trial is free from contamination of any other allegations – and if Applicant is acquitted on the first trial, he would then be allowed a subsequent trial on another indictment also without the contamination of other allegations. It appears that trial counsel did not even consider the true merit of options #2 or #3 – that being Applicant may be entitled to at least one trial un-contaminated by other unrelated allegations. As a result, counsel was ineffective for deciding not to request a severance of the indictments.

Applicant asserts that a request for severance of the indictments would most likely have been granted by the trial court. The recent South Carolina Court of Appeals case State v. Beekman reviews the legal standard for when separate indictments *may be tried together* in one trial. 405 S.C. 225, 746 S.E.2d 483 (2013). The Court stated:

“[W]here the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion to order the indictments be tried together if the defendant’s substantive rights would not be prejudiced. Offenses are considered to be of the same general nature when they are interconnected.

Conversely, offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together.

Charges can be joined in the same indictment and tried together where they 1) arise out of a single chain of circumstances; 2) are proved by the same evidence, 3) are of the same general nature; and 4) no real right of the defendant has been prejudiced.”

² Counsel for Applicant agrees that the other allegations could possibly be offered as bad character evidence without a conviction in each and every one of the trials. However, this would only be done if the State offered the evidence properly under State v. Lyle. As an analysis under Lyle is necessary in making a decision on the merits of this Severance issue, counsel will assume, for the purposes of this argument, that if the indictments should have properly been severed they also would have not been allowed in each trial pursuant to Lyle and the trials would have been conducted without the contamination of other allegations.

Id. at 229, 486 (emphasis added).

Applicant asserts the indictments presented at trial should not have been tried jointly as they did not involve interconnected transactions, did not arise out of a single chain of circumstances, and are not provable by the same evidence. Applicant contends that counsel was ineffective for failing to request a severance. A summary of the facts presented at trial is necessary to illustrate this point.

Indictment 2007-GS-40-3372 involves an allegation of a one-time-only incident occurring between 1999 and 2004 when the victim was somewhere between the ages of 4 and 9 (pre-puberty). *See*, Indictment. There was a delayed disclosure and therefore no evidence was presented as to exactly when the alleged event occurred. *See*, trial transcript generally. The victim knew the Applicant from church but he did not frequently come to her house. *See*, Trial Transcript page 174-175. The alleged incident took place while he was babysitting at her house and no adults were around. *Id.* at 175-176. The victim testified that while she was asleep the Applicant placed her on his lap and put her hand on his penis and made her rub it. *Id.* at 178-180. The victim also testified that, although her pants were down when she woke up, she had no memory of being touched inappropriately. *Id.* at 180. The victim did not testify that any coercion or threats were made other than "shhh don't say nothing." *Id.* at 181.

Regarding Indictment 2007-GS-40-3373, the victim alleged that three incidents occurred between 2001 and 2005 when she was between the ages of 7 and 11 (pre-puberty). *See*, Indictment. Again, there was a delayed disclosure and therefore no evidence was presented regarding exactly when the alleged event occurred. *See*, trial transcript

generally. The victim knew the Applicant from church but his family was also very close with her family and he regularly visited her home. *Id.* at 90-91. The first incident allegedly took place at the victim's home while the Applicant was babysitting. *Id.* at 92. Victim testified that Applicant told the victim to turn around and pull her pants down and he inappropriately touched her vagina. *Id.* at 92-94. She also testified that he pulled his penis out and tried to put her on top of his penis but it "didn't work" and he stopped all the activity voluntarily. *Id.* at 95. The victim testified that the second incident occurred sometime later at her mom's apartment while her family was outside. *Id.* at 96. She testified that he touched her "boob area" on this occasion and he said "give me that cat." *Id.* at 97. Finally, the victim testified that the third incident occurred at the Applicant's house while his sister was home and asleep in a different room. *Id.* at 98. She testified that on this occasion the Applicant started to unzip her pants and began to go into her panties with his hand but was interrupted when her ride showed up. *Id.* at 100. On this occasion the victim testified that the Applicant said "don't tell anyone or I will kill you." *Id.* at 101.

Regarding Indictment 2012-GS-40-4135, the victim alleged that a one-time-only incident occurred on August 28, 2011 when the victim was 13 years old³. *See*, Indictment. The victim knew Applicant from church and her step-father was a close friend of the Applicant. *See*, Trial transcript page 455. The victim testified that the incident took place while she was in the backseat of a car while her step-father was driving and the Applicant was in the front-passenger seat. *Id.* at 460-463. The victim testified that the Applicant was pretending to sleep when he reached into the backseat and began rubbing up and down her leg and plucking at her clothing like he was trying to get into the bottom of her pants. *Id.*

³ While there was no testimony offered at trial regarding this victim's development Applicant would assert that the age 13 is typically post-puberty.

The testimony reflects that this happened while her step-father was in the car and she did not alert him to what was going on. *Id.* at 464. The victim did not testify that the Applicant made any threats or coercive statements to her at any time. *See*, trial transcript generally.

Applicant asserts that a review of the transcript clearly shows that, while the allegations may be of the same *general* nature, the incidents did not involve connected transactions closely related in time, place or character. They did not arise out of a single chain of circumstances. Further, the incidents were not provable by the same evidence. While the only evidence to prove any of the indictments was testimony evidence⁴, each allegation had separate witnesses necessary to prove the case. The only exception is that the victims in the first two indictments had a conversation with each other which resulted in their disclosures and as a result their cases were investigated by the same investigator. *See*, trial transcript generally. The third indictment was proved by completely separate evidence without exception. *Id.*

In Beekman, the sexual abuse allegations against the defendant arose over the course of an eight month period and involved his two pre-pubescent stepchildren. 405 S.C. 225, 746 S.E.2d 483 (2013). The court found that the charges arose from "a single course of conduct or connected transactions" and that "there was a great deal of overlap of evidence between the two charges, and the two charges were provable by the same evidence." *Id.* at 231, 486.

Looking at the test for when indictments can be joined in trial, it is probable that a Court would have found that the Applicant's indictments should not have been tried

⁴ No physical evidence existed directly related to any of the three indictments.

together. Applicant was charged with three indictments for incidents involving three unrelated victims occurring at different times and places. There was no single chain of circumstances. The evidence offered to prove each indictment was entirely separate with minor exceptions. To the extent that a Court may have determined that the first two indictments could be tried together due an overlap in their disclosure, it is more likely than not that the Court would have at least found that the third indictment should have been severed.

It should also be noted that in making this determination the Court would have also been required to look at the fourth prong of the test for joinder of the indictments – prejudice. Prejudice is also necessary to review in determining whether trial counsel's failure to request a severance of the indictments prejudiced the Applicant for the purpose of granting post-conviction relief.

Applicant again cites to State v. Beekman which explains “[P]rejudice to a defendant may occur where the defendant is jointly tried on charges resulting in the admission of prior bad act evidence that would have otherwise been inadmissible.” 405 S.C. 225, 230, 746 S.E.2d 483, 486 (2013)(emphasis added). In other words, the Applicant suffers no prejudice from the joint trial of indictments if the facts underlying the severed indictment could have been offered in trial as evidence of bad conduct pursuant to Rule 404(b), SCRE. “When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. When the similarities outweigh the dissimilarities, the bad act evidence is admissible under 404(b).” *Id.* at 231,487, citing State v. Wallace, 384 S.C. 428, 683 S.E.2d 275, 277-78 (2009). “In

determining whether a close degree of similarity exists, some of the factors to consider are 1) the age of the victims when the abuse occurred, 2) the relationship between the victims and the perpetrator; 3) the location where the abuse occurred; 4) the use of coercion or threats; and 5) the manner of the occurrence, for example, the type of sexual battery." *Id.* at 232, 487. A summary of these factors is below:

A review of the facts previously listed provides a basis for analysis of these factors. As to the first and second indictments, no one knows exactly when the incidents allegedly occurred but it clearly involved pre-pubescent victims, while the third indictment alleges abuse of a thirteen year old. The incidents underlying the first and second indictments occurred at least five years prior to the third indictment's allegation. While Applicant attended church with all alleged victims, he had closer relationships with some than others. All alleged incidents occurred at different locations. The first two indictments allegedly occurred in a house while no other adults were in the room, but the third indictment allegedly occurred in a car while another adult was present. The only allegation of coercion or threats was present during the second indictment. Finally, the manner of each occurrence as described above was very different. The first indictment alleged that the Applicant made the victim touch him inappropriately. The second indictment alleged that the Applicant touched the victim inappropriately. The third indictment alleged that the Applicant rubbed the victim's legs and plucked at her clothing with an inappropriate intention.

At the evidentiary hearing the State argued that the indictments were similar because the Applicant had the same defense to all indictments. As an initial matter, this argument is not compelling because the defense was simply denial – a defense used

commonly by defendants who plead not guilty to criminal charges. Further, the State's argument was incorrect regarding the third indictment, as Attorney Shadd testified that they also asserted a defense that the victim's allegations were physically impossible and therefore not credible.

This Court finds that the similarities of the details do not outweigh the dissimilarities. While all allegations are of the same general nature sufficiently to result in the same criminal charge of Lewd Act being charged, the details have sufficient dissimilarities such that introduction of the facts of any severed indictment would likely not have been introduced to prove common scheme or plan, and therefore the Applicant was prejudiced by having all three indictments tried together.

Additionally, the Beekman court pointed out that "even if the prior bad act evidence is found admissible under Rule 404(b) SCRE, the evidence may nonetheless be excluded if its probative value is substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE." 405 S.C. 225, 230, 746 S.E.2d 483, 486 (2013). In the Applicant's case the danger of unfair prejudice was made clear by the Solicitor herself. In the cross examination of the Defendant the Solicitor asked:

"So all this arose out of three little girls who were - whose families were either jealous or had no reason or who you were trying to get in trouble making up independently these heinous allegations?"

See, Trial transcript, page 818, lines 19-22.

Subsequently in her closing argument the Solicitor made the following comments:

"In this case what you have is solid direct evidence of the crimes that were committed that is totally and completely corroborated by the circumstantial evidence that you have before you. You can consider either and in this case it's not just one or the other, this isn't a case where you just have one person