

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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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF RICHLAND
4 2007-GS-40-03372 and 03373, 2012-GS-40-04135
5

6 State of South Carolina

7 vs.

8 David Carmichael, Jr.
9

10
11 Columbia, South Carolina
12 October 8-11, 2012
13 Before the Honorable Roger Couch
14

15 APPEARANCES

16 For the State: Luck Campbell, Nicole Simpson

17 For the Defendant: James Shadd
18

19 Reported by: Karen Ambrokiak (edited by Mike Watkins)

20 Official Court Reporter
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24
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VOIR DIRE

1 THE COURT: All right. Solicitors may call the cases.

2 MS. CAMPBELL: State vs. David Carmichael, indictment
3 number 2012-GS-40-4135; indictment number 2007-GS-40-3373
4 and 2007-GS-40-3372. That is three counts of lewd act, Your
5 Honor.

6 THE COURT: All right. Mr. Shadd, your client is
7 present. I assume he has been arraigned on these charges?

8 MR. SHADD: He has.

9 THE COURT: And is he still requesting a trial by jury?

10 MR. SHADD: Yes.

11 THE COURT: Thank you. My understanding is that there
12 is a proposed amendment to one of the indictments in this
13 case, I'll hear from the state on that.

14 MS. CAMPBELL: That is correct, Your Honor, it would be
15 indictment number 2007-GS-40-3373. That is for the victim,
16 victim [REDACTED], we are expanding those dates.

17 THE COURT: All right. I need copies of those other
18 two indictments, Madam Clerk. Let me see what you're
19 referring to. I've got 2012-4135 is the only one I have.
20 All right. I'm sorry, I interrupted you, could you go over
21 the proposed amendment?

22 MS. SIMPSON: Yes, Your Honor. For indictment number
23 3373, that is for the victim, victim [REDACTED], we are
24 expanding that timeframe by one year to include January 2002
25 to December 31st, 2004. That amendment reflects what is

VOIR DIRE

1 actually in discovery as well.

2 THE COURT: All right. Any objection from the defense?

3 MR. SHADD: No objection, Your Honor.

4 THE COURT: All right. That amendment has been
5 approved, dates from January 2002 to December 30th, 2004.

6 All right. Any other matters we need to take up before we
7 begin qualifying the jury for this trial from the State?

8 MS. SIMPSON: None from the State.

9 MR. SHADD: None from the defense.

10 THE COURT: Bring us the jury panel.

11 (The jury panel entered the courtroom.)

12 THE BAILIFF: The jury is present.

13 THE COURT: Ladies and gentlemen, I am Roger Couch, I
14 am a resident judge in the Seventh Judicial Circuit. It's
15 my pleasure to be serving this week on a one-week term in
16 General Sessions court in Richland County. General Sessions
17 court is the court in which we try criminal cases in circuit
18 court. The cases in front of me this week involve
19 situations where individuals have been charged with the
20 commission of a crime. We're about to begin the trial of
21 the State of South Carolina versus David Lee Elijah
22 Carmichael, III, and we're at this point in time entering
23 into jury selection for this case. Now, as we do that, I'm
24 going to first of all see that you have certain information
25 that you might need to more fully respond to some questions

VOIR DIRE

1 that I'm going to ask you that apply specifically to this
2 case. The first thing that I'm going to do is to go over
3 with you the indictments that have been presented in this
4 court. Let me explain that the indictment is the document
5 that brings this case before this court, it also informs the
6 defendant of the charges that have been lodged against the
7 defendant. Now, an indictment is just that and it's simply
8 that, it's the document that brings the case before this
9 court and gives notice to the parties involved as to the
10 charges. An indictment cannot be used by a jury in any
11 fashion in determining the guilt or the innocence of a
12 defendant, it does not constitute evidence in the case. The
13 reason I'm going to go over the indictments with you at this
14 time is because later on I'm going to ask you some questions
15 that apply specifically to these three cases. There's three
16 indictments, and I want to be sure you understand what I'm
17 asking about, what's been alleged and what is involved in
18 the allegations that have been made in this particular case.
19 Now, the first indictment that I will discuss with you is in
20 case number 2007-GS-40-3372. The indictment is for the
21 general offense of a lewd act upon a child.

22 The indictment states in part that the -- that
23 David Lee Elijah Carmichael, III, did in Richland
24 County on or between July 1999 and August 31 of 2002
25 being over the age of 14 years willfully and lewdly

VOIR DIRE

1 commit or attempt a lewd or lascivious act upon or
2 with the body or its parts with one **victim 1**.
3 **[REDACTED]**, a child under the age of 16 years with
4 the intent of arousing, appealing to or gratifying
5 the lust, passions or sexual desires of himself or
6 such child all in violation of code section
7 16-15-140 of the Code of Laws of South Carolina
8 against the peace and dignity of the state and
9 contrary to the statute in such case made and
10 provided, that's the first indictment before the
11 court. The second indictment is case number of
12 7-GS-40-3373, it is also for the offense of lewd act
13 upon a child. This indictment states in part that
14 David Lee Elijah Carmichael, III, did in Richland
15 County on or between January of 2002 and December
16 30th, 2005 being over the age of 14 years willfully
17 and lewdly commit or attempt to commit a lewd or
18 lascivious act upon or with the body or its part
19 with one **victim 2** **[REDACTED]**, a child under the age of 16
20 years, with the intent of arousing, appealing to or
21 gratifying the lust, passions or sexual desires of
22 himself or such child in violation of South Carolina
23 Code of Laws 16-15-140 against the peace and dignity
24 of the state and contrary to the statute in such and
25 provided. The last indictment before the Court at

VOIR DIRE

1 this time is cases number 12-GS-40-4135, this
2 indictment is for the offense of lewd act upon a
3 minor child. The indictment states in part that
4 David Lee Elijah Carmichael, being over 14 years of
5 age, did in Richland County on or about August 28th,
6 2011 willfully or lewdly commit a lewd and
7 lascivious act upon or with the body of a child less
8 than 16 years of age, to wit, victim 3 age
9 13, with the intent or arousing, appealing to or
10 gratifying sexual desires of said defendant or the
11 victim in violation of section 16-15-140 of the
12 South Carolina Code of Laws, 1976, as amended.
13 against the peace and dignity of the State and
14 contrary to the statute in such case made and
15 provided. Those are the three indictments before
16 the Court, and again, I have gone over them with you
17 for the purpose of giving you some information about
18 what these cases -- what cases are before the Court
19 and the allegations that have been made. Now, I'm
20 going to ask you a series of questions, and again
21 before I do that, there's some -- I'm going to allow
22 the attorneys to introduce themselves to you because
23 I want to be -- I've got some questions to ask about
24 them. In the case of the defendant, I've asked the
25 defense attorney to introduce the defendant to the

VOIR DIRE

1 jury panel. First of all for the State, the
2 attorneys will introduce themselves.

3 MS. CAMPBELL: I'm Luck Campbell, I'm with the 5th
4 Judicial Circuit, I'm a prosecutor.

5 MS. SIMPSON: And I'm Nicole Simpson, I'm also an
6 assistant solicitor with the 5th Judicial Circuit.

7 THE COURT: Thank you very much. The defense, please.

8 MR. SHADD: Thank you, Your Honor. May it please the
9 court? Good afternoon, I'm James Shadd, I'm a member of the
10 Richland County Bar. I own a practice called the Shadd Law
11 Firm in January 2010, prior to that I worked at Johnson,
12 Toal & Battiste, a local law firm here in Columbia. My
13 client is David Lee Elijah Carmichael, Jr. He is a resident
14 of Richland County.

15 THE COURT: Thank you very much, you can be seated.
16 Now, before I begin to ask questions of you, it's important
17 that the information that you give me in response to my
18 questions is truthful, honest and complete information
19 because it's the information upon which the attorneys will
20 be going through jury selection in just a few minutes. So
21 at this point in time, I'm going to have the clerk again
22 swear you but at this time as to the information that you
23 are providing in this case. Madam clerk, please swear the
24 potential jurors.

25 THE CLERK: Thank you, Your Honor.

VOIR DIRE

1 (The jury was sworn.)

2 THE COURT: Now, if there was any member of the jury

3 panel who either failed or refused to take the oath that was

4 just administered by the clerk I'd ask that you please

5 stand. All right. The record will reflect that all

6 potential jurors have been sworn concerning their responses

7 in this case. Now, as I ask these questions, I will be

8 asking you if the question applies to you or you have a

9 response to the question, I'll be asking that you stand. I

10 will point out to you that before I receive the answers to

11 my questions I will need to get your name and number on the

12 record so that we might be able to identify who I'm talking

13 to later on if we review the record on this subject. So

14 I'll ask your name and number, then I'll go through the

15 response that you might have to the questions that I have

16 asked. The first question I have, has any member of this

17 jury panel ever been related by marriage or are you related

18 by blood to either the defendant, David Lee Elijah

19 Carmichael, III or the alleged victims in this case, victim 1

20 , victim2 , or victim3 ? If that's

21 true, please stand. Has any member of this jury panel ever

22 had a close personal or a social relationship with any of

23 those individuals, that being the defendant, Mr. Carmichael,

24 or the alleged victim, victim 1 , victim2 or

25 victim3 If that's true, please stand. Ma'am,

VOIR DIRE

1 I'll need your name and number, please.

2 PROSPECTIVE JUROR: Denise Johnson.

3 THE COURT: Your relationship is with who?

4 PROSPECTIVE JUROR: I went to school with
5 Mr. Carmichael.

6 THE COURT: All right. Ma'am, I won't ask you how long
7 ago that was.

8 PROSPECTIVE JUROR: That was elementary school, middle
9 school.

10 THE COURT: All right. Now, the fact that you attended
11 school with him, if you were selected to be a member of this
12 jury panel would that affect your ability to be fair and
13 impartial to either the State or the defendant?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: All right. Thank you very much. You can
16 be seated, ma'am. Anyone else? Now, has to the attorneys
17 that are involved in this case, has any member of the jury
18 panel ever been represented by any of the attorneys involved
19 in this case or have they ever appeared on the other side of
20 some legal matter from you? If that's true, please stand.
21 Has any member of the jury panel ever been related by
22 marriage, or are you related by blood, or have you ever had
23 a close social or a personal relationship with any of the
24 attorneys that might be involved in this case? If that is
25 true, please stand. Now, ladies and gentlemen, I'm going to

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1 go over a list of people who have been identified to me as
2 potential witnesses. It doesn't mean that they absolutely
3 will testify in the case, but these are people that have
4 been identified as possible witnesses in this matter. It's
5 a rather lengthy list, so pay attention as I go through this
6 list. When I finish, I'll be asking about these individuals
7 as a group as witnesses in the case. All right. [victim 1]
8 [REDACTED], Patrick Robinson, Davetta Graham, [victim 2]
9 [REDACTED], Richard Carter with the Richland County Sheriff's
10 Department, Sabrina Mack-[REDACTED], Jennifer Savitz-Smith
11 with the Palmetto Mental Health Services, [victim 3] [REDACTED],
12 Jacquelyn R. Mack, Lashanda [REDACTED] David Carmichael, Jr.,
13 B.A. Metz with the Richland County Sheriff's Department; Dot
14 Morant, Cynthia [REDACTED], Ray Olszweski with the Assessment
15 Resource Center, Dr. Susan Luberoff with the Assessment
16 Resource Center, Deputy William Carlson with the Richland
17 County Sheriff's Department, Deputy Scott Soto with the
18 Richland County Sheriff's Department, Robin Jefferson,
19 Investigator Kristian Bell with the Richland County
20 Sheriff's Department, Investigator Jerry Hall, II with the
21 Richland County Sheriff's Department, Jamise [REDACTED],
22 Sabrina Sanders, Heather Smith with the Assessment Resource
23 Center, Dr. Susan Luberoff, Dr. William Taylor, Wendy
24 Graham, Lauren Rosinski with Post Trauma Resources, Anthony
25 Wilson with the Richland County Sheriff's Department, Deputy

VOIR DIRE

1 George Shaw, Janie [REDACTED] Jamise Sanders, Captain Rosalind
2 Glover, Erin Bishop, and Jennifer Bishop. Now, as to the
3 individuals that I just named as possible witnesses in this
4 case, has any member of this jury panel ever been related by
5 marriage, or are you related by blood or have you ever had a
6 close personal or social relationship with anyone that I've
7 identified as a possible witness in this case? If that's
8 true, please stand. All right. I'm going to start in the
9 front, ma'am. Your name and number, please?

10 PROSPECTIVE JUROR: Number 30.

11 THE COURT: And your situation?

12 PROSPECTIVE JUROR: I went to church with all of those.

13 THE COURT: All right. Now, ma'am, do you still attend
14 the church with all of those people?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: Well, ma'am, would that affect your ability
17 to be fair and impartial in this matter?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: You're sure it wouldn't affect your
20 impartiality?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Thank you, ma'am. Name and number, please,
23 sir.

24 PROSPECTIVE JUROR: 207, David Poole.

25 THE COURT: What is your situation?

VOIR DIRE

1 PROSPECTIVE JUROR: If William Taylor is the doctor at
2 Sandhills Pediatrics --

3 THE COURT: I'll ask the attorneys. Is that the same
4 person we're talking about?

5 (Indicating.)

6 THE COURT: It is the same person we're talking about.

7 PROSPECTIVE JUROR: I know Dr. Taylor.

8 THE COURT: And is that socially or professionally?
9 How is that?

10 PROSPECTIVE JUROR: Both.

11 THE COURT: All right. Would the fact that you have an
12 acquaintance with him or if he appeared as a witness in this
13 case, would that affect your ability to be fair and
14 impartial if you were on the jury?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: Thank you. You can be seated. Yes, ma'am.
17 I need your name and number again, please.

18 PROSPECTIVE JUROR: Felicia Washington. Dot Morant is
19 a close friend of our family.

20 THE COURT: All right. When you say your family, is
21 that you or people in your family?

22 PROSPECTIVE JUROR: Basically in my family. She has
23 been around my family for years.

24 THE COURT: All right. Would the fact that if she were
25 involved in this case either as a witness or otherwise,

VOIR DIRE

1 would that affect your ability to serve as a juror in the
2 matter?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Is that a no?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Okay. Thank you. You can be seated.

7 Anyone else? Has any member of this jury panel or a member
8 of your immediate family ever been the victim of a crime of
9 violence or a crime involving criminal sexual conduct? If
10 that's true, please stand. Name and number?

11 PROSPECTIVE JUROR: Denise Brown, juror 33.

12 THE COURT: And can you tell me how a member of your
13 family or yourself was involved in those facts, please?

14 PROSPECTIVE JUROR: My first cousin was raped.

15 THE COURT: All right. Now, ma'am, the fact that that
16 had occurred, would that have affected your ability to be
17 fair and impartial in this trial?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Ma'am, if it would affect your
20 impartiality, I'm going to excuse you from the trial of the
21 case. Name and number, please. You need to keep your seat,
22 ma'am. Thank you.

23 PROSPECTIVE JUROR: Sir, Keith Mauldin.

24 THE COURT: Thank you. We'll get with you in just a
25 few minutes. Okay. You no longer have to answer my

VOIR DIRE

1 questions. I have excused you from the case. Your number
2 was --

3 PROSPECTIVE JUROR: Thirty-three.

4 THE COURT: Number 33. Thank you. I'm sorry. Name
5 and number, please?

6 PROSPECTIVE JUROR: Yes, sir. It's Keith Moore, 183.

7 THE COURT: Yes, sir. Your situation?

8 PROSPECTIVE JUROR: Yes, sir. Somebody in my immediate
9 family and my wife's side have been victims of sexual
10 assault.

11 THE COURT: The fact that occurred in your family,
12 would that affect your ability to be fair and impartial if
13 you were to serve?

14 PROSPECTIVE JUROR: In my heart I believe so.

15 THE COURT: I'll excuse you from the trial of the case,
16 you can be seated, you no longer have to answer my
17 questions. We'll take care of you in just a few minutes.

18 PROSPECTIVE JUROR: All right.

19 THE COURT: Name and number, please?

20 PROSPECTIVE JUROR: Heather Woods.

21 THE COURT: Yes, ma'am.

22 PROSPECTIVE JUROR: And my nephew was a victim of
23 sexual assault.

24 THE COURT: Would that fact affect your ability to be
25 fair and impartial if you were selected on a jury?

VOIR DIRE

1 PROSPECTIVE JUROR: I believe so.

2 THE COURT: Okay. I'm going to excuse you from the
3 trial of the case. Name and number, please, ma'am?

4 PROSPECTIVE JUROR: Number 278, Marilyn Whitaker. My
5 niece, who was in my care at the time, was a victim of
6 sexual assault.

7 THE COURT: Would that affect your impartiality in this
8 matter?

9 PROSPECTIVE JUROR: It could.

10 THE COURT: If it would then I'm going to excuse you.
11 Name and number, please, ma'am?

12 PROSPECTIVE JUROR: 303. Personally, I've had some
13 issues with that so...

14 THE COURT: I'm sorry, I didn't understand you.

15 PROSPECTIVE JUROR: I've been a victim.

16 THE COURT: All right. Would that fact affect your
17 ability to be fair and impartial in this case?

18 PROSPECTIVE JUROR: Yes, it would.

19 THE COURT: All right. I'm going to excuse you from
20 the trial. Thank you, ma'am. Anyone else? Is there any
21 member of the jury panel who is related by blood or marriage
22 or is a close personal friend or acquaintance with any
23 employee in the 5th Circuit Solicitor's Office? If that's
24 true, please stand. Has any member of the jury panel or a
25 member of your immediate family or a close personal friend

VOIR DIRE

1 of yours ever been accused of or charged with any type of
2 sexual offense or child abuse? If that is true, please
3 stand. Name and number, please, ma'am?

4 PROSPECTIVE JUROR: Thirty-seven, Helen Burden.

5 THE COURT: Yes, ma'am.

6 PROSPECTIVE JUROR: I'm not quite sure, but my
7 boyfriend -- his nephew is going to be charged.

8 THE COURT: Well, has he been --

9 PROSPECTIVE JUROR: He has been charged.

10 THE COURT: He has been charged?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: All right. Tell me that relationship again
13 please, ma'am.

14 PROSPECTIVE JUROR: It's my boyfriend's nephew.

15 THE COURT: I see. And you think he has been charged
16 with some type of --

17 PROSPECTIVE JUROR: The case, I guess, is pending.

18 THE COURT: Is that a good word? All right. Would
19 that fact affect your ability to be fair and impartial if
20 you were selected on this jury?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: Thank you. You can be seated. Yes, ma'am,
23 name and number.

24 PROSPECTIVE JUROR: Juror 66, Lashonda Denton. My
25 first cousin has been charged and is going through an

VOIR DIRE

1 investigation on the same charges.

2 THE COURT: All right. Would that fact affect your
3 ability to be fair and impartial if you were selected on the
4 jury panel?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: It would? Okay. Then I'm going to excuse
7 you from the trial of this case. Thank you. Has any member
8 of this jury panel previously served on a jury? Please
9 stand if you have. All right. I'd ask that you remain
10 standing. Now, my next question would be if you served on a
11 criminal or civil case, please be seated.

12 PROSPECTIVE JUROR: Could you do a description on that?

13 THE COURT: Well, a criminal case is where someone is
14 charged with the commission of a crime. A civil case is
15 where someone is seeking monetary damages, such as for
16 personal injury, breach of contract, failure to pay debts,
17 those are civil matters. Criminal cases are where someone
18 has been charged with the commission of a crime. All right.
19 I'm going to get the names and numbers of those who are
20 standing, and then I have another question for you. Sir,
21 your name and number is?

22 PROSPECTIVE JUROR: David Abromaitis, number one.

23 THE COURT: All right. Your name and number, sir?

24 PROSPECTIVE JUROR: George Entzminger, number 75.

25 THE COURT: Sir, your name and number?

VOIR DIRE

1 PROSPECTIVE JUROR: Samuel Tishae Mungo, 185.

2 THE COURT: Your name and number?

3 PROSPECTIVE JUROR: David Poole, 207.

4 THE COURT: Your name and number?

5 PROSPECTIVE JUROR: Keith Murray, 186.

6 THE COURT: For you, if you feel that your
7 participation in a criminal case as a juror in the past
8 would in any way affect your ability to be fair and
9 impartial in the trial, I'd ask that you remain standing.
10 If not, you can be seated. Is there any member of this jury
11 panel who has formerly worked in law enforcement either as
12 -- on the state, federal, or military level? If that's
13 true, please stand. Your name and number, sir?

14 PROSPECTIVE JUROR: Number 47, Clifton Change. I was a
15 police officer for 27 years in New York City.

16 THE COURT: All right, in New York City. Would that
17 affect your ability to be fair and impartial if you were
18 selected on this jury?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: Thank you, sir. Your name and number,
21 please.

22 PROSPECTIVE JUROR: 104.

23 THE COURT: Yes, ma'am?

24 PROSPECTIVE JUROR: I was with the Department of
25 Defense.

VOIR DIRE

1 THE COURT: All right. Would that affect your ability
2 to be fair and impartial if you were selected on this jury?

3 PROSPECTIVE JUROR: No, sir.

4 THE COURT: Thank you, ma'am. Name and number, please.

5 PROSPECTIVE JUROR: George Danson.

6 THE COURT: Yes, sir.

7 PROSPECTIVE JUROR: I was a deputy sheriff in Suffolk,
8 Florida.

9 THE COURT: All right. Would that affect your
10 impartiality if you were selected on this trial?

11 PROSPECTIVE JUROR: I believe it would.

12 THE COURT: All right, sir. Then I'm going to excuse
13 you from the trial of this case, you can be seated. You no
14 longer have to answer my questions. Is there any member of
15 the jury panel who is related to or has as a close friend
16 anyone who works in the Richland County Solicitor's Office,
17 the Richland County Sheriff's Department, the South Carolina
18 Law Enforcement Division or any police or law enforcement
19 officers? So if you are a close friend or a relative of a
20 -- of those individuals, please stand. Name and number of,
21 please, sir.

22 PROSPECTIVE JUROR: Number one, David Abromaitis. I
23 have a deputy sheriff who is a close personal friend of
24 mine.

25 THE COURT: He apparently was not on the list I called?

VOIR DIRE

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Would that affect your ability to be fair
3 and impartial?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Thank you very much. Yes, ma'am?

6 PROSPECTIVE JUROR: Meghan Walker, works for the
7 Solicitor's Office.

8 THE COURT: All right. And you know her in what
9 capacity?

10 PROSPECTIVE JUROR: I don't.

11 THE COURT: All right. Would that fact affect your
12 ability --

13 PROSPECTIVE JUROR: She is a prosecutor.

14 THE COURT: Hold on. You can be seated. Name and
15 number of, please, sir?

16 PROSPECTIVE JUROR: Howard Dunn, 123.

17 THE COURT: Yes, sir.

18 PROSPECTIVE JUROR: Chief Scott.

19 THE COURT: All right. Would that affect your
20 impartiality if you were selected on the jury?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: Thank you, sir. Name and number, please.

23 PROSPECTIVE JUROR: David Keens, juror number 173.

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR: My brother-in-law is a federal ATF

VOIR DIRE

1 agent.

2 THE COURT: All right. Would that affect your
3 impartiality in this case?

4 PROSPECTIVE JUROR: (Shakes head no.) Thank you very
5 much. Yes, ma'am, name and number?

6 PROSPECTIVE JUROR: Felicia Washington. My uncle works
7 for Richland County Victim's Assistance.

8 THE COURT: Ma'am, would that affect your impartiality
9 if you were selected?

10 PROSPECTIVE JUROR: (Shakes head no.)

11 THE COURT: Thank you. Has any member of this jury
12 panel or a close personal friend of yours or a member of
13 your immediate family ever been treated by or seen as a
14 professional any social worker, psychiatrist, or
15 psychiatrist? If that is true, please stand.

16 PROSPECTIVE JUROR: Excuse me, would you repeat that,
17 please?

18 THE COURT: I said has any member of the jury panel or
19 a close personal friend of yours or a member of your
20 immediate family ever been treated by or seen professionally
21 a social worker, psychologist or psychiatrist? If that's
22 true, please stand. All right. Now, obviously, there are
23 -- those people are going to be testifying in this case, so
24 we're interested in any concerns you might have in that
25 regard. Name and number, please, sir.

VOIR DIRE

1 PROSPECTIVE JUROR: David Abromaitis, juror number one.

2 THE COURT: Yes, sir.

3 PROSPECTIVE JUROR: My son had some treatment by a
4 psychologist.

5 THE COURT: All right. Would that fact affect your
6 ability to be fair and impartial?

7 PROSPECTIVE JUROR: Not at all.

8 THE COURT: Thank you, sir. Name and number, please.

9 PROSPECTIVE JUROR: George Entzminger, number 75.

10 THE COURT: Yes, sir.

11 PROSPECTIVE JUROR: Well, my daughter was treated just
12 to see if it was -- could be determined what was causing her
13 aches and pains.

14 THE COURT: Okay. Would that affect your impartiality,
15 the fact she received treatment of that kind?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you, sir. Yes, ma'am.

18 PROSPECTIVE JUROR: I'm not sure if this would apply,
19 but my mom was a mental patient and she has been treated for
20 that.

21 THE COURT: Well, that would apply. Now, that would --
22 if you were selected on the jury, would that fact affect
23 your ability to be fair and impartial in this case?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Thank you. Name and number.

VOIR DIRE

1 PROSPECTIVE JUROR: Sheila Lamson, 144. I was treated
2 by a social worker.

3 THE COURT: All right. Would that affect your
4 impartiality in this matter?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Thank you very much. Yes, ma'am?

7 PROSPECTIVE JUROR: My son, mother and sister has been
8 treated, 306.

9 THE COURT: All right. Would that affect your
10 impartiality in this matter?

11 PROSPECTIVE JUROR: (Shakes head no.)

12 THE COURT: Thank you. Sir, name and number?

13 PROSPECTIVE JUROR: Keith Murray, 186.

14 THE COURT: And your situation, sir?

15 PROSPECTIVE JUROR: I've been treated from a
16 psychiatrist.

17 THE COURT: All right. Would that fact affect your
18 ability to be fair and impartial if you were selected on a
19 jury?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Thank you. Yes, ma'am, name and number?

22 PROSPECTIVE JUROR: Vivian Alton, number 4. I had
23 professional counseling before, went to a counselor.

24 THE COURT: Uh-huh. And would that affect your
25 impartiality if you were to serve on this jury?

VOIR DIRE

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Thank you very much, ma'am. Anyone else?
3 Now, has any member of this jury panel received or gathered
4 any information from any source such that that information
5 would have caused you to either form or express an opinion
6 about any issue or matter that might be involved in this
7 trial? If that is true, please stand. Is there any member
8 of this jury panel who may have served as a member of the
9 grand jury which might have issued the indictments that are
10 involved in the trial of this case? The indictments in this
11 case were issued on July 18th, 2012; September 12th, 2007
12 for the other two. So if you may have served as a member of
13 the grand jury that indicted the indictments in this cases,
14 please stand. Is there any member of the jury panel who is
15 a member of or a contributor to a group that has as its
16 primary concern the promotion of law enforcement and/or
17 victim's rights? These groups would include but certainly
18 not be limited to such groups as Mothers Against Drunk
19 Driving students Against Drunk Driving, Citizens Against
20 Violent Crime, the South Carolina Troopers Association, the
21 South Carolina Sheriffs Association, or any victim's rights
22 organizations? If that's true, please stand. Yes, sir,
23 name and number.

24 PROSPECTIVE JUROR: Forty-seven.

25 THE COURT: Yes.

VOIR DIRE

1 PROSPECTIVE JUROR: I'm a member of the Fraternal Order
2 of Police.

3 THE COURT: All right. You've already indicated that
4 your prior police service wouldn't affect you. Is that
5 still true?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Thank you. Name and number.

8 PROSPECTIVE JUROR: Will Bourn, 272. I've donated with
9 Sister Care.

10 THE COURT: All right. Would that affect your
11 impartiality?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Thank you. Now, does any member of this
14 jury panel know of any reason whatsoever why he or she
15 should not serve as a juror in this case with particular
16 emphasis being placed upon your ability to be fair and
17 impartial to both the State and the defense? If that's
18 true, please stand. Does the State request additional
19 questions?

20 MS. SIMPSON: No, Your Honor.

21 THE COURT: Does the defense request additional
22 questions?

23 MR. SHADD: No, Your Honor.

24 THE COURT: All right. Then the remaining members of
25 the jury panel I will declare as being qualified to serve as

VOIR DIRE

1 jurors in this case. Now, ladies and gentlemen, what we're
2 going to do at this point in time, we're going to begin to
3 call the names of those of you who have been selected by a
4 computer program randomly. We've already had that done. Of
5 course, as we've gone through this process we've eliminated
6 those that I may have excused, so we're going to be calling
7 your names as they appear on that list and as selected by
8 the program. When your name is called I'm going to ask that
9 you step down front here where the microphone is right here
10 in front of me on the left, if you'll stand there and face
11 counsel table, at that point in time the attorneys should be
12 in a position to exercise their strikes. In this case, the
13 State will have five strikes; the defense will have five.
14 We're going to pick one alternate with the State having one
15 strike and the defense having two strikes. So at this time,
16 Madam Clerk, you can begin the jury selection process. All
17 right. Madam Clerk, you can begin that process.

18 THE CLERK: Thank you. As I call your number, please
19 come down, bringing all your belongings with you. As the
20 Judge instructed, stand here in front of the microphone
21 facing the State and the defense. Give us your occupation.

22 THE COURT: Thank you. State your occupation, please,
23 ma'am.

24 PROSPECTIVE JUROR: I'm an admin assistant.

25 THE COURT: Thank you.

VOIR DIRE

1 THE CLERK: What says the State?

2 PROSPECTIVE JUROR: The State has no control. Oh, I'm
3 sorry.

4 MS. SIMPSON: Please swear this juror.

5 THE CLERK: What says the defense?

6 MR. SHADD: Have a seat.

7 THE CLERK: Number 172. Okay.

8 PROSPECTIVE JUROR: Student information systems
9 manager.

10 THE CLERK: What says the State?

11 MS. SIMPSON: Please present this juror.

12 THE CLERK: What says the defense?

13 MR. SHADD: Please swear this juror, please, in this
14 case.

15 THE CLERK: Have a seat in the jury box. Number 93.

16 PROSPECTIVE JUROR: I'm retired as a school teacher.

17 THE CLERK: What says the State?

18 MS. SIMPSON: Please present this juror.

19 THE CLERK: What says the defense?

20 MR. SHADD: Please swear this juror in this case.

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

22 Number 207.

23 PROSPECTIVE JUROR: I'm a financial planner.

24 THE CLERK: What says the State?

25 MS. SIMPSON: Please present this juror.

VOIR DIRE

- 1 THE CLERK: What says the defense?
- 2 MR. SHADD: Please excuse this juror from this case.
- 3 THE CLERK: Have a seat in the back of the courtroom,
- 4 please. Number 272.
- 5 PROSPECTIVE JUROR: Medical sales.
- 6 THE CLERK: What says the State?
- 7 MS. SIMPSON: Please present this juror.
- 8 THE CLERK: What says the defense?
- 9 MR. SHADD: Please excuse this juror there this case.
- 10 THE CLERK: Have a seat back in the courtroom. Number
- 11 56.
- 12 PROSPECTIVE JUROR: I'm currently disabled.
- 13 THE CLERK: What says the State?
- 14 MS. SIMPSON: Please seat this juror.
- 15 THE CLERK: What says the defense?
- 16 MR. SHADD: Swear the juror.
- 17 THE CLERK: Have a seat in the jury box. Number 94.
- 18 PROSPECTIVE JUROR: Radio announcer.
- 19 THE CLERK: What says the State?
- 20 MR. SHADD: Please excuse this juror.
- 21 THE CLERK: Have a seat in the back of the courtroom,
- 22 please. Number 306.
- 23 PROSPECTIVE JUROR: I'm unemployed.
- 24 THE CLERK: What says the State?
- 25 MS. SIMPSON: Please excuse this juror.

VOIR DIRE

1 THE CLERK: Have a seat in the back of the courtroom,
2 please. Number six.

3 PROSPECTIVE JUROR: I'm retired military, and I
4 currently work at Lexington Medical Center in the records
5 department.

6 THE CLERK: What says the State?

7 MR. SHADD: Please present this juror.

8 THE CLERK: What says the defense?

9 MR. SHADD: Please swear the juror in this case.

10 THE CLERK: Have a seat in the jury box, please.
11 Number 40.

12 PROSPECTIVE JUROR: Employment, human resources, York
13 Technical College.

14 THE CLERK: What says the State?

15 MS. SIMPSON: Please present this juror.

16 THE CLERK: What says the defense?

17 MR. SHADD: Please swear this juror for this case.

18 THE CLERK: Have a seat in the jury box, please.
19 Number 186.

20 PROSPECTIVE JUROR: I work in a warehouse and work at a
21 car dealership.

22 THE CLERK: What says the State?

23 MS. SIMPSON: Please present this juror.

24 THE CLERK: What says the defense?

25 MR. SHADD: Present this juror.

VOIR DIRE

1 THE CLERK: Have a seat in the jury box, please.

2 Number one.

3 PROSPECTIVE JUROR: Claims manager, South Carolina
4 Insurance Reserve Fund.

5 THE CLERK: What says the State?

6 MS. SIMPSON: Please present this juror.

7 THE CLERK: What says the defense?

8 MR. SHADD: Please excuse the juror in this case.

9 THE CLERK: Have a seat in the back of the courtroom.
10 Number 275.

11 PROSPECTIVE JUROR: Software and control systems
12 engineering.

13 THE CLERK: What says the State?

14 MS. SIMPSON: Please present this juror.

15 THE CLERK: What says the defense?

16 MR. SHADD: Swear this juror.

17 THE CLERK: Have a seat in the jury box, please.
18 Number 16.

19 PROSPECTIVE JUROR: Nursing, Palmetto Health Women's
20 Center.

21 THE CLERK: What says the State?

22 MS. SIMPSON: Please present this juror.

23 THE CLERK: Defense?

24 MR. SHADD: Excuse this juror from the trial of this
25 case.

VOIR DIRE

1 THE CLERK: For the State, I have two, for the defense
2 I have four. Number 37.

3 PROSPECTIVE JUROR: My occupation is in retail.

4 THE CLERK: What says the State?

5 MS. SIMPSON: Please excuse this juror.

6 THE CLERK: Have a seat in the back of the courtroom,
7 please. Number 75.

8 PROSPECTIVE JUROR: Retired with Southern Bell.

9 THE CLERK: What says the State?

10 MS. SIMPSON: Please present this juror.

11 THE CLERK: What says the defense?

12 MR. SHADD: Please swear this juror.

13 THE CLERK: Have a seat in the jury box, please.

14 Number 194.

15 PROSPECTIVE JUROR: I work for a security information
16 specialist.

17 THE CLERK: What says the State?

18 MS. SIMPSON: Please present this juror.

19 THE CLERK: What says the defense?

20 MR. SHADD: Please swear this juror.

21 THE CLERK: Have a seat in the jury box. Number 185.

22 PROSPECTIVE JUROR: I'm a banker.

23 THE CLERK: What says the State?

24 MS. SIMPSON: Please present this juror.

25 THE CLERK: What says the defense?

VOIR DIRE

- 1 MR. SHADD: Swear this juror.
- 2 THE CLERK: Have a seat in the jury box. Number 47.
- 3 PROSPECTIVE JUROR: Retired police officer.
- 4 THE CLERK: What says the State?
- 5 MS. SIMPSON: Please present this juror.
- 6 THE CLERK: What says the defense?
- 7 MR. SHADD: Please swear this juror on this case.
- 8 THE CLERK: Have a seat in the jury box, please.
- 9 THE COURT: For the alternate at this time. This is
10 for the alternate.
- 11 THE CLERK: Number 240.
- 12 PROSPECTIVE JUROR: I'm a state appraiser with the
13 South Carolina Department of Labor, Licensing & Regulation.
- 14 THE CLERK: What says the State?
- 15 MS. SIMPSON: Please present this juror.
- 16 THE CLERK: What says the defense?
- 17 MR. SHADD: Please swear this juror in this case.
- 18 THE CLERK: Please have a seat in the jury box.
- 19 THE COURT: Thank you, Madam Clerk.
- 20 THE CLERK: Yes, Your Honor.
- 21 THE COURT: Is there any objection to the jury
22 selection process by the State?
- 23 MS. SIMPSON: No, Your Honor, from the State, Your
24 Honor.
- 25 THE COURT: Is there any objection by the defense?

VOIR DIRE

1 MR. SHADD: No objection.

2 THE COURT: Those of you who were not selected as
3 jurors in this case, I want to thank you very much for your
4 cooperation with us this morning -- or this afternoon now.
5 We're going to allow you to go back to the jury assembly
6 room. Again, I want to thank you very much for your
7 willingness to come forward and serve on a jury in Richland
8 County this week. It's my personal belief that service on a
9 jury panel is the second highest service a citizen can
10 render. Of course, the first being service in the military,
11 and while we don't ask anybody to carry a weapon or risk
12 their lives here in jury service, it is disruptive to your
13 personal lives, and I appreciate you taking the time to
14 participate with us this week. So at this time, the
15 bailiffs will show you back to the assembly room. Have a
16 good day.

17 (Whereupon, the unselected members of the jury
18 left the courtroom.)

19 THE COURT: All right. Now, to those of you who have
20 been selected as jurors in this case, let me go over some
21 matters with you at this point in time. First of all, we're
22 going to spend the afternoon doing some pretrial matters in
23 this case, so your services will not be required for the
24 afternoon session in this matter, that means you'll be
25 excused for the afternoon and will be asked to return in the

VOIR DIRE

1 morning. I would like you to be back in the jury room
2 that's in use for this trial by 9:30, try to get there a few
3 minutes early if you can, we may try to start quickly as we
4 can. Be there at least by 9:30, and we should be starting
5 the case shortly thereafter. Now, let me tell you, when you
6 come back to the courtroom when we start the trial, you will
7 be taking an, oath. That oath is that you will decide the
8 case, to well and truly decide the issues joined in the
9 matter and render an oath according to the law and the
10 evidence. Now, the only place that you're going to hear
11 evidence in this case will be in this courtroom, and that
12 evidence will come from witnesses who have been sworn to
13 tell the truth who will testify from the witness stand right
14 over there and right in front of you and whatever evidence
15 comes into the record of the case through the testimony of
16 those witnesses, so I'm going to tell you now that it would
17 be a violation of your oath as jurors for you to try to
18 gather information outside of this courtroom about this
19 case. I realize -- and I'm not so dumb as to know that
20 people can with a touch of a button get information about
21 just about anything these days, but I also know that a great
22 deal of that information is either erroneous or also
23 contains information that would not be admissible in a court
24 of law during a trial and therefore should not be considered
25 by a jury in any manner whatsoever in reaching a verdict in

VOIR DIRE

1 a trial in a court of law. So for that reason, do not
2 attempt to gather any information about the case, and should
3 you happen to be present when there is a news report or a
4 media report or if there's something put in the newspapers
5 about this case, I'm going to ask you not to listen to it,
6 don't watch it, don't read it. In other words, don't let
7 yourselves be influenced by any outside factors in this
8 case. We've gone to a great deal of trouble already in this
9 case to select you as jurors who are open minded on this
10 case and do not have preconceived notions or ideas about the
11 case. I want you to keep that open mind. I want you to
12 keep the open mind throughout the trial during the arguments
13 of the lawyers, during the presentation of evidence. Until
14 such time as I ask you to begin your deliberations in this
15 case, you should not even discuss this case with anyone. I
16 would hope that you would realize even the most innocent
17 conversation that you might have with someone even about the
18 charges that might be involved or the personalities that are
19 involved, that could begin to color your ultimate decision
20 in this case, and that would be factors, again, from outside
21 of this courtroom. So I'm going to ask you not to discuss
22 the case with anyone, don't allow anyone to discuss the case
23 with you. It's okay to tell someone you've been selected on
24 a jury, it's also imperative that you tell them that you
25 won't discuss the case until the case is completed, and then

VOIR DIRE

1 only if you choose to because a juror is not required to
2 discuss jury service with anyone unless you choose to do
3 that. So again, don't discuss the case with anyone. Don't
4 allow anyone to discuss the case with you. Don't try to
5 gather information outside the courtroom. Don't listen to,
6 watch, or read any media reports. The last thing I'm going
7 to caution you about is should anyone attempt to contact you
8 about your service as a member of this jury, I'm going to
9 ask that you report that immediately as soon as you can to
10 court officials. Jury tampering, trying to influence a jury
11 is a felony in this state, I take it very seriously, and
12 should anyone attempt to contact you concerning your service
13 on this jury panel, please report it. I can assure you that
14 the appropriate authorities will begin the appropriate
15 investigation into that matter. So again, don't let anyone
16 talk to you about it. Don't discuss it with anyone. Now,
17 when you come back to the courtroom tomorrow I'm going to
18 ask you if you've been able to comply with the instructions
19 I've just given you, so I hope that you'll be in a position
20 to answer that you have and be able to proceed as a juror in
21 this case. So again, those are the cautions I'm going to
22 leave you with. As you leave, the bailiffs are going to
23 show you the jury room you'll be using during this trial.
24 You'll be reporting back to that jury room. Don't go to any
25 assembly room that you're using for the general jury, you'll

VOIR DIRE

1 be coming to the jury room that's in use for this case.
2 They'll show you how to get there, and that's where you need
3 to report to. Again, be there by 9:30 in the morning, we
4 should be in a position to start promptly at that time.
5 Again, thank you for your willingness to serve on this jury
6 panel. I do expect this case to last for a couple of days,
7 so I will caution you that it may take more than a couple of
8 days to try the case, but we do plan to end the case this
9 week, it's going to fit within your jury schedule, so don't
10 be concerned about that particular matter. All right. At
11 this time, I'll ask the bailiffs to show you out. We'll see
12 you tomorrow morning, be there at 9:30. Thank you very
13 much.

14 (The jury left the courtroom.)

15 THE COURT: Any objection from the State to my comments
16 to the jury?

17 MS. CAMPBELL: No, Your Honor.

18 THE COURT: Any from the defense?

19 MR. SHADD: None, Your Honor.

20 THE COURT: All right. One thing we need to clean up
21 before we break for lunch at this time, that is, I think
22 there was a change to the amendment that was announced to
23 the indictment in case number 07-3373. We had a bench
24 conference before we selected the jury, I was informed that
25 the dates should be January of 2002 and December 30th, 2005.

1 Have I correctly stated the amendment from the State's
2 perspective?

3 MS. SIMPSON: Yes, Your Honor.

4 THE COURT: And is that the defense's understanding, as
5 well?

6 MR. SHADD: It does, Your Honor.

7 THE COURT: All right. The indictment stands as
8 amended as I just mentioned. All right. Let's start
9 back -- let's give ourselves about an hour or so, we'll
10 start back at 2:15. Do we have some pretrial matters the
11 State wishes to bring up?

12 MS. SIMPSON: Yes, Your Honor. Specifically -- and if
13 I may approach, the defense already has a copy -- it's for
14 admission of the out-of-court statement, the recorded
15 statement from **victim 1**.

16 THE COURT: Is that the one I've been provided with a
17 copy of?

18 MS. SIMPSON: Yes, Your Honor.

19 THE COURT: All right. Anything else from the State's
20 perspective?

21 MS. SIMPSON: We have a couple of, I guess, suppression
22 issues --

23 THE COURT: All right.

24 MS. SIMPSON: -- just my -- regarding some of the
25 subject manner of the abuse of the witnesses.

1 THE COURT: And, defense, do you have some motions you
2 wish to take up this afternoon?

3 MR. SHADD: Not at this time but depending on what the
4 State talks about.

5 THE COURT: All right. I'm going to try to -- how long
6 is this interview?

7 MS. CAMPBELL: Probably -- I think, Your Honor, about
8 around 45 minutes.

9 THE COURT: All right. Let's say we'll come back at
10 2:30, that will give me a little time to go over that, try
11 to listen to that.

12 MS. CAMPBELL: In addition, Your Honor, it's the
13 defense's position -- we also have -- the defendant made two
14 statements that we would be seeking to introduce.

15 THE COURT: All right. And have you made the defense
16 aware of the statements you intend to introduce?

17 MS. CAMPBELL: Yes, sir.

18 THE COURT: Okay. We'll be back at 2:30 this
19 afternoon. Court is in recess for lunch at this time.
20 Thank you very much.

21 (A lunch break was taken.)

22 THE COURT: It's my understanding the State had some
23 matters you wished to take up before the Court.

24 MS. CAMPBELL: Yes, Your Honor. There were two
25 statements taken in the case. One was given to Investigator

1 Metz, and one was given to Investigator Carter on more
2 recent charges. Your Honor, I don't know if the defense is
3 contesting their voluntariness or if we needed to have a
4 hearing on that matter, I didn't ask him before we left.

5 THE COURT: Counsel?

6 MR. SHADD: Beg the Court's indulgence.

7 MS. CAMPBELL: This would be the written statement and
8 then the oral statements are one of the two. He said he had
9 the accusations because the people in the church were
10 jealous of him.

11 (Break in proceedings.)

12 MR. SHADD: Your Honor, that's not an issue, his
13 voluntariness, no, sir.

14 THE COURT: It's not an issue.

15 MR. SHADD: No, sir.

16 MS. CAMPBELL: Your Honor, we have marked the two
17 advice of rights forms as State's Exhibits 1 and 2, and then
18 the actual written statement of the charges, State's Exhibit
19 3 are.

20 THE COURT: All right. Thank you, ma'am.

21 MS. CAMPBELL: Your Honor, the only other issue we
22 have, I believe, is the matter that we had handed up the
23 disc before you. Our forensic person, Heather Smith, is in
24 the middle of a forensic interview, this has gone on a
25 little bit longer, she is on her way here. She will be here

1 as soon as she can get here.

2 THE COURT: All right.

3 MS. CAMPBELL: Then we can take her testimony.

4 THE COURT: Do you expect her in a few minutes?

5 MS. CAMPBELL: I'm hoping --

6 THE COURT: I'm trying to decide whether to stay on the
7 bench or go back in chambers.

8 MS. CAMPBELL: I think I would go back to chambers,
9 Your Honor.

10 THE COURT: Okay.

11 MS. CAMPBELL: We can't tell you exactly how long it
12 will be.

13 THE COURT: Okay. Then the Court will be in recess
14 until she arrives.

15 MS. CAMPBELL: Thank you, sir. Oh, does the defense
16 have any motions? I apologize, Judge.

17 THE COURT: Earlier he had said no. That's the reason
18 I'm -- I'll be glad to hear from you if there's something
19 you would like.

20 MR. SHADD: Right now it's still no, Your Honor.

21 THE COURT: All right. Thank you very much.

22 MS. CAMPBELL: Thank you, Judge.

23 THE COURT: All right.

24 (Break in proceedings.)

25 THE COURT: We're on the record in the case of the

1 State of South Carolina versus David Carmichael. I have a
2 motion from the State concerning an out-of-court statement.
3 I believe this involves a statement of **victim I**, or **victim I**
4 **;** is that correct?

5 MS. SIMPSON: That's correct, Your Honor.

6 THE COURT: Yes, ma'am. I'll be happy to hear from
7 you.

8 MS. SIMPSON: Thank you. May it please the Court? I
9 am going to hand up Court's Exhibit 1 which is the
10 curriculum vitae for Heather M. Smith, the forensic
11 evaluator in this case. The defense has a copy, as well.

12 THE COURT: All right. Any objection to the Court
13 receiving this as an exhibit in the matter?

14 MS. SIMPSON: No objection, Your Honor.

15 THE COURT: All right. It will be received as an
16 exhibit in the matter.

17 (The CV was received as Court's 1.)

18 THE COURT: Yes, ma'am, you may proceed with your
19 motion.

20 MS. SIMPSON: Thank you, Your Honor. The State is
21 offering this evidence pursuant to 17-23-175 which does
22 permit the admission of an out-of-court statement by a child
23 under the age of 12 if that statement complies with certain
24 factors which we believe, Your Honor, have been met. They
25 are clear on the video. Specifically, it requires -- or

1 certain things for Your Honor to consider is whether the
2 statement was elicited by leading questions. In this case,
3 it was not, whether the interviewer has been trained in
4 conducting investigative interviews of children. I believe
5 Ms. Smith is more than qualified, she has conducted hundreds
6 to thousands of interviews. Additionally, whether the
7 statement contains a detailed account of the offense. We
8 believe it does, Your Honor, as well as that is clear from
9 the video and --

10 THE COURT: Let me -- let me stop you right there.
11 Mr. Shadd, I've been looking at the curriculum vitae of the
12 interviewer, is there any objection to her being declared to
13 be qualified to conduct such interviews?

14 MR. SHADD: No, Your Honor. I've been around Ms. Smith
15 before and around her, I'm comfortable with her
16 qualifications, she has testified many times. So on behalf
17 of the defendant, we have no opposition to her
18 qualifications at this time.

19 THE COURT: All right. She will be then recognized by
20 the Court as qualified in the area. Now, if you'll tell me
21 the arguments in favor of admitting the statement.

22 MS. SIMPSON: Thank you, Your Honor. At this point,
23 based on the video which was submitted for your review, we
24 believe that we have met the requirements of South Carolina
25 code section 17-23-175(b). Additionally, Your Honor, the

1 victim will testify in this case prior to the admission of
2 that testimony -- or of the video into evidence, as well as
3 the forensic interviewer.

4 THE COURT: I have reviewed the video, and I did note
5 there were several occasions that the interviewer asked
6 about other children and other matters. Can you tell me how
7 you intend to handle that?

8 MS. SIMPSON: Yes, Your Honor. We are prepared to --
9 and actually have a transcript that was prepared by our
10 office, just a law clerk -- but we can redact those portions
11 from the video.

12 THE COURT: So it's your intention to redact any
13 references to other incidents involving other females
14 besides the one being interviewed?

15 MS. SIMPSON: Correct, Your Honor.

16 THE COURT: Okay. All right. I'll be happy to hear
17 from the defense concerning the admissibility of the
18 recorded statement.

19 MR. SHADD: Thank you, Your Honor. May it please the
20 Court?

21 THE COURT: Yes, sir.

22 MR. SHADD: We just have a general objection to it,
23 Your Honor. We believe because the victim is here to
24 testify, of course, she will be subjected to cross
25 examination and examination by the State. This would be

1 just improper bolstering of her testimony, what she said
2 when she was 11 and three quarters years of age, almost at
3 that 12-year-old stage and --

4 THE COURT: But she was under the age of 12 when she --

5 MR. SHADD: Yes, sir. Chronologically, she was under
6 the age of 12 when her interview was taken by Ms. Smith with
7 ARC. We know the purpose of this is to -- when we have
8 children of that age, such a tender age that there's a
9 possibility that they may not have a good depth of recall,
10 and of course, knowing there's a difference between truth
11 and telling a falsehood. In those certain circumstances you
12 may want to have that out-of-court statement to come in
13 because it has -- inherently, it has some type of
14 particularized trustworthiness to it. Well, I guess the
15 beauty of this that you have, Your Honor, is this case is
16 not -- being brought some six years later. She is a grown
17 woman now, she can surely tell what experiences she claims
18 that she had with my client and doesn't necessarily need the
19 video recording of what she said back at 11 years old. So
20 we would in general deny, object to, and ask that you keep
21 out this out-of-court video recording. We have the witness
22 here, which is the best evidence, which we expect her to be
23 here.

24 THE COURT: Yes.

25 MS. SIMPSON: Yes, Your Honor, and just for the record,

1 on [REDACTED] of -- well, excuse me, [REDACTED] victim I [REDACTED]'s date
2 of birth is [REDACTED] [REDACTED] [REDACTED]. Additionally, Your Honor, our
3 legislature is very clear with these videotape evidence
4 where certain requirements are met. Additionally, our
5 courts have addressed the improper bolstering argument that
6 was made by defense in State v. Russell which is at 679 SE
7 2nd 542, I believe that is an appellate case and found that
8 it did not amount to improper bolstering, and additionally,
9 that the videotape evidence is highly probative. Where
10 these are met, I understand defense counsel's arguments, but
11 our legislature is absolutely clear. This videotape should
12 be admitted into evidence.

13 THE COURT: All right.

14 MR. SHADD: Your Honor, the legislature is clear that
15 you have this option, this just means that this -- it
16 doesn't necessarily mean it has to be admitted. I think we
17 -- the legislature left that to your discretion and we'll
18 follow that.

19 THE COURT: All right. Well, I have reviewed the
20 statement, and I do find that the statement was not elicited
21 by leading questions. It does appear from the background of
22 Ms. Smith that she has been trained in conducting these
23 types of interviews and is qualified to do so. I do find
24 that the statement contains a detailed description of the
25 alleged offense and it did have coherent instances. It was

1 understandable and followed a logical progression. In this
2 case, the participant of this will be testifying, is my
3 understanding in court. For the foregoing reasons I do find
4 that it is admissible and will allow it to be admitted with
5 the exception of those comments or questions that had to do
6 with someone else's accounts of similar events and
7 information involving what may have happened to other
8 alleged victims.

9 MS. SIMPSON: Thank you, Your Honor.

10 THE COURT: Do you need this disc? Is this the disc
11 you intended to use?

12 MS. SIMPSON: No, we have a copy.

13 THE COURT: Okay. You don't need that back?

14 MS. SIMPSON: No, Your Honor.

15 THE COURT: All right. I'm going to have the
16 curriculum vitae of the interviewer part of the record.
17 It's marked already and part of the record. All right.
18 Anything further from the State before we go forward?

19 MS. SIMPSON: Nothing further from the State, Your
20 Honor.

21 THE COURT: Mr. Shadd, any motions from the defense?

22 MR. SHADD: No, Your Honor. In light of the exceptions
23 from the defense that's going to be redacted, that's all I
24 have.

25 THE COURT: I understand. That's quite all right.

1 Now, I believe the defendant is in custody at this time; is
2 that correct?

3 MR. SHADD: Yes.

4 THE COURT: All right. Then we'll adjourn and resume
5 at 9:30 in the morning. Thank you very much.

6 MS. SIMPSON: Thank you.

7 MR. SHADD: Thank you.

8 (Court adjourned for the evening and resumed at
9 9:30 a.m. on October 9, 2012.)

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

12 MS. CAMPBELL: One housekeeping matter. I was remiss
13 to bring to the Court's attention yesterday, with the last
14 victim she was shown a photo lineup, however she knows the
15 defendant by name and sight and ID is not an issue in this
16 case. I have consulted with defense counsel and he agrees
17 that ID is not an issue so we won't be offering the
18 out-of-court ID, however we will be offering the in-court
19 ID.

20 THE COURT: I understand. Is that correct, Mr. Shadd?

21 MR. SHADD: Yes, sir, Your Honor.

22 THE COURT: Defense ready?

23 MR. SHADD: Yes, Your Honor. I just need to let you
24 know that I inadvertently left off a potential witness, her
25 name is Tamara Green. I spoke with opposing counsel

1 yesterday and they said they don't have a problem with that.
2 I guess when the jury comes back in if you'll ask if they
3 recognize that name.

4 THE COURT: Tamara Green?

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: Any objection as to the Court inquiring of
7 the jury concerning that individual?

8 MS. CAMPBELL: No, Your Honor.

9 THE COURT: All right. Anything further before we
10 bring the jury in?

11 MR. SHADD: No, sir.

12 THE COURT: All right. Let's bring the jury.

13 (The jury returned to the courtroom.)

14 THE COURT: Ladies and gentlemen, I sure hope everyone
15 had a good evening. And yesterday when you left the
16 courthouse I gave you some instructions concerning your
17 behavior during the break. If there was any member of the
18 jury panel who had any difficulty in complying with the
19 instructions that I gave you please stand. All right. The
20 record will reflect that all jurors have been able to comply
21 with the Court's instructions during their absence from the
22 courthouse. Yesterday I went over with you a list of
23 witnesses that were potential witnesses in this case and
24 this morning I was informed that there was an individual
25 that needed to be added to that list, and that name is

1 someone named Tamara or Tamara Green, so concerning that
2 particular individual, I'll ask the same questions that I
3 asked of you yesterday, I remind you that you remain under
4 oath at this time. Has any member of the jury panel been
5 related by marriage, are you related by blood or have you
6 had a close social or a personal relationship with an
7 individual known as Tamara or Tamara Green? If that's true,
8 please stand. It appears that none of the jury is
9 acquainted with that individual. At this point in time, I
10 told you that the Clerk would be swearing you concerning
11 your duties and responsibilities as jurors in this trial and
12 at this time I will ask the clerk to swear the jury panel.

13 (The jury was sworn.)

14 THE CLERK: Thank you.

15 THE COURT: Now, if there was any member of the jury
16 panel who either failed or refused to take the oath that the
17 clerk just administered, I'd ask that you now please stand,
18 so if there's anyone who failed to take that oath, please
19 stand. All right. It appears that all members of the jury
20 have been sworn for purposes of your participation in this
21 trial. Now, before we begin the trial of the case there's
22 some matters that I want to go over with you because
23 probably for some of you this is your first experience in
24 ever serving on a jury in the actual trial of a case and so
25 I'm going to speak primarily to those individuals. Some of

1 you may have had previous experience on a jury panel, but
2 for those of you who have not been in this position before
3 probably most of what you might know about what goes on in
4 courtrooms and how trials are conducted and what juries do
5 you would have learned from such sources as books that you
6 might have read or television shows that you might have
7 seen, and while those sources of information are
8 interesting, they're always entertaining because they're
9 written to entertain you. They have interesting twists in
10 the stories and the plots change and try to keep your
11 attention. I tell jurors that it never ceases to amaze me
12 that on television you can have an event occur, a trial be
13 conducted and the whole matter wrapped up in an hour and
14 they still stop about five or six times for commercials in
15 the meantime. Obviously if you think about it, they take
16 what's called a literary license with what goes on in the
17 courtroom, in other words the author of those scripts makes
18 the story fit the timeframe and what goes on in the
19 courtroom as well and that's because those sources of
20 information are intended to entertain you. Now, what you're
21 engaged in today is an exercise that's intended for anything
22 but your entertainment. I hope you realize that you're
23 engaged in what's a fundamental part of our democracy, a
24 situation where ordinary citizens are taken from your
25 day-to-day lives, you're brought into the courtroom and

1 you're asked to perform important functions for the judicial
2 system, important decision making functions. I will tell
3 you that if you look around the world today most of the
4 judicial systems and most of the countries don't allow
5 direct participation by citizens in the decision making
6 process that goes on in the courtrooms of those countries.
7 Our system is different, it's based on a document known as
8 the Magna Carta which was signed in the year 1215 in
9 England, that means in about three years it will have an
10 800th birthday, so it's a long tradition of jury trials that
11 exists in our jurisprudence and I hope you appreciate the
12 fact that you're allowed to participate in these decisions
13 in this country, I hope it's a tradition we never lose in
14 this country. Now, what you're engaged in is a search for
15 the truth, it's an effort to see that justice is done
16 between the parties that are involved in this case, in this
17 case the State of South Carolina which has brought charges
18 against one of its citizens in this matter. And this
19 courtroom is a place of honor, it's dedicated to the
20 preservation of citizen's rights through the laws and the
21 constitution of both this state and of the United States.
22 Now, I hope you realize that searching for the truth is
23 sometimes slow, sometimes it's a repetitive exercise. If I
24 had asked you earlier and if I met you in the hallway and
25 said what would you expect a search for the truth to look

1 like I would have expected you to say well it ought to be
2 slow, it ought to be deliberate, sometimes it might even be
3 repetitive. That's the kinds of things that you do to
4 ensure that you're going to get the truth out in any
5 situation and that's what you're engaged in here again is a
6 search for the truth. Now, the attorneys that are going to
7 appear in this case are here to represent their client's
8 interest and I'm sure they'll do an excellent job in
9 presenting their client's cases to you in the trial. But
10 first and foremost the attorneys are also officers of this
11 court, they have appeared before some tribunal in this state
12 and taken an oath as prescribed by law and that oath
13 includes an oath that they will assist you in your search
14 for the truth during this trial. That means that you can
15 expect from that they they'll act in a reasonable, a
16 professional and in an ethical manner in the presentation of
17 their client's cases before you during -- this case. Now,
18 I'm going to remind you that you've come before this Court
19 today and now you've taken an oath, and your oath is to
20 decide this case based upon the law and the evidence. You
21 are expected to act in a reasonable, a professional and in
22 an ethical manner in the discharge of your duty as jurors in
23 this case. I told you yesterday and I will tell you again,
24 I want to thank you very much for your willingness to accept
25 this responsibility that you have as jurors in this case

1 today. What I'm telling you now is not intended to be a
2 charge concerning the law in this matter. Later on when all
3 the arguments have been made and all the evidence has been
4 presented, once that's been completed I will charge you
5 concerning the law that you're to apply in this case. What
6 I am going to tell you about is some of the duties and
7 responsibilities that we all have in this trial and what you
8 might expect as far as the procedure that we'll follow in
9 this case. I started yesterday by going over with you the
10 three indictments that are in this case all of which allege
11 the same offense, that is a lewd act upon a minor. I've
12 explained to you that an indictment is not evidence in the
13 case and can't be used by you as evidence of any wrongdoing,
14 it's simply the document that brings the case into the court
15 and to the indictments the defendant has pled not guilty.
16 Now, that plea under the law and the constitution of this
17 state and of the United States puts the burden of proof in
18 this case solely upon the State. It's the State's
19 obligation to prove the allegations that are contained in
20 the indictments by proof beyond a reasonable doubt, and I'll
21 explain those concepts to you when I charge you concerning
22 the law in this case, but I will tell you at the close of
23 this trial it will be your responsibility to make a
24 determination as to whether or not the State has met its
25 burden of proof concerning the allegations in this matter.

1 I will tell you that a defendant in this State is never
2 required to prove himself or herself innocent of any charge
3 that's brought before this Court. It's your purpose as
4 jurors to find and determine the facts in this case, and I'm
5 going to tell you a couple of times during this trial that
6 you are the sole judges of the facts in this case. Now,
7 it's going to be my job to be the presiding officer over
8 this trial, and as the presiding officer I will have the
9 duty of ruling on maybe objections that are raised during
10 the trial, that's concerning the admissibility of evidence
11 or perhaps the appropriateness of questions that have been
12 asked, things of that nature, and I'm going to ask you to
13 please not take anything that I do in the discharge of the
14 duties to somewhat indicate that I have a preference one way
15 or the other as to how you determine the facts in this case.
16 You see, the law does not allow a presiding judge on that
17 subject, I don't have an opinion as to how you determine the
18 facts in this case, it will simply be me doing my job to
19 preside over the case and make the rulings that are required
20 of me in order to see that the case moves forward under the
21 rules of evidence and the procedure that we have to follow
22 in the courts. Now, you are to determine the facts from the
23 testimony that you will hear and from any other testimony
24 that's placed in the record of the case through that
25 testimony, and it's up to you to determine the inferences

1 that you feel can be properly drawn from the evidence that
2 you will hear during this trial. And I will tell you that
3 it's especially important that you perform the duty that you
4 have both conscientiously and diligently because under our
5 system of justice ordinarily there is no means by which a
6 determination of facts made by a jury can ever be corrected
7 or changed. Now, the same law that makes you the sole
8 judges of the facts makes me the sole judge of the law in
9 this case and at the close of the trial I'll give you the
10 law that you should apply to the facts as you determine
11 those facts to be. So if you came into the courtroom with a
12 notion as to what the law is or somehow what it ought to be,
13 I must tell you that you need to leave that notion outside
14 of the jury room before you begin your deliberations. It's
15 your obligation under the oath that you've taken to take the
16 law exactly as I give it to you, then apply it to the facts
17 as you determine those facts to be, that should put you in a
18 position to render a just, true and fair verdict at the
19 close of this case. Now, until you begin your
20 deliberations, and I've touched on this already, I'm going
21 to ask you not begin any discussions about this case even
22 among yourselves. Because during many of our breaks if we
23 go to lunch or whatever we do, if you begin to discuss the
24 case you'll be discussing the case based on partial
25 information, and I'm going to ask you not to begin any of

1 the those discussion until you have heard all of the
2 testimony in the case and you've seen all of the evidence to
3 be presented and I've charged you concerning all of the law
4 that you should apply to those facts. Only then will you
5 have the tools that you need to begin an appropriate and an
6 intelligent discussion of the questions that are going to be
7 before you at the close of the trial. Any discussion that
8 you may have before that time might begin to color your
9 ultimate decision based on partial information. So again,
10 I'm going to ask you not to discuss any aspect of the case,
11 anything about the case until I've asked you to begin your
12 deliberations. Because again, you've been selected as fair
13 and impartial jurors with an open mind concerning the case.
14 Keep your mind open until such time as I ask you to begin
15 the decision making process at the close of the trial. Now,
16 I've already told you that you shouldn't discuss the case
17 among yourselves, you shouldn't try to gather information on
18 your own because again, the only evidence in this case will
19 be presented during the trial from the witness stand in this
20 courtroom. So don't try to gather information on your own
21 and don't allow any one to discuss the case with you during
22 the trial, and you shouldn't read, watch or listen to media
23 reports. Now, it's your solemn responsibility at the close
24 of this trial to determine the guilt or the innocence of the
25 defendant on these charges and your verdict must be based

1 solely on the evidence presented to you in this trial and
2 the law as I instruct to you at the close of the trial.
3 Now, I want to tell you in a few minutes we're going to
4 begin this case with an opening statement made by the
5 attorneys, at the close of the evidence I'll allow the
6 attorneys to again make a closing argument or statement, and
7 I'm going to caution you that statements made by lawyers do
8 not constitute evidence in the case. At the beginning of
9 the trial the statement will tell you what perhaps the case
10 is about and what they might expect to prove, at the close
11 of the case they'll sum up the evidence that you've heard
12 from their client's perspective or position. But again,
13 statements made by lawyers in court are not evidence. The
14 evidence is the testimony of witnesses who have been sworn
15 to tell the truth who will testify from the witness stand
16 and whatever documents or other pieces of evidence come into
17 the record of the case through the testimony of those
18 witnesses. Now, from time to time during the trial I've
19 told you that it will be my job to rule upon questions
20 concerning the admissibility of evidence or questions that
21 have been asked, and I will tell you that if it's my belief
22 that the discussions I might have with the attorneys, if
23 they may go into matters which I think may not be admissible
24 under the rules that govern the rules of evidence, if I
25 think the discussion is going in that direction I'll ask you

1 to leave the courtroom while I have those discussions with
2 the lawyers. I'm going to caution you now, don't take from
3 the fact that I've asked you to step outside the courtroom
4 to indicate that I have an opinion one way or the other
5 concerning the facts. I've already told you, I don't have
6 an opinion on that subject and the law doesn't allow me an
7 opinion on that judgment, I hope you realize that it would
8 be me doing my job in that case. In other words, it's my
9 job to see that you decide the case only based on properly
10 admitted evidence under the rules that govern the admission
11 of evidence. So if I believe the discussions are going to
12 be about matters that are not admissible I'll ask you to
13 leave the courtroom so that you won't hear those things.
14 Once I've had the discussions with the lawyers I'll make a
15 ruling one way or the other on the appropriateness of the
16 questions that are being asked. At that time I'll ask you
17 to come back into the courtroom, I'll announce my decision
18 and we'll proceed with the trial. But again, if I've asked
19 you to leave the courtroom it's just me doing my job, don't
20 take any inferences from that that I have an opinion as to
21 how you ought to determine the facts in this case. Now,
22 I've told you, you're the sole judges of the facts and I
23 will tell you in order to determine the facts in this case
24 you're going to have to necessarily have to make a
25 determination as to the credibility or the believability of

1 the testimony that you hear and that's what credibility
2 means, it means believability, and I'll tell you to use your
3 own good common sense in making those decisions. Every
4 single day of your life you make common sensible decisions
5 as to what you choose to believe and what you choose not to
6 believe, today is no different than any other day in your
7 life. Use your own good common sense to evaluate the
8 testimony that you will hear in this trial. As the sole
9 judges of the facts you have the right to believe all or
10 part or none of what a witness may tell you from the witness
11 stand. You have the right to believe one witness against
12 all the others or all the others against one witness.
13 You're the sole judges of the facts and you're the sole
14 judges of the credibility of the testimony that you hear.
15 You have the right to consider such factors as whether or
16 not a witness may have a stake in the outcome of a case,
17 whether or not you believe a witness may have a bias or
18 prejudice either for or against one side of the case or the
19 other. You have the right to evaluate the testimony from
20 the standpoint of whether the witness actually had the
21 ability to know the facts about which they are testifying
22 and some people think it's the most important factor of all,
23 but that's up to you to judge. The witness stand in every
24 courtroom I've ever been in, and I've been in a lot of them,
25 is always right in front of the jury box, that's so that you

1 can watch the witnesses as they testify, evaluate how they
2 delivery their testimony, the way they speak. So in other
3 words you have the right to consider anything that's in the
4 record of the case including the appearances of the
5 witnesses as they testify in making a determination as to
6 the credibility or believability of the testimony that you
7 hear. So pay close attention to what goes on in the
8 courtroom, watch what goes on, be in a position to recall
9 the testimony when you begin your deliberations, be in a
10 position to judge the credibility of the testimony that you
11 hear during this case. So try not to let your thoughts
12 wonder. We'll take breaks from time to time so that we'll
13 try to keep you fresh and not too bored or anything of that
14 nature, but pay attention to what you hear and be in a
15 position to discuss those issues with your other fellow
16 jurors when I ask you to begin deliberations at the close of
17 the trial. Now, I have not appointed a foreperson of your
18 jury and I know on television they do that right away at the
19 beginning of the trial, I don't do that. I appoint the
20 foreperson of the jury when I charge you concerning the law
21 in the case. I do that for a couple of reasons; one, it
22 gives me a chance to evaluate the jury and determine who I
23 think might be the best person for that position. But I
24 also want to emphasize to you, the jury, that at the close
25 of the trial your verdict has to be unanimous. Each and

1 every one of you will have to agree upon the verdict before
2 it's the verdict of the jury, that means there's not any
3 juror in your group that's more important than any other
4 juror, including the foreperson. Each of you has an equal
5 say in the outcome of the case and as the trial goes on
6 along I'd like each of you to think that you might have to
7 be the foreperson of this jury. So pay attention to what
8 goes on, be in a position to discuss it with each other
9 because again, your verdict has to be unanimous in order for
10 a jury to reach a verdict, therefore each of your opinions
11 is important in making a decision at the close of the trial.
12 Now, that concludes my opening comments to you and I want to
13 be sure that neither side thinks that I have misspoken in
14 what I have told you. Is there any objection to my comments
15 from the State?

16 MS. CAMPBELL: No objection, Your Honor.

17 THE COURT: Any objection from the defense?

18 MR. SHADD: None, Your Honor.

19 THE COURT: All right. Now, ladies and gentlemen, I
20 have explained to you that the State has the only burden of
21 proof in this case, that is to prove its case beyond a
22 reasonable doubt and for that reason we let the State go
23 first when we make the opening arguments followed by the
24 defense and the presentation of evidence. Again, the State
25 goes first again followed by any evidence that the defense

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1 chooses to put up, and then at the close of the trial we'll
2 have closing arguments and following the closing arguments
3 I'll charge you concerning the law. So those are the steps
4 that we'll go through as this case proceeds in front of you
5 today. So at this point in time the State may make its
6 opening comments. You may proceed, Counselor.

7 MS. SIMPSON: Thank you, Your Honor.

8 THE COURT: Yes, ma'am.

9 MS. SIMPSON: May it please the Court? The face of a
10 predator, what exactly does it look like? Well, for the
11 victims in this case, **victim 2** **_____** **victim 1** **_____** and
12 **victim 3** **_____** it wasn't the stranger on the streets
13 hiding under the cover of darkness or the unknown man
14 wearing a mask and carrying a gun, it was the face of a
15 person that they were supposed to be able to trust, a close
16 family friend considered to be like family, they fondly
17 recognized to him as J. He served as the minister of music
18 in their respective churches often leading the praise and
19 worship in those churches. Their parents respected him,
20 trusted him, their friends and other family members. The
21 face of their predator was that of the defendant, David
22 Carmichael. And he didn't need to hide under the cover of
23 darkness or cover his face with a mask or carry a gun to
24 commit these crimes because he had the greatest weapon of
25 all, the most powerful tool in the commission of what is

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1 often termed a crime of secrecy, he had the veil of trust
2 and a position of power that only an adult can have over a
3 child. And we are here today because of his actions,
4 because of what he did. Now, there are three victims in
5 this case, an assault for [victim 2] and [victim 1] occurred some
6 years ago. With respect to [victim 1] he assaulted her when
7 she was eight or nine and as to [victim 2] from the time she
8 was nine to 11, and then finally [victim 3] [redacted] on
9 August 28th of 2011. Now, in order to understand what
10 happened to these little girls you have to start in the
11 middle so to speak at the point where [victim 2] and [victim 1]
12 finally disclosed the secret that he they had been keeping.
13 Now, they were best friends, good friends, they grew up
14 together, they grew up in the church and they were very
15 religious, went to church, their families went to church.
16 And you're going to hear all these families, they are very
17 close, their church community was very close. The defendant
18 served as a minister in [victim 1] and [victim 2]'s church, and on
19 this day [victim 2] will tell you that she doesn't quite
20 remember what the sermon was about, but it was the word that
21 moved her. So as her friend, [victim 1] went to what they
22 call I think the girl's lounge she followed her in there.
23 "I have something to tell you but you have to pinky promise
24 that you won't tell," a pinky promise. At that point
25 [victim 2] disclosed that Junior, the defendant, had been

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1 touching on her. [victim 1] responds, "You're not the only
2 one, he's touched on me too." And so they each tell a
3 little bit about what happened to them. But at that point
4 [victim 1]'s cousin comes into the lounge, they broke up, they
5 leave. And you're going to hear about how their parents
6 found out and you're going to hear the circumstances
7 surrounding the disclosures in this case and how it was
8 reported to police, and once it was reported this case was
9 turned over to an investigator to investigate this case.
10 And sexual assault cases are somewhat unique and they have
11 to be investigated. And so the investigator interviewed
12 [victim 2] [redacted] and you're going to hear about that and she
13 disclosed what had happened to her, some of what had
14 happened to her and [victim 1] And [victim 1] because of her
15 age, she was a little bit younger, was referred to The
16 Assessment Resource Center which you'll probably hear
17 referred to as The ARC throughout this case, and there she
18 was interviewed by a forensic interviewer, someone who is
19 trained in interviewing children about these types of cases
20 and child abuse and you're going to hear about her
21 disclosures and what happened to her. And each of these
22 little girls is going to take the witness stand before you.
23 They're a little more grownup now but what happened to them
24 happened to them when they were a child. Remember that
25 throughout this case. So the investigator continues the

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1 investigation, and after having the disclosure from [victim 2]
2 and [victim 1] he goes and arrests the defendant. He advises
3 him of -- I apologize -- he advises him of his rights and
4 charges him, and the defendant says, "I didn't do this,
5 they're making this up. Why? Because they're all jealous
6 of me. Why are they jealous?" The defendant couldn't give
7 a reason, I submit because there wasn't one.. But the case
8 doesn't end there because this was back in 2006. So the
9 defendant goes about his way and the victims continue on
10 too, of course, a little piece of them has been taken and
11 they carry that still today, what the defendant took from
12 them. But he moved forward, eventually left their church
13 and went to another church, and it was there that again he
14 established that reputation for someone who could be
15 trusted. He became friends with [victim 3] parents, close
16 friends, and again he was the minister of music in this
17 church. He actually hung out with Patrick Robinson,
18 [victim 3] father, quite a bit, so much so that he even went
19 on some of their family vacations. Mr. Robinson and
20 [victim 3] mother, Cynthia [redacted], trusted the defendant.
21 You're going to hear about what happened to her on
22 August 28th of 2011 when he sexually assaulted her. Now
23 I'll stop here because it's important to understand exactly
24 what some of these little girls disclosed because you're
25 going to hear about it and it's going to be hard for them to

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1 talk in front of 13 jurors and everyone else in this
2 courtroom. They're going to take this witness stand and
3 you're going to hear about what happened to them, and you're
4 going to hear from **victim 2** he assaulted her on several
5 occasions, as I said, it beginning when she was nine or ten.
6 And on one of those occasions he was actually watching them,
7 and she had siblings, brothers and sisters, he was watching
8 them and he sent her siblings to their rooms, "But hold on,
9 you can't go back there, stay here with me." And he made
10 her stand in front of him, and she remembers because she was
11 wearing her favorite nightgown and he began to run over the
12 nightgown on her body, all over her body and then he went up
13 underneath her nightgown and began rubbing on top of her
14 panties. This little girl who didn't really know what was
15 happening because this was someone she was supposed to be
16 able to trust, continued to rub, she looked back and saw his
17 private part sticking up and sticking out. He continued to
18 rub and he slid her panties to the side and rubbed on her
19 vaginal area and he attempted to sit her on his lap but it
20 wouldn't go in so he put her back down. And she remembers
21 that a short time later everyone returned home and she's
22 going to tell you about that. She's also going to tell you
23 about some other occasions in which he touched her and said
24 things to her. And one of the final times when she was
25 actually staying with the defendant's sister, Davetta Green,

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1 who you will learn was her mother's best friend. So her
2 mother's best friend, her brother is sexually assaulting
3 **victim 2** and has been for awhile, but on this day he's not
4 there while she's watching, she goes to sleep but when she
5 wakes up the defendant has come home and he's rubbing on her
6 playing with her. He's used to it now because she knows he
7 knows that she won't say anything, because before this she's
8 heard from him that if you tell anyone you'll be the one to
9 get in trouble, not me, you'll be the one. It's a heavy
10 burden for a little girl to bear. So he's rubbing on her,
11 "Stop, no, don't," trying to get in her pants and unzip
12 them, she's a little older, she's moving, "No, stop, don't."
13 Because his sister is right next door asleep. How bold must
14 he be? Because he continues and he's begging her, "Please
15 get on top of me, please get on top of me. Stop, don't."
16 And lucky for her there's the sound of a horn beeping and
17 it's her aunt who is coming to pick her up. So she gets up
18 to go out the door and he let's her, he stops, but on the
19 way out she's a little bit older now the threats of trouble
20 just aren't quite enough, "If you tell anyone I will kill
21 you." And she leaves, she gets into the car and her aunt
22 asks her because she knows she observes, "What's wrong?
23 Something is wrong. Nothing." She doesn't say anything
24 until that day after that sermon at the church. So what did
25 he do to **victim 1** Well, her assault occurred when

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1 she was eight or nine years old. Again, the defendant
2 respected, trusted by her family, baby-sitting her. She was
3 asleep on the couch and she woke up, she remembers waking up
4 most of all, and she was laying in his lap. He had his
5 penis out and her hand was on it and he had it against her
6 stomach rubbing it. "How did it feel? It felt soft and
7 lumpy. I was scared. I didn't know what to do." And
8 you're going to have that interview, you're going to see
9 when she was interviewed and what she said and I implore
10 you, I ask you to judge her demeanor, I ask you to watch
11 that video and watch that little girl. So as he's rubbing,
12 again the sound of someone coming, "Just go," he tells her,
13 she runs down the hall and pulls up her pants too scared to
14 tell because this is her parent's friend, this is a grownup,
15 this is an adult. And they're going to tell you what
16 happened to them. So now we fast forward up to 2011 with
17 **victim 3** **██████████** What happened to **victim 3** Well, on this
18 day as I told you they were very close with friends and
19 family and they were on their way to a cookout in North
20 Carolina, it was actually a cookout with her stepdad,
21 Patrick, his family and the defendant was going to come with
22 them and her mother couldn't go because she was working and
23 her other siblings had other things to do but she was going
24 to a cookout and he was the friend. On the way the
25 defendant drove Mr. Robinson's car up to North Carolina and

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1 this was early afternoon and they spent the better part of
2 the day and into the evening at the cookout spending time
3 with friends and family, and then they leave. It's late,
4 after 10:00 they leave and they're driving for several
5 hours. As they get back, as they get closer Mr. Robinson
6 was driving, [victim 3] is in the backseat and the defendant
7 is in the passenger's seat, and it's leaned back, you're
8 going to hear about this because [victim 3] is going to tell
9 you, the passenger seat was leaned back in the car and he
10 had his hand behind him. Now, Patrick, he's driving, he's
11 been driving a couple of hours, the music is on, it's dark,
12 he thinks everyone is asleep. Well, [victim 3] wakes up, she
13 feels something, maybe it's my foot, she thinks, but then
14 she realizes the defendant is rubbing on her. This is in
15 August, she has on a pair of shorts and a shirt and her
16 panties and he's rubbing on her legs under her shorts trying
17 to get to her panties. [victim 3] doesn't really know what to
18 do so she does the only thing she can, she pretends to be
19 asleep and just move around so he can't get inside her
20 panties. "What's happening to me? He's not supposed to
21 touch me like this," but too scared to tell but she says
22 nothing, finally they get off the exit and they go to the
23 store and they go home. Well, the next day, Sunday, and
24 [victim 3] likes to go to church, but on this day she didn't
25 want to go. "No, mom, I don't want to go. You have to go

1 to church. You have to go to church." Reluctantly, she
2 does. While she's there, the defendant is actually up front
3 leading the praise and she says she can feel him looking at
4 her and she just breaks down, she leaves crying. Her good
5 friend, Christy, follows her out to the lobby area and into
6 the bathroom. Now, she happens to be observed by Robin
7 Jefferson who you will hear from in this case, and Ms.
8 Jefferson will tell you, "I didn't really think anything of
9 it because occasionally people are moved by the word but I
10 got concerned when they didn't come out," and so she went in
11 to check. [REDACTED] victim 3 was still crying. "Are you okay? I
12 just need to speak with my mom. I just need to speak with
13 my mama." Ms. Jefferson did what she thought she should do,
14 the right thing, and she went and got her mother. Because
15 teenagers, the children don't usually sit with their
16 parents, they're sitting with their friends and I think Ms.
17 [REDACTED] was actually helping out at the church that day so
18 she went and got her and took her to the bathroom. And Ms.
19 Jefferson didn't feel it was quite her place to be there,
20 [REDACTED] victim 3 had asked for her mother, but as she was leaving
21 she overheard, "Junior touched me. Junior touched me." She
22 leaves and a short time later Ms. [REDACTED] comes out upset,
23 angry, wanting to confront the defendant, several people
24 have to help contain her. This is a mother who has just
25 learned that her child has been touched on by someone that

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1 she trusted, a friend, and they go and they get Patrick.
2 Everyone is upset and they go outside, still upset. The
3 defendant comes out. "What's wrong? You need to just go
4 back inside, go back inside. What's wrong? What's up?
5 Just go back inside." And he does and they leave and the
6 next day Ms. [REDACTED] reports this to law enforcement. And
7 you're going to hear about how the defendant was actually
8 calling them I submit not trying to find out what was wrong
9 because he knew what was wrong, he was trying to find out
10 how much they knew. And you're actually going to have some
11 text messages in this case that he sent to Mr. Robinson, and
12 I ask that you pay careful attention because they reveal a
13 lot. And so [REDACTED] victim 3 again is sent to The Assessment
14 Resource Center and she's interviewed by a forensic
15 interviewer who you are going to hear from in this case, and
16 you're going to hear from the investigator that investigated
17 her case, how they heard charges and how after her
18 disclosure he obtained an arrest warrant for the defendant
19 and he went to speak to the defendant, and the defendant
20 waived his rights and agreed to speak with Investigator
21 Carter. Now, he denied doing anything but he did admit
22 that, "Yes, I went with them. Yes, I sent these texts," and
23 perhaps most importantly, "Yes, we had good relationship. I
24 don't know why she would make this up." And that is going
25 to be key throughout this case because these little girls

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1 don't have any reason to make this up. They told what
2 happened and they are going to take this stand and tell you
3 about what happened. Good morning members of the jury, my
4 name is Nicole Simpson, and I together with my co-counsel,
5 Luck Campbell, together we represent the State of South
6 Carolina, the citizens of Richland County and the victims in
7 this case. Now, as solicitors, it is our job to prosecute
8 all crimes that occur here in Richland County and as I
9 stated earlier the defendant has been charged with three
10 counts of lewd act for his actions. Now this is my one and
11 only opportunity to address you directly and so I want to
12 take can this time to echo His Honor and to thank you for
13 your time, service and patience in this case, because when
14 you reported to jury duty I'm certain you had other things
15 that you wanted to do, probably needed to do, but this is a
16 very important case. It is important to the State, it is
17 important to the defense, and it is important to the victims
18 and their families. And so on behalf of all of us I thank
19 you, because while our system of justice can do without the
20 lawyers, it can do without the judges, it cannot do without
21 you. Now, in every criminal case the defendant is presumed
22 innocent until proven guilty, and that is as it should be,
23 the State wouldn't have it any other way. And as the State
24 it is our job to prove to you that the defendant is guilty
25 beyond a reasonable doubt, and what that means is that we

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1 must prove to you each element of the crime for which he has
2 been charged. But remember that while there is the
3 presumption of innocence every defendant who is ever
4 convicted at a jury trial by his peers started his trial
5 presumed innocent and was ultimately found guilty beyond a
6 reasonable doubt, so while our burden is high it is not
7 insurmountable and I can tell you that we welcome that
8 burden here today. So what must we prove? Well, the
9 defendant has been charged with three counts of a lewd act,
10 and in South Carolina it is unlawful for a person over the
11 age of 14 years to willfully and lewdly commit or attempt a
12 lewd or lascivious act upon or with the body or its parts on
13 a child under the age of 16 years with the intent of
14 arousing, appealing to or gratifying the lusts or passions
15 or sexual desires of the person or of the child. Well,
16 there is no doubt that when we touch on the child in their
17 vaginal area, rubbing on their breasts, rubbing your penis
18 with their hand, these things are a lewd act. What exactly
19 is proof beyond a reasonable doubt? Well, I can tell you
20 that it is proof that leaves you firmly convinced of the
21 defendant's guilt. Now, there are very few things in this
22 world that we know with absolute certainty and the law does
23 not require the State to present proof that overcomes all
24 doubt or every possible doubt, only that doubt which is
25 reasonable. Now, the roles in this courtroom are very

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1 defined. The State, we will bring forth to you the
2 admissible evidence in this case and the defense's job is to
3 represent his client to the best of his ability and ensure
4 his right to a fair trial, and His Honor is the sole judge
5 of the law in this case and he will instruct you on the law
6 as you are to apply it to the facts of this case. And if
7 ever there is a discrepancy between what any of the
8 attorneys in this case say and what His Honor says, you are
9 to follow his instructions and his rulings to you. But with
10 that said no one is going to deny that you don't have the
11 most important job here today because you are the sole
12 judges and finders of fact in this case. What that means is
13 that each of you here today is wearing a black robe and
14 individually and collectively, you must decide and only you
15 can decide if the defendant is guilty of these crimes. How
16 are you going to do that? Well, you are going to consider
17 the evidence that is brought forth before you. Some of that
18 evidence is going to be physical evidence like the video
19 that you'll see, but because of the very nature of this
20 crime, it's not a murder case where there's a murder weapon
21 and blood at the scene, a struggle, DNA, fingerprints, you
22 don't have semen from a rape, it's not one of those. So
23 most evidence, most of what you'll have will come from right
24 here on this witness stand, and you'll have the opportunity
25 to judge the credibility of each witness that takes the

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1 stand. And you're going to hear from each of the victims,
2 you're going to hear from the officers involved in this case
3 and the investigators who investigated this case and the
4 statements from the defendant made to the investigators.
5 You're going to hear from the experts in this case,
6 forensics interviewers who are trained in interviewing
7 children and they're going to tell you about what they did
8 in this case and they're going to explain to you some of the
9 issues that are unique to sexual assaults, especially with
10 respect to children such as delayed disclosure and the
11 process of disclosure, things of that nature. After you've
12 heard all the witnesses you'll have the opportunity to judge
13 their credibility, and in doing so, we ask that you consider
14 a few things. Was that witness hesitant or forthright in
15 testifying? What was that witness' demeanor on the stand?
16 Was their testimony consistent? Was it corroborated by any
17 other testimony or other evidence? And did that witness
18 have any reason whatsoever to be biased or prejudiced in
19 this case? Now, I ask that you use your common sense in
20 what you know about human nature when you decide this case.
21 Now, there's a quote in the courthouse and I didn't really
22 notice it until a little while ago because it's on a back
23 hall near a jury room in the family courts where I don't
24 usually go, and it's very little, this big, but I submit
25 that what it says should be posted on the front doors of

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1 this courthouse, it's a quote by President Theodore
2 Roosevelt, and it says that no man is above the law, no man
3 is below it, and we ask no man's permission when we require
4 him to obey it. And I submit that this case embodies the
5 essence of that quote. Now, it is your job, your duty here
6 today to find the truth and to seek justice, and at the end
7 of this case **victim 2** **victim 1** and **victim 3** will have done
8 all that they can do and the case will be turned over to
9 you, and my co-counsel, Ms. Campbell, is going to come
10 before you and she is going to ask you for a verdict that
11 the evidence supports and that justice demands. She is
12 going to ask that you find the defendant, David Carmichael,
13 guilty of these crimes. Thank you.

14 THE COURT: The defense may proceed.

15 MR. SHADD: Thank you, Your Honor. May it please the
16 Court.

17 THE COURT: Yes, sir.

18 MR. SHADD: Just because a person is accused of a crime
19 does not mean they are guilty of that crime. I think I need
20 to say that again, just because a person is accused of a
21 crime does not mean they are guilty of a crime. I
22 introduced myself to you on yesterday, I am James Shadd, I
23 am proud of defending Mr. David Carmichael, Jr. Mr.
24 Carmichael is seated next to me, you'll see him throughout
25 his trial, he is also here with several members of his

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1 family. His father is here, David Sr., his sister, as well
2 as aunts, close friends and church members, some of the same
3 church members that go to church with [victim 3] [REDACTED]
4 This case is extremely important to not only the State but
5 their accusers, their accusers who have accused David
6 Carmichael of these crimes, but it's equally important to
7 David Carmichael because he has been accused of three very
8 serious crimes with three different accusers. Now, Ms.
9 Simpson has told you a lot, you heard a lot of passion in
10 her voice, a lot of emotion, but guess what? You can't make
11 a decision on emotion, you can't make a decision on passion
12 and His Honor will tell you that. You have to decide this
13 case based on what comes from this stand and what evidence
14 may go back there with you when you all deliberate. And
15 because -- I agree with her -- the majority of the evidence,
16 and that's the only thing you can't get from the evidence,
17 you can't speculate and say, I wonder did this happen or why
18 did this happen? Well, do they have some motive or what
19 have you to come after this man? You aren't allowed to even
20 speculate, you can only decide based on the facts. Now, we
21 agree that David Carmichael knows these three accusers. We
22 agree that there was at least a relationship because he went
23 to church with them. We agree that there was trust and
24 trust went both ways, he trusted them, he trusted their
25 families and they trusted him. You will find from the

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1 Was there any other times?" Why did they ask that? Because
2 they had learned there were several other times with **vic I**
3 or **victim I** but she confirms there was this one time. And
4 this wasn't the first person she had spoken to about what
5 happened, as far as a professional, as far as a counselor.
6 And all you need is one, I do want you all to understand all
7 you need is one time to find someone guilty of this, but
8 when you hear that there were several occasions and then you
9 hear her confirm that there was just one time there's
10 inconsistencies there. You need to look at those
11 inconsistencies because when you're judging the credibility
12 or believability of a witness regardless of what age they
13 are at you have to determine are they telling the truth, and
14 in order for you to judge whether they are telling you the
15 truth is if they are consistent with their story. But I
16 would even submit you can consistently lie. So we have Ms.
17 **victim I** who said that this happened as far back as '99 and
18 I imagine continued happening until 2002, and then
19 Mr. Carmichael would have been 19 years old at that time.
20 They did go to church, he led praise and worship, but here
21 is another inconsistency, he was not the minister of music
22 at that church. He was not appointed minister of music
23 until he began going to Grace Christian Church, their pastor
24 Aaron Bishop, is here today. And I know that we're talking
25 about jealousy and that sort of thing, you will hear that

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1 Mr. Carmichael at a very young age was appointed the
2 minister of music, he set what music was going to be played
3 for the worship service, he appointed and practiced with
4 members of the music group, one of those is Patrick
5 Robinson, [victim 3] [REDACTED] stepfather. Another good
6 friend who plays the drums is Clarence, Clarence's fiancée
7 is Tamara Green. Tamara Green was present a week before
8 [victim 3] made this claim where he had taken [victim 3] and
9 another young lady over to Tamara's house, while he was in
10 the house [victim 3] and this young lady were outside.
11 Unbeknownst to him while [victim 3] and this young lady were
12 outside they were speaking to some 18 and 19-year-old men.
13 David Carmichael got on her, he scolded her, he had a
14 conversation with these young men. [victim 3] had told these
15 young men that she was 17 years old, she was only 13. Mr.
16 Carmichael, knowing Cynthia [REDACTED] who he calls his God
17 sister, this is how close they are, I think he even calls
18 her Little Mama or they call her Little Mama, this is
19 Cynthia [REDACTED], the mother, he knew from Cynthia [REDACTED]'s
20 how she had treated [victim 3] s older sister that, "I'm not
21 sure if I need to tell Cynthia about what happened with
22 [victim 3] and these young men," so he hesitated in doing
23 that. He wishes now he would have done that because a week
24 later [victim 3] [REDACTED] accused my client of touching her.
25 One of the things you're going to have to keep reminding

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1 yourself and asking yourself as you hear this evidence, this
2 dramatic evidence, this testimony that's going to be coming
3 from the bench, from the stand, does it make sense? Is it
4 physically possible? Is it possible for a man who was
5 asleep -- and you'll hear testimony that he was asleep
6 sitting on the passenger's side faced towards the window,
7 you may hear testimony that it was his right hand being
8 used, you may also hear testimony that it was left hand that
9 was being used, that his hand went behind him -- this is a
10 four-door sedan -- that his hand goes behind him and he is
11 able to touch [victim 3] [REDACTED] who is seated behind her
12 stepfather, Patrick Robinson, and Patrick Robinson is
13 totally unaware that he friend is doing this to his
14 stepdaughter? And we say that there is trust. Is it
15 physically possible? Is it physically possible for [victim 1]
16 [victim 1] to say -- here we go, someone else saying they
17 were asleep and when they woke up they were on his lap and
18 that his penis was rubbing on her stomach as she sat in his
19 lap. And [victim 2] [REDACTED] who according to her indictment, or
20 their indictment against him, she was nine, between she
21 being nine and 11. And I believe she says that there were
22 three occasions, she tells the investigator that there was
23 rubbing, that there was fondling, she did not tell the
24 investigator that he penetrated her. Six years later, and I
25 would submit only a couple of weeks ago when we knew we were

1 definitely coming to trial this week, the story grew and now
2 he digitally penetrated her nine years ago. His Honor
3 talked about us going through, you know, you might see a TV
4 show that might end in 30 minutes, in an hour and you hear a
5 little bit of evidence and the defendant gets found guilty.
6 Ms. Simpson even said there is a presumption of innocence,
7 and there is. Mr. Carmichael was innocent when three
8 accusers made these claims, he was innocent when he was
9 arrested by these officers, he was innocent when these
10 officers confronted him and questioned him and he denied it
11 after being told that he didn't have to talk to officers he
12 did. And six years later he still is innocent, throughout
13 this trial he is innocent. And Ms. Simpson says every
14 defendant who comes in is innocent, and that's true, every
15 defendant who is convicted eventually is found guilty, what
16 she didn't tell you is some of those defendants are falsely
17 accused and some of those defendants remain innocent and
18 some of those defendants are found not guilty by a jury such
19 as yourselves because the State failed to prove their case
20 beyond a reasonable doubt because the jury was not firmly
21 convinced of the defendant's guilt because the jury was
22 hesitant in acting to go that far. Now you all have an
23 awesome responsibility, you know, we all have roles to play.
24 His Honor is the gatekeeper as far as what evidence comes in
25 and what evidence stays out, we do have an agreement on some

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1 things but this is a very serious case, and you will
2 probably hear some objections from me, possibly from the
3 State and the Judge resolves those conflicts. But the only
4 group that decides whether David Carmichael is guilty as
5 charged is you. I would submit that you all -- you know,
6 Hollywood scripts are written all the time, some make it,
7 some don't. With regard to this script, this indictment,
8 this formal document that has now gotten us here that
9 accuses Mr. Carmichael of touching inappropriately [victim 1]
10 [victim 1] as for [victim 2] [redacted] this indictment, saying
11 that he fondled her I believe on at least three occasions,
12 that's a poor script. As for [victim 3] [redacted] just last
13 year putting the hand behind him and touching her, that
14 script. Now, we got a lot of drama, we got a lot of
15 passion, but we have to have those facts, and understand
16 that no proof is just as important, equally important as
17 proof. We have a major dispute in this case and we ask that
18 after you hear everything, after you view everything that
19 will be allowed back there with you, that you will come to
20 just one conclusion, to a verdict that speaks the truth that
21 David Carmichael is not guilty as charged. Thank you.

22 THE COURT: The State may call its first witness.

23 MS. SIMPSON: The State calls [victim 2] [redacted]

24 THE COURT: Come forward, please.

25 The witness, [victim 2] [redacted] was first duly

victim 2 [REDACTED]

1 sworn and testified as follows:

2 THE COURT: Ma'am, once you're seated, I'm going to ask
3 that you state your name for us.

4 THE WITNESS: I'm victim 2 [REDACTED]

5 THE COURT: Ms. Simpson, your witness. And I'll
6 caution the witness to move a little closer to the
7 microphone if you have to, be sure to speak up so all the
8 members of the jury panel can hear what you have to say,
9 ma'am. You may proceed, Ms. Simpson.

10 MS. SIMPSON: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. SIMPSON:

13 Q victim 2 how old are you?

14 A I was about nine or ten then.

15 Q How old are you now?

16 A Eighteen.

17 Q When is your birthday?

18 A [REDACTED]

19 Q Are you from Columbia?

20 A Yes, ma'am.

21 Q You've lived here all your life?

22 A Yes, ma'am.

23 Q Are you still living here?

24 A Yes, ma'am.

25 Q Let's talk a little bit about your family. Do you have

victim 2

1 any brothers or sisters?

2 A Yes, ma'am, I have one sister and two brothers.

3 Q How old are they?

4 A My brother, Kashawn, is 17. My sister, Jasmine, is 16,
5 and my little brother is 14, about to be 15.

6 Q Okay. So you're the oldest?

7 A Yes, ma'am.

8 Q Do they live with you right now?

9 A Yes.

10 Q Who all lives with you?

11 A Well, just me and my sister and grandma, it's always
12 been like that.

13 Q Okay. So you're with your grandma?

14 A And my auntie.

15 Q And do you spend a lot of time with some of your other
16 relatives or mainly your grandma and mom?

17 A All of them.

18 Q All of them. Is your family pretty close?

19 A Yes.

20 Q And do you have an aunt?

21 A Yeah, I have two.

22 Q Two of them. Who are they?

23 A My Aunt Shannon [REDACTED] and my other Aunt Janice Saxon.

24 Q Okay. Speak up just a little bit. Now, where do you
25 go to school?

victim 2

- 1 A I attend Richland Northeast High School.
- 2 Q What grade are you in there?
- 3 A I'm in twelfth.
- 4 Q Twelfth. So you're about to graduate.
- 5 A Yes.
- 6 Q Are you on track to graduate?
- 7 A Yes.
- 8 Q Excited about it?
- 9 A Yes.
- 10 Q And what are some of your favorite subject?
- 11 A My favorite subjects are Science and Social Studies.
- 12 Q Do you participate in other activities at school?
- 13 A Yes, ma'am. I was in the ROTC Navy and cheerleading.
- 14 Q So you're in ROTC for the Navy and cheerleading.
- 15 A Yes.
- 16 Q Do you attend church?
- 17 A Yes, I do.
- 18 Q What church do you go to?
- 19 A I go to -- well, my family church, Grace Saint Thomas,
- 20 or my grandma's church Bible Way Church of Piedmont.
- 21 Q So you go to both churches. Are you pretty involved
- 22 with the church?
- 23 A I was involved with the church, I'm not now.
- 24 MR. SHADD: I'm sorry, I didn't hear.
- 25 THE COURT: If you would, speak up, please. Move as

Victim 2

1 close to the microphone as you can without touching it,
2 there you go. Be sure to speak up so everybody can hear
3 you.

4 Q Do you actually sing?

5 A Yes, I do.

6 Q Are you in the choir at your church?

7 A No, ma'am.

8 Q Not anymore?

9 A Not anymore.

10 Q Okay. I want to talk to you a little bit about how you
11 know David Carmichael. Okay. Can you tell us about that?

12 A Yes. Well, he went to -- he attended to Bible Way
13 Church of Piedmont a few years ago.

14 Q Okay.

15 A -- with me and vic 1. He was basically our pianist
16 because he played the piano and sang sometimes.

17 Q You said vic 1. Who is vic 1 to you?

18 A My best friend in church.

19 Q Do you know her first name?

20 A Yes, victim 1.

21 Q victim 1. Is that the victim 1 that we've heard about?

22 A Yes.

23 Q The defendant, what do you know him? What did you call
24 him?

25 A We called him Junior.

victim 2

- 1 Q Junior?
- 2 A (Nods in the affirmative.)
- 3 Q And did he know your mom?
- 4 A Yes, he did.
- 5 Q How did he know your mother?
- 6 A He knew my mother by his sister, Davetta, they were
- 7 best friends.
- 8 Q So Davetta was his sister and she and your mom were
- 9 best friends.
- 10 A Yeah.
- 11 Q Would Junior be around the house some or around you
- 12 guys?
- 13 A Yeah.
- 14 Q Can you tell us a little bit about that?
- 15 A He would come just like to watch us. Like sometimes
- 16 when my family, like they trusted him or whatever so like he
- 17 was just around pretty much all of them.
- 18 Q He was around? Would your brothers and sisters be with
- 19 you sometimes?
- 20 A On one occasion they was.
- 21 Q Okay. And this is -- we're not quite to what happened
- 22 yet, but you actually spent -- he was around your family and
- 23 he was in the church.
- 24 A Yes.
- 25 Q Now, going back to the time when you were -- it's after

victim 2

1 eight years old, nine years old, ten, where were you living?

2 A I was first living on [REDACTED] [REDACTED] it was down

3 like --

4 Q Who lived there with you?

5 A I was staying with my grandmother and aunt and brothers
6 and sisters at that point in time.

7 Q Okay. Which aunt were you with?

8 A My Auntie Shannon.

9 Q Shannon? Okay. And while you were on [REDACTED] [REDACTED],
10 did something happen?

11 A Yes.

12 Q Okay. And what happened?

13 A At that particular time, he was there -- well, Junior
14 was there, my grandmother and my aunt decided that they
15 wanted to go out and go grocery shopping and they couldn't
16 leave us in the house by ourselves so they trusted Junior to
17 stay and watch us. He did, he watched us, and then at that
18 point in time he sent my brother and sister off to bed.

19 Q Okay. And once he sent them off to bed -- and so what
20 time of day was this?

21 A It was in like the evening, afternoon, night.

22 Q Okay. So he sent them off, what happened next?

23 A As he sent them off he told me to go grab him some
24 tissue from the bathroom, I did, I guess he had a snot nose,
25 I did. As I gave him a tissue he told me to turn around, as

1 I turned around he pulled my pants down and I had on a
2 nightgown like a pink Barbie nightgown and he started to rub
3 on me.

4 Q He started to rub on you. You said the nightgown, the
5 pink nightgown, how are you able to remember what you were
6 wearing?

7 A Because my grandparents gave it to me for Christmas.

8 Q Your grandparents gave it to you?

9 A Yeah.

10 Q When you say he was starting to rub on you, how was he
11 rubbing on you?

12 A With his bare hands.

13 Q Speak up just a little bit.

14 A With his bare hands.

15 Q So he was rubbing on you with his hands.

16 A Yes.

17 Q Where was he rubbing on you at first?

18 A He started to rub on my legs like thigh.

19 Q So you're standing in front of him.

20 A (Nods in the affirmative.)

21 Q Where were you in the house?

22 A I was like the front room, like the family area.

23 Q Okay. So what all is in the family area?

24 A We had like a big old TV, like one of them big old
25 school TVs and he was sitting in my granddad's chair,

victim 2

1 rocking chair, like broken old school chair.

2 Q Okay. And where were you? Where were you at while he
3 was sitting there?

4 A Well, when he told me to come get him the tissue I was
5 in front of him, he had his legs like open.

6 Q Okay. So he had his legs open and you said his penis
7 was out.

8 A Yes.

9 Q How were you standing in front of him?

10 A Well, I was short, so like -- he told me to turn
11 around, he actually helped me turn around and as I turned
12 around when he was touching me, he bent me over. Then he
13 escalated to moving my panties over and touching in my area.

14 Q Okay. And so he moved your panties over. He didn't
15 take them off?

16 A No.

17 Q He just slid them?

18 A He just slid them over.

19 Q And what was he touching you with at that point?

20 A His fingers.

21 Q His fingers. And how was he touching you down there?

22 A Like this with his finger.

23 Q Kind of rubbing with his finger?

24 A Yes.

25 Q Was he inside of your vagina?

- victim 2 [REDACTED]

1 A No.

2 Q Just kind of on top of it rubbing it?

3 A Yes.

4 Q And while he was doing that what do you remember
5 happening next?

6 A He tried to -- like he picked me up to get on top of
7 him but it didn't happen or whatever, like -- I guess like
8 it couldn't fit or whatever --

9 MR. SHADD: Objection to what she guessed, Your Honor.

10 THE COURT: Counsel?

11 MS. SIMPSON: Your Honor, we'll move on.

12 THE COURT: Okay. Withdraw the question, you may
13 proceed.

14 Q Okay. He tried to put you on his lap.

15 A And it didn't work. So he put me back down to -- and
16 called my brother and sister to come back. As he pulled up
17 his pants he called my brother and sister to come back out.

18 Q Okay. You said this is the first time that he was
19 touching on you?

20 A Yes.

21 Q What were you feeling at that time?

22 A At that point in time like I didn't know what to think
23 or do.

24 Q Had he ever said anything to you or done anything that
25 made you feel uncomfortable before he actually touched on

victim 2 [REDACTED]

1 you?

2 A No. It was shocking, that was the first time.

3 Q The first time that he touched? Did he touch you on
4 another occasion?

5 A Yes, he did.

6 Q And can you tell us about that?

7 A The other occasion was I was actually at my mother's
8 apartment in [REDACTED] [REDACTED] on [REDACTED] [REDACTED] -- like on [REDACTED]
9 [REDACTED], he was there. My mother moved a lot, but my
10 mother, like she was gone, I think, she was gone and he was
11 there. He tried -- like, he touched my boob area.

12 Q Okay. You said your mother moved a lot. So you didn't
13 always live with your mom.

14 A No.

15 Q You lived with your grandma?

16 A Yeah.

17 Q She kind took care of you?

18 A Yes.

19 Q But you lived with your mom now, or off and on.

20 A Yes.

21 Q And on this occasion were you older than the first
22 time, was it a little bit later?

23 A Yes.

24 Q Do you remember how old you were?

25 A It was probably like some several months later.

victim 2

- 1 Q Okay. So several months later. And you said at that
2 point he just touched you on your boob.
- 3 A Yeah.
- 4 Q When he touched you on your boob what did you do?
- 5 A I -- at that point in time like he just did a little,
6 "stop," I just told him to stop.
- 7 Q You just kind of nudged him to stop?
- 8 A Yes.
- 9 Q And did he stop?
- 10 A No. He didn't stop but he said some nasty comments.
- 11 Q What kind of things did he say to you?
- 12 A Like he would just say, "give me that cat," and stuff,
13 comments such as that.
- 14 Q Give me that cat?
- 15 A Yeah.
- 16 Q Now you know what that means, right?
- 17 A Yes.
- 18 Q Did you know what it meant back then?
- 19 A Not really, like give me that cat, not really.
- 20 Q So he was saying tough stuff to you and touching on
21 your boob.
- 22 A Yeah.
- 23 Q At what point did he stop?
- 24 A When my brothers and them back from outside.
- 25 Q And did your mom come back, too?

victim 2

- 1 A Yes, my mother came back in.
- 2 Q Did you tell anybody about what happened?
- 3 A No, I didn't.
- 4 Q Did he ever touch you again?
- 5 A Yes, he did. In fact, this was his last time before I
- 6 told.
- 7 Q Okay. What happened on this last time?
- 8 A At this last time, I was -- I don't know where I was
- 9 coming from but his sister, Davetta, she was watching me at
- 10 her house but I forgot the name of the street or the
- 11 neighborhood but I know exactly where the house is at, she
- 12 was watching me. I guess like we had -- we was in a -- but
- 13 he wasn't home at that point in time. We was taking a nap
- 14 but I woke up, and she was still asleep, she was in her
- 15 room, she had the door closed and I was in Junior's room to
- 16 watch TV because I don't think she had a TV in her room at
- 17 that point in time.
- 18 Q Okay.
- 19 A That's when he came home and he was in the room, he
- 20 shut the door, and I guess like okay, you know, so -- but
- 21 like he started touching me from there.
- 22 Q Okay. Let me back you up just a little bit. At this
- 23 point you were at Davetta's house?
- 24 A Yes.
- 25 Q His sister?

victim 2

- 1 A Yes.
- 2 Q Would she watch you some times?
- 3 A A little bit but my mom would be there, but we would
- 4 just go over to their house because my mom is best friends
- 5 with her.
- 6 Q Okay. So usually your mom would be with you at
- 7 Davetta's house?
- 8 A Yes.
- 9 Q But on this occasion she wasn't.
- 10 A She wasn't.
- 11 Q And the defendant wasn't there at first?
- 12 A Yes.
- 13 Q So when you first noticed that the defendant was there,
- 14 Junior, what happened?
- 15 A I just remained calm and as he came in the room he shut
- 16 the door, like I said, and he just plopped on the bed and I
- 17 was still on the bed like on my side of the bed, it was
- 18 pretty big, I was on my side.
- 19 Q And where is the TV?
- 20 A The TV was like on a big old tall dresser and the TV is
- 21 on the top.
- 22 Q So the bed is right next to the TV?
- 23 A The TV is on top of the dresser.
- 24 Q And that's where you would watch TV?
- 25 A Yes.

victim 2

- 1 Q So what happened when he was on the bed?
- 2 A He like started to unzip my pants and started to
- 3 proceed to play, I told him to stop, you know, multiple
- 4 times, stop. I didn't want to be as loud because I didn't
- 5 want his sister, Davetta, which is asleep, to think that I
- 6 was trying to -- because at that point in time I was bit
- 7 older, to think that I was pushing or trying to start
- 8 anything. So as I told him to stop and he began to go in my
- 9 panties at that point in time my Auntie Shirley came.
- 10 Q Okay. And you didn't -- you said you didn't want to
- 11 wake Davetta up.
- 12 A No.
- 13 Q And you said that you were concerned that she was going
- 14 to think that you were actually --
- 15 A Yeah.
- 16 Q -- doing something?
- 17 A Yes.
- 18 Q Why did you think that?
- 19 A Because from like I said the time that -- he always
- 20 stated if I told it would seem like I was the one that was
- 21 in the wrong.
- 22 Q In the wrong. You were the one causing him to do these
- 23 things to you.
- 24 A Yes.
- 25 Q So you were kind of quiet when you said stop?

victim 2

- 1 A Yes, it was like a quiet stop.
- 2 Q Was he able to unzip your pants?
- 3 A Yes, he did.
- 4 Q And how was he when this was happening?
- 5 A As we was on the bed like he turned on his side or
- 6 whatever, his side to get to me.
- 7 Q How were you? Were you on your back, you're side?
- 8 A Yes, I was.
- 9 Q Okay. So you were on your back and he was on his side
- 10 rubbing. And was he rubbing on top of the your panties or
- 11 underneath?
- 12 A He started first on top, then he got like under the
- 13 panties.
- 14 Q And he was rubbing on your vagina.
- 15 A Yes.
- 16 Q And what made him stop?
- 17 A Because of my Auntie Shirley.
- 18 Q What did your Auntie Shirley do?
- 19 A She didn't come in, she just tooted her horn, that was
- 20 her first time coming to get me from Davetta's house.
- 21 Q So she tooted the horn. What happened next?
- 22 A She tooted the horn and that was my sign to go so I
- 23 hurried up and jumped up and to zip my pants back up. He
- 24 made a statement as I was about to leave saying "If you tell
- 25 I will kill you."

victim 2

1 Q Okay. What did you think would happen if you told at
2 that point?

3 A He was going to kill me. Somehow, some way he was
4 going to hurt me.

5 Q He was going to hurt you in some way?

6 A Yeah.

7 Q Did you tell anybody?

8 A No. When my aunt asked me what was wrong with me I
9 didn't tell her.

10 Q So when you got in the car she actually asked you what
11 was wrong.

12 A Yes.

13 Q And you didn't tell her.

14 A No.

15 Q Did he ever touch on you any other way that you can
16 remember?

17 A No, just my vagina area.

18 Q Okay. But he would say things to you sometimes?

19 A Yeah. Like he -- after like the situations he tried to
20 play it like it was cool or whatever.

21 Q Like it was cool?

22 A Like nothing ever happened in front of my like family,
23 my family.

24 Q Okay. And you didn't want them to know either what
25 happened.

victim 2

1 A No.

2 Q And would he say stuff to you asking him to do things
3 to him sometimes?

4 A Just touch this --

5 MR. SHADD: Objection, leading.

6 THE COURT: That question does not suggest an answer,
7 overruled, you may proceed.

8 MS. SIMPSON: Thank you, Your Honor.

9 Q Did he say anything to you? Would he ever ask you to
10 do stuff to him?

11 A Yes.

12 Q What kind of things would he ask you to do?

13 A He would ask me to touch his private or to like get on
14 top.

15 Q And so that's the only times that you can remember that
16 he actually touched on you.

17 A Yes.

18 Q When -- and I want to move forward just a little bit to
19 when you told victim 1 --

20 A Yes.

21 Q -- about what happened. Can you tell the jury what you
22 were doing that day?

23 A We was in church that night, I believe -- I think it
24 was a revival, we went to church and there was a late-night
25 service. That's when vic 1, her mother told her to I think

victim 2

1 to go change I think it was her cousin's at that point in
2 time diaper, it was some baby we had to change.

3 Q Okay. So it was a little baby.

4 A Yeah.

5 Q You don't remember exactly which baby it was. So she
6 was going to have vic 1 go change him.

7 A Yes.

8 Q And what happened next?

9 A Well, like you said, at church we don't sit with our
10 family, we sit with friends. But usually I'll follow vic 1
11 when she goes down or whatever so I followed her downstairs
12 to go change the baby. And I don't know what made me come
13 out of the blue and tell her, but that's when I told her
14 that I had been touched by Junior.

15 Q Okay. And once you told her that you had been touched,
16 what happened next?

17 A Well, before I told her we made a pinky promise because
18 usually that's what we do when we tell secrets, we made a
19 pinky promise that we weren't going to tell nobody else. As
20 I told her she let me know that she (sic) wasn't the only
21 one that was getting touched by him.

22 Q Okay. So you weren't the only one getting touched.

23 A Yes.

24 Q She told you that she was getting touched, too.

25 A Yes.

victim 2

1 Q And y'all were talking about it. What do you remember
2 happening next?

3 A As we was talking about it we started a little tear,
4 crying a little bit and that's when her cousin, Jessica,
5 came in, we was in the women's lounge.

6 Q Okay. And where is the women's lounge in the church?

7 A It's downstairs by the girl's bathroom, it's got like a
8 baby changer thing.

9 Q Okay. So it's got a sitting area where you can sit.

10 A Yes.

11 Q And that's where y'all were.

12 A Yes.

13 Q So when Jessica comes in what happens next?

14 A She asked what was we doing and that's when we both
15 said nothing at one time and we went back upstairs after the
16 baby was changed.

17 Q Okay. And did you tell anybody at that point?

18 A No.

19 Q Okay. And you still didn't tell. When is the next
20 time that you talked about it?

21 A My grandmama had found out. I came from church and she
22 told me to come here and I was like, "I'm in trouble," so I
23 wasn't. She asked me what had happened and I tried to play
24 it off like I didn't know what she was talking about but she
25 knew exactly, you know.

victim 2

1 Q Okay. So she, your grandma, asked you what happened?

2 A Yes.

3 Q At that point did you just think you were in regular
4 trouble like maybe you had done something or did you know it
5 was about this?

6 A I kind of knew because not too long ago I had just told

7 vic 1 --

8 Q Uh-huh.

9 A -- so vic 1 told Jessica I guess and Jessica went back
10 and told her grandma's sister's, Mag, which is her grandma's
11 close friends.

12 Q So your grandmother asked you, you didn't offer this
13 information.

14 A No.

15 Q So she asked you. What did you tell her? Did you tell
16 her what happened?

17 A Yes, I did.

18 Q Okay.

19 A I told her.

20 Q And once you told her what happened, what happened?

21 A Well, before that I mentioned to my Auntie Shannon I
22 used to say, "I got something to tell you but I can't tell
23 you," I used to always say that to her, but my grandma found
24 out. She was letting me know it's okay to let her know,
25 nothing bad is going to happen to me so I just told her and

victim 2

1 my mom about that.

2 Q Okay. So your mom actually found out, you didn't tell
3 your mom?

4 A No.

5 Q Okay. But your -- so your aunt and your grandma knew.

6 A Yes.

7 Q And your mom.

8 A Yes.

9 Q Now, once they found out when is the next time somebody
10 talked to you about it?

11 A I went to school, I think I was at school, the officer
12 there had asked me to come in his office because he had -- I
13 guess -- I don't know how he found out about it but like he
14 started questioning me about it. I didn't feel really
15 comfortable telling a man officer what happened at that
16 point.

17 Q Okay. You said you think you were at a certain school.
18 Did you go to a lot of different schools?

19 A Yes.

20 Q So the school you're at now, is that the longest you've
21 ever been in a school?

22 A Yes.

23 Q So you said you were uncomfortable telling him about
24 what happened.

25 A (Nods in the affirmative.)

victim 2

1 Q You have to speak up.

2 A Yes.

3 Q But you did tell him a little bit about Junior touching
4 on you.

5 A Yes, I did.

6 Q Do you remember what happened next?

7 A From then on, he asked me questions and I went back to
8 class.

9 Q You went back to class?

10 A Yeah. Because my mom found out and she was pretty
11 upset.

12 Q So your mom is upset, your family is pretty upset. How
13 are you feeling during this?

14 A I just felt like I didn't want to hear about it no
15 more.

16 Q Okay. Do you remember another officer coming to talk
17 to you?

18 A Yes.

19 Q Okay. Do you remember he took a statement from you?
20 This would have been an investigator, a different officer.

21 A It was a lady, I think, it was another lady who asked
22 me questions.

23 Q Was there a man there, too?

24 A I don't know.

25 Q You can't remember?

victim 2

- 1 A No.
- 2 Q But you did talk to somebody else?
- 3 A Yes.
- 4 Q About this?
- 5 A Yes.
- 6 Q And did you tell the investigator something about what
- 7 you knew?
- 8 A Yeah.
- 9 Q Or what had happened to you?
- 10 A Yeah.
- 11 Q Were you real comfortable telling them at that point?
- 12 A I was really not comfortable when there is like another
- 13 man in the room at that point in time because of the age I
- 14 was in telling them about the type of stuff that was
- 15 happening.
- 16 Q So you weren't really comfortable talking to guys --
- 17 A Yeah.
- 18 Q -- or a man about what happened?
- 19 A Yeah.
- 20 Q But you did tell him some of what happened?
- 21 A Yes.
- 22 THE COURT: Ms. Simpson, I'll ask you to take a short
- 23 break at this time. Ladies and gentlemen of the jury, we're
- 24 going to take a short break at this time. I'm going to ask
- 25 you to step back to the jury room. The bailiffs will make

victim 2

1 you comfortable, give you a chance to stretch your legs and
2 clear your minds. As always when you leave the courtroom I
3 instruct you not to begin any discussions about any aspects
4 of this case until I ask you to do so. We'll be on break
5 for about ten minutes or so and give you a chance to clear
6 your head, you may step back to the jury room at this time.
7 Thank you very much.

8 (The jury left the courtroom.)

9 THE COURT: All right. I'm going to instruct the
10 witness that during the break you should not discuss your
11 testimony with anyone whatsoever during the break. You are
12 free to move around the courtroom and take a break if you
13 would like, but again do not discuss your testimony with
14 anyone during the break. We'll be in recess about ten
15 minutes or so. Court is in recess. Thank you.

16 (A short break was taken.)

17 THE COURT: Do you want to proceed without Ms.
18 Campbell?

19 MS. SIMPSON: That will be fine, Your Honor, whatever
20 the Court --

21 THE COURT: If you have a problem I will be glad to
22 wait.

23 MS. SIMPSON: No, she will be in.

24 THE COURT: All right. During the break I received an
25 inquiry from one of the jurors, juror 186, sent an inquiry

victim 2

1 asking if, "Can we take notes during the trial? If not can
2 we take our personal notes when we get back to the jury
3 room?" My practice is if jurors ask to be allowed to take
4 notes, I'll give limited instructions on what those notes
5 could be used for. So I've instructed the bailiff to make
6 available for any juror, not just any particular one, but
7 any juror who would like to take personal notes concerning
8 the trial the ability to do that. Again, I will instruct
9 them when they begin doing that that those are for a limited
10 purpose not to be shared with other jurors and will instruct
11 them at the end of the trial how they should use those notes
12 during deliberations. Any objections to my response from
13 the State?

14 MS. SIMPSON: No, Your Honor.

15 THE COURT: Any from the defense?

16 MR. SHADD: No.

17 THE COURT: All right. Mr. Bailiff, if the jury is
18 ready to return, you may bring them.

19 (The jury returned to the courtroom)

20 THE COURT: Ladies and gentlemen of the jury, I have
21 received an inquiry as to whether or not I do allow the jury
22 to take notes and when the jury is asking me that I allow
23 you to take notes. I will caution you, though, the notes
24 are for a limited purpose and for your use alone and cannot
25 be used to try to influence other juror's decisions or their

victim 2

1 memory in the case and I'll explain that to you in more
2 detail when I charge you on the law, but I will allow you to
3 take notes during the trial if you like, the bailiffs will
4 make that available to you if you need them, however you are
5 not required to. It is a personal preference, if you wish
6 to do that, I'll allow you to do that. I'm going to have
7 the inquiry made a part of the record of the case. We'll
8 pass this over to the court reporter and it will be marked
9 as a Courts's Exhibit.

10 (The note was marked as Court's 1.)

11 THE COURT: All right. And at this time you may
12 proceed with your examination of the witness, Ms. Simpson.

13 MS. SIMPSON: Thank you, Your Honor.

14 BY MS. SIMPSON

15 Q I believe we left off about the investigator and
16 telling them. Why did you not tell anybody on your own
17 about what happened?

18 A I didn't want to tell them because like I didn't want
19 to make -- I didn't want it to seem like I didn't want to
20 get anyone in trouble.

21 Q Okay. So you didn't tell because you didn't want to
22 get anybody in trouble.

23 A (Indicating in the negative.)

24 Q And did Junior ever make threats to you?

25 MR. SHADD: Objection, leading.

victim 2

1 THE COURT: Overruled, I'll allow the question.

2 Q Did Junior ever threaten you with what would happen if
3 you told?

4 A Yeah, and that last time as I was leaving.

5 Q And with respect to victim 1 after all of this came out,
6 did you still see Junior and victim 1 at church?

7 A I seen victim 1 at church but he didn't come to Bible
8 Way anymore.

9 Q So he left Bible Way after this came out?

10 A Yes.

11 Q But you saw victim 1 some.

12 A Yes.

13 Q Do you still see her, do you go to the same schools?

14 A No. We don't go to the same schools but I live in the
15 same district.

16 Q Okay. You live in the same district but you had to
17 separate because of the schools.

18 A No. Her family went to another church, too.

19 Q Okay. So her family actually went to another church.

20 A Yes. But they still come to my grandmother's church
21 from time to time.

22 Q Okay. So you have a chance to see her from time to
23 time?

24 A I just saw her Sunday.

25 Q And outside of what you told us, you know, those are

victim 2

1 the times that you remember him touching on you, right?

2 A Yes.

3 Q And again, you didn't tell anybody.

4 A Nobody but her.

5 Q Nobody but victim 1 until you were asked about it.

6 A Yes.

7 Q And the man who touched you inappropriately and rubbed
8 on your vagina and over you a couple of times, do you see
9 him in the courtroom here today?

10 A Yes.

11 Q And can you point him out for the jury?

12 A Yes, right there, (indicating).

13 Q Who are you pointing to? What is he wearing?

14 A He's wearing a black suit with a white shirt and a tie.

15 Q Okay.

16 MS. SIMPSON: Let the record reflect that she has
17 identified the defendant.

18 THE COURT: The record will so reflect and you may
19 proceed, Counsel.

20 MS. SIMPSON: Thank you, Your Honor. I have no further
21 questions of this witness at this time.

22 THE COURT: All right. You may cross-examine, sir.

23 MS. SIMPSON: Thank you, Your Honor.

24 THE COURT: Yes, sir?

25 CROSS EXAMINATION

victim 2

- 1 BY MR. SHADD:
- 2 Q Ms. [REDACTED] how old are you now?
- 3 A I'm 18.
- 4 Q Are you working?
- 5 A No.
- 6 Q Have you worked?
- 7 A Yes, I did.
- 8 Q Where was the last place you worked?
- 9 A Columbia Place Centers, it was by Columbia Mall.
- 10 Q They're not operating anymore, right?
- 11 A No.
- 12 Q When is the last time you worked there?
- 13 A My last time working there was when they closed which
- 14 was August of last year.
- 15 Q Okay. You haven't worked since then?
- 16 A No, sir.
- 17 Q Okay. What did you do there?
- 18 A I was at the concession stand and ticket box.
- 19 Q And at this job you are relied upon to collect money,
- 20 pass out whatever item is bought at the concession stand,
- 21 correct?
- 22 A Yes.
- 23 MS. SIMPSON: Your Honor, may we approach just briefly?
- 24 THE COURT: Yes, you may.
- 25 (WHEREUPON, a bench conference was held.)

victim 2 [REDACTED]

1 THE COURT: You can proceed, Mr. Shadd.

2 MR. SHADD: Thank you, Your Honor.

3 Q Ms. [REDACTED] you were saying that you collect money and
4 you pass out products that's bought; is that correct?

5 A Yes, I hand them to the customer.

6 Q Ma'am?

7 A I hand them to the customer.

8 Q And of course you take tickets and give them back their
9 money as well, correct?

10 A No. They give me the money and I give them back their
11 ticket.

12 Q Okay. Well, you're former employer trusts you to do
13 that; is that right?

14 A Yes.

15 Q And so you consider yourself a trustworthy person?

16 A Yes.

17 Q If you see something wrong, do you tell?

18 A It all depends.

19 Q What would it depend on, Ms. [REDACTED]

20 A If it's my business or not.

21 Q If it involves you would you tell?

22 A Yeah.

23 Q Did you grow up learning to do that?

24 A Yes.

25 Q When was the earlier age that you learned if something

victim 2

- 1 is wrong you're supposed to tell? How old were you?
- 2 A It was just grew upon me.
- 3 Q It just grew upon you?
- 4 A Yes.
- 5 Q Was it before you knew David Carmichael that you were
- 6 taught if something bad happens you're supposed to tell if
- 7 it involves you?
- 8 A After.
- 9 Q Ma'am?
- 10 A After.
- 11 Q Okay. So before you were nine years old you never
- 12 learned that if something bad happens to you you're supposed
- 13 to tell?
- 14 A I mean, every child knows that.
- 15 Q Every child knows that and that would include you,
- 16 right?
- 17 A I guess.
- 18 Q You guess? You were a child at nine years old and you
- 19 knew before nine years old that if something bad happens to
- 20 you you're supposed to tell, correct?
- 21 A Correct.
- 22 Q Did you learn before you were nine years old that there
- 23 are good touches and bad touches?
- 24 A No.
- 25 Q You didn't even have to think about that. You were not

victim 2

1 told before about good touches and the bad touches at nine
2 years old?

3 A No. We didn't have any males, like I don't have any
4 uncles, nothing but like one uncle and I don't really have
5 that many males in the family.

6 Q Yes, ma'am. I understand about males in the family.

7 But you know that females can touch you inappropriately too,
8 correct?

9 A Yes.

10 Q So you weren't warned before nine years old or taught
11 before nine years old about good touches and bad touches?

12 A No.

13 Q Whether it was from a male or female?

14 A No.

15 Q All right. Now, when you were nine I believe you told
16 us that you were living with your grandmother; is that
17 right?

18 A Yes.

19 Q Do you know why you was living with your grandmother
20 and not your mom?

21 A Yes.

22 Q Why?

23 A Can you repeat that?

24 Q Do you know why you were not living with your mom and
25 were living with your grandmother at nine years old?

victim 2

- 1 A Yeah, my grandmother had custody of us.
- 2 Q Yes, ma'am. Did you know that at nine years old?
- 3 A (Nods in the affirmative.)
- 4 Q Do you know why your grandmother had custody of you and
- 5 your siblings?
- 6 A Huh?
- 7 Q Do you know why your grandmother had custody of you and
- 8 your siblings at nine years old?
- 9 A (Nods in the affirmative.)
- 10 Q Why? That's okay, take your time, go ahead.
- 11 A My mom, she was young so my grandmother had custody of
- 12 us, me and my sister.
- 13 Q Okay. And if I remember correctly you were the oldest?
- 14 A Yes.
- 15 Q You said your mom was young.
- 16 A Yes.
- 17 Q So because your mom was young your grandmother had
- 18 custody of you and your sister.
- 19 A Yes.
- 20 Q But then you had a brother.
- 21 A I have two.
- 22 Q Okay. So it's you then you're younger sister --
- 23 A No. It's me, my brother, my sister and my little
- 24 brother.
- 25 Q Okay. So girl, boy, girl, boy.

victim 2

- 1 A Yes.
- 2 Q But your grandmother -- when your mom was young, your
- 3 grandmother got custody of you and your sister, middle
- 4 sister?
- 5 A Yes.
- 6 Q Where was your brother?
- 7 A My Auntie Shannon had custody of my brother.
- 8 Q So y'all were split up.
- 9 A No. We was all living in the same household, though.
- 10 Q Oh, okay. But just -- so your grandmother had you and
- 11 your sister?
- 12 A Yeah.
- 13 Q Your Auntie Shannon --
- 14 A Yes.
- 15 Q -- had custody of your oldest brother which is really
- 16 you're youngest brother.
- 17 A Yes.
- 18 Q What's his name again?
- 19 A Kashawn.
- 20 Q And the little boy is Marquel?
- 21 A Yes.
- 22 Q What's your sister's name?
- 23 A Jasmine.
- 24 Q Jasmine?
- 25 A Yes.

victim 2

- 1 Q All right. Kashawn is two years younger than you?
- 2 A A year.
- 3 Q Just one year?
- 4 A Yeah.
- 5 Q So you're 18 and he's 17 right now?
- 6 A He's about to be 17 next month.
- 7 Q So at this time when you were nine -- how old is
- 8 Marquel?
- 9 A Marquel is about 13, he's 12.
- 10 Q So you were nine, he was two?
- 11 A Two, yeah.
- 12 Q And who had him?
- 13 A My Auntie.
- 14 Q Shannon again?
- 15 A Well, at that point in time Marquel was young so this
- 16 is my -- my mom still had him because he was at -- he had
- 17 a --
- 18 Q I'm sorry?
- 19 A She didn't give up her rights on my younger brother
- 20 yet.
- 21 Q Your mom gave up her rights to you and your sister and
- 22 brother?
- 23 A No. Just so I could stay with my grandmother, so she
- 24 could raise us.
- 25 Q Okay. Now, you all went to church at Bible Way Church

victim 2

1 of Piedmont?

2 A Yes.

3 Q Who was the pastor then around nine years old, when you
4 were nine?

5 A Well, the only one I can remember is Bishop Belton.

6 Q Bishop Belton? Right. Did you like Bishop Belton?

7 A Yes.

8 Q Did you trust Bishop Belton?

9 A Yes.

10 Q Okay. And y'all obviously had music at the church.

11 A Yes.

12 Q To help y'all praise God and worship, right?

13 A Yes.

14 Q Your grandmother made sure that you attended church,
15 right?

16 A Yes.

17 Q Whether you were feeling bad or whether you wanted to
18 go or not, right?

19 A Yes.

20 Q Now, at nine years old I know you and the other kids
21 wasn't sitting away from the grandmother, everybody was
22 sitting right next to her, correct?

23 A Excuse me?

24 Q Your grandmother had y'all sitting with her when you
25 were nine, she didn't have y'all sitting with other kids.

victim 2

- 1 A My grandma was on the usher board.
- 2 Q Oh, she was working.
- 3 A Yes.
- 4 Q So where did y'all sit?
- 5 A We sat on the left side of where the youth sits.
- 6 Q Okay. So your grandmother ushered so she had a role in
- 7 the church.
- 8 A Uh-huh.
- 9 Q Obviously Bishop Belton was the pastor of the church.
- 10 A Yes.
- 11 Q And you know David Carmichael, Junior, correct?
- 12 A Yes.
- 13 Q You call him Junior?
- 14 A Yes.
- 15 Q How close were you when you were nine years old to him?
- 16 A Me personally?
- 17 Q Yeah. How close were you to him at nine years old?
- 18 A I wasn't like -- I guess it was like to the point where
- 19 like -- where my brother called him like Uncle Junior, so
- 20 that's like how close it was.
- 21 Q Okay. Kashawn called him Uncle Junior?
- 22 A Right. Outside the church my family hung with their
- 23 family.
- 24 Q Y'all were close enough to where Kashawn would call
- 25 David, Jr. Uncle Junior?

victim 2

- 1 A Sometimes.
- 2 Q He would tell other people that.
- 3 A No, he didn't other people that. He just said it when
- 4 he was there in our home.
- 5 Q Okay. So y'all were close?
- 6 A Yes.
- 7 Q Okay. You didn't call him Uncle Junior.
- 8 A No.
- 9 Q Okay. Now, he also had a role in the church because he
- 10 played the piano in the church, correct?
- 11 A Yes.
- 12 Q Was he good at it?
- 13 A He was okay.
- 14 Q He was okay?
- 15 A Yes.
- 16 Q Was he a good singer?
- 17 A Yes.
- 18 Q He was a better singer than he was a piano player.
- 19 A Yes.
- 20 Q Okay. In fact, you knew later on that he actually went
- 21 on and sung at different places and went out on tour because
- 22 of his singing, correct?
- 23 A I think he had like certain -- was around Columbia like
- 24 at church gospel concerts, I didn't know he was on tour.
- 25 Q You didn't know anything about him being on tour?

victim 2 [REDACTED]

1 A No.

2 Q But he was not at Bible Way Church of Piedmont, he was
3 not the minister of music, correct?

4 A I don't think so.

5 Q Okay. Now, y'all were obviously close enough to where
6 at times outside of church you all were -- I have to say
7 social, y'all did things outside of the church as well.

8 A Yes.

9 Q And what was the address that your grandmother stayed
10 at in that you said he did these things to you, that first
11 one?

12 A [REDACTED]

13 Q Off Two Notch Road? You can go there from Two Notch
14 Road?

15 A It is like Park Lane, it goes straight down there, the
16 houses are there.

17 Q You go across the apartments and across the speed bump
18 and then you're on [REDACTED]

19 A Yes.

20 Q And who lived in that house again?

21 A It was me, my auntie and my siblings.

22 Q Well, except for Marquel.

23 A Yeah, he was there from time to time.

24 Q Okay. Where did your mom and Marquel live?

25 A Well, Marquel, he was with his father most times.

victim 2

1 Q He was what?

2 A With his daddy.

3 Q So he lived with his daddy and your mom or he lived
4 with your daddy, your mom and sometimes he would come to
5 stay with you all?

6 A Yeah.

7 Q The second one?

8 A Yeah.

9 Q Okay. Where was your father?

10 A I don't know.

11 Q Okay. So on [REDACTED] -- we're going to say this is the
12 first one -- on [REDACTED] you're accusing Mr. Carmichael, or
13 Junior, of touching you; is that right?

14 A Yes.

15 Q You're saying that -- how old was he at this time?

16 A I don't know.

17 Q He was still in high school, right?

18 A I don't know.

19 Q Okay. And according to you your grandmother and your
20 Aunt Shannon went to the grocery store to go grocery
21 shopping.

22 A Yes.

23 Q Now, did you ever go grocery shopping with them?

24 A No.

25 Q Okay.

victim 2

1 A Not like -- not like -- my grandmother -- we had a
2 certain bed time.

3 Q Oh, so this -- this happened at night?

4 A It was like not at midnight.

5 Q Midnight?

6 A No, not at midnight.

7 Q Okay.

8 A Like getting dark.

9 Q Okay. Like the sun was about to go down?

10 A Yes.

11 Q All right. And so your grandmother and your Aunt
12 Shannon had to go to the grocery store and you said your
13 grandmother called David to come baby-sit you all.

14 A Yeah. Well, he was already there.

15 Q All right. Now, let me understand now because I
16 thought I wrote this down like you said, he -- they wanted
17 to go grocery shopping and they called him to come watch
18 you. Isn't that what you said?

19 A Yeah, you could say that, too.

20 Q Well, what is it?

21 A He was over there to watch us.

22 Q He wasn't there to necessarily talk to your grandmother
23 or to talk to Shannon --

24 A No.

25 Q -- no piano lessons or anything like that.

victim 2

1 A No.

2 Q They called him to baby-sit you and your siblings.

3 A Yes.

4 Q Do you know why they didn't call your mama?

5 A No.

6 Q And you said earlier you only had I think one other
7 adult male in your family; is that right?

8 A Yes, my uncle --

9 Q Okay.

10 A -- Bobby.

11 Q And do you have other aunts that are in this area?

12 A Yes.

13 Q Okay. But your grandmother and Aunt Shannon both had
14 to go to the grocery and they called David who was a piano
15 player in your church to come over and baby-sit you and your
16 sisters.

17 A Yes.

18 Q Your sister, your brother --

19 A It was me, my brother and my sister.

20 Q Marquel wasn't there.

21 A Marquel wasn't there.

22 Q Okay.

23 A My Aunt Shannon don't like driving, she don't like
24 driving.

25 Q Your Aunt Shannon doesn't like driving, that's why

victim 2 [REDACTED]

1 what?

2 A That's why my grandmother had to drive with her, she
3 don't like driving.

4 Q Okay. So Shannon wanted to go to the grocery store,
5 your grandmother drove because Shannon doesn't like driving.

6 A Yeah, we had to eat. You want to have groceries in the
7 house to eat.

8 Q And there is a Bi-Lo on Two Notch Road. As soon as you
9 go up the road you take a left on Two Notch and Bi-Lo is on
10 the left.

11 A I don't know which grocery they went to, I just know
12 they went to a store.

13 Q But it was a grocery store.

14 A Yes.

15 Q Okay. Being a student of Richland Northeast, isn't it
16 true that there is a Bi-Lo on Two Notch Road near the
17 school?

18 A Yes, there is Bi-Lo near Two Notch.

19 Q And actually it's close to [REDACTED]

20 A Yes.

21 Q Okay. Do you know if your Aunt Shannon and your
22 grandmother told you all, whether it was you or Junior, how
23 long it was going to take them to come back from the grocery
24 store?

25 A No. They said it wouldn't be too long.

victim 2

1 Q How long did it take them to come back?

2 A If I could estimate, it would probably be like an hour
3 or less.

4 Q How long after they left to go to the grocery store
5 did, as you say, he told your siblings to go in the other
6 room?

7 A About five minutes.

8 Q So five minutes later after they left he said for the
9 other to say leave and for you to stay.

10 A Yeah, he told them to go to bed.

11 Q Oh, it was their bedtime.

12 A It was like -- yeah.

13 Q I mean, your brother was eight and your sister was how
14 old at that time?

15 A She had to be like seven or eight.

16 Q Right, because you're two years older than her.

17 A Yes.

18 Q Okay. Let me understand this, every child knows about
19 good touches and bad touches and to tell when that happens,
20 right?

21 A Yes.

22 Q So as you told Ms. Simpson, he told you to go grab some
23 tissue --

24 A Yes.

25 Q -- from the bathroom, I guess.

victim 2

- 1 A Yes.
- 2 Q And he brought it to you, he told you to turn around
- 3 and you had a pink nightgown on.
- 4 A Yes.
- 5 Q And it was a Barbie nightgown.
- 6 A Yes.
- 7 Q And you remember of all the night clothing that you
- 8 have you remember that it was this one because your
- 9 grandparents bought it for you for Christmas?
- 10 A It was my favorite one.
- 11 Q It was your favorite one. So you wore it often.
- 12 A Yes, it had to be washed.
- 13 Q Sure, of course. You would wear it, wash it, wear it
- 14 again and all the other.
- 15 A Yes.
- 16 Q All right. That's how you knew it was yours because it
- 17 was your favorite?
- 18 A Yes.
- 19 Q What kind of panties did you have on?
- 20 A They had the -- it had -- I don't know.
- 21 Q You're not sure which kind but you definitely are
- 22 certain the nightgown was a Barbie.
- 23 A Yeah, it was little girl panties.
- 24 Q Little girl panties?
- 25 A (Nods in the affirmative.)

victim 2

1 Q And you saw him pull his pants down?

2 A (Nods in the affirmative.)

3 Q Is that a yes? I'm sorry, she has to take everything
4 that you --

5 A Yes. Like he just pulled his pants down.

6 Q Did you see him pull his underwear down?

7 A No, I didn't see. I just saw him pull his pants down.

8 Q You saw him pull the pants down but not the underwear.

9 A Yeah, but he had that down, too. I guess he took it
10 down with his pants, I don't know, but both of them was off
11 and down.

12 Q And how do you know that?

13 A I looked at it.

14 Q You're standing in front of this 17-year-old with his
15 pants and his underwear down and you looked back?

16 A And he said -- as he told me to turn around I turned
17 around, I looked back and then like his pants and I
18 guess boxers, I don't know, whatever was down.

19 Q Do you know if he -- what kind of underwear he was
20 wearing?

21 A No.

22 Q Okay. Do you know what kind of clothing he was
23 wearing?

24 A No.

25 Q And the first thing he touched was what?

victim 2

- 1 A The first thing he touched was my thighs to get from me
2 up my dress, and then he started to rub around my area not
3 with a -- he didn't slip my panties over yet, he is rubbing
4 around that area and then he slid my panties over and he
5 rubbed me.
- 6 Q So he never pulled your panties down?
- 7 A No, he pulled them aside.
- 8 Q Okay. And you said -- at this point you said he slid
9 your panties to the side?
- 10 A Yes.
- 11 Q And you were standing straight up at this point?
- 12 A Bent over.
- 13 Q And why did you bend over?
- 14 A Because he told me to.
- 15 Q This is the first time he had been to your house,
16 right?
- 17 A To watch us by himself, yes.
- 18 Q That's what I'm talking about, he had been at your
19 house before.
- 20 A Yes.
- 21 Q Your grandmother's house.
- 22 A Yes.
- 23 Q For what occasion?
- 24 A Just to come over. My grandmother cooked a lot, he
25 comes over to eat, say hey to Aunt Janie.

victim 2

- 1 Q Who is Aunt Janie?
- 2 A My grandmother is Janie, that's her real name.
- 3 Q He would call her Aunt Janie.
- 4 A Yeah.
- 5 Q You were that close that he would call your grandmother
- 6 Aunt Janie?
- 7 A Yeah.
- 8 Q And Kashawn would call him Uncle Junior.
- 9 A Sometimes but not like in front of an adult.
- 10 Q And your mom was his sister's best friend.
- 11 A Yes.
- 12 Q Your mom even went to his sister's wedding; is that
- 13 right?
- 14 A Yes, to show respect.
- 15 Q To show respect? It's not a funeral, it's a wedding,
- 16 right?
- 17 A Yes.
- 18 Q What do you mean show respect?
- 19 A It's a viewing, I guess like Davetta, my mother didn't
- 20 have no comforting that she needed.
- 21 Q Davetta and your mom did not have any conflict.
- 22 A Not that I know of.
- 23 Q They didn't have any conflict after you accused her
- 24 baby brother of touching you?
- 25 A To be honest I don't know where my mother went.

victim 2

- 1 Q But your mom did go to Davetta's wedding.
- 2 A Yes, she did.
- 3 Q Well, this wasn't the last -- after you made your
- 4 accusations to these folks that wasn't the last time you saw
- 5 Junior, was it?
- 6 A I don't think so.
- 7 Q When was another time you saw Junior after he was
- 8 accused of doing this?
- 9 A I don't remember a time. He came to some church
- 10 function that we had but I don't know how he came or how he
- 11 got there or who told him to come or whatever, I don't know
- 12 about that. But as he came up me and my grandma, we left.
- 13 Q Okay. Was there another time that you saw Junior?
- 14 A Not that I can remember.
- 15 Q You never went -- after this happened, after you made
- 16 these accusations you're saying that you was never -- except
- 17 this one time at a church function you never had any contact
- 18 with Junior?
- 19 A No.
- 20 Q Okay. You never went and hugged Junior?
- 21 A No.
- 22 Q Okay. Now, going back that first time on [REDACTED] he
- 23 told you to turn around and you said he helped you turn
- 24 around.
- 25 A Can you say that again?

victim 2

1 Q You said he helped you -- let me backup. You said he
2 told you to turn around and you turned around. Do you
3 remember telling Ms. Simpson that?

4 A Yeah, I think.

5 Q Do you also remember telling her that he helped you
6 turn around?

7 A Yes.

8 Q Why did he have to help you turn around?

9 A I guess to move like the pace faster.

10 Q And this whole time he's not saying anything to you.

11 A No, but turn around. And like the -- whatever he
12 wanted me to do, but yeah.

13 Q Okay. Now, Ms. Simpson asked you specifically did he
14 do anything with his finger inside you and you said no; is
15 that right?

16 A Besides sliding his finger on top.

17 Q On top of your panties?

18 A Yeah, he did that too.

19 Q And then what's the other thing he did?

20 A Then slid my panties over and then he proceeded around.

21 Q Around your private area.

22 A Yeah.

23 Q And this is what you told the police officer, right?

24 A Which one?

25 Q I don't know.

victim 2

- 1 A The one who interviewed me in the school.
- 2 Q Have you told the police officers two different things?
- 3 A No.
- 4 Q So it doesn't matter which one, you're saying that you
- 5 told the officer exactly what you're telling us today.
- 6 A Yes.
- 7 Q And you told the officer exactly what you told us
- 8 today.
- 9 A Yeah.
- 10 Q I'm sorry?
- 11 A I said yes.
- 12 Q And you would agree that you remember what happened
- 13 according to you back then better than you do now, right?
- 14 A Yes.
- 15 Q Okay. So do you recall now telling those two officers
- 16 that he put his finger inside of you back then?
- 17 A I don't remember.
- 18 Q Okay. Do you recall in preparation for today do you
- 19 recall coming here and talking to Ms. Simpson and some other
- 20 people maybe on her staff?
- 21 A Yes.
- 22 Q When was that?
- 23 A I believe it was Thursday, I believe. Yes, Thursday.
- 24 Q Last Thursday?
- 25 A Yes, last Thursday. I told her a fully more, like I

victim 2

1 told her I didn't feel comfortable back then telling them,
2 like another man officer stuff like that.

3 Q You've talked to other females, though, haven't you?

4 A Yes, I talked to her.

5 Q I'm talking about back then. You had other people that
6 you told what happened but you did not tell them about the
7 finger going inside you.

8 A Yes, the females.

9 Q What females did you tell?

10 A I told vic 1 when I made her pinky promise, my
11 grandmother asked me and I told her. My mom asked me,
12 there's a little bit on there, females. I didn't really
13 feel comfortable telling a male.

14 Q Okay. But you're comfortable saying it in front of all
15 these males now.

16 A Not all males.

17 Q Six years older.

18 A Yes.

19 Q Right before trial you tell the female prosecutor that
20 you had -- there were fingers, it was a finger inside you.

21 A Not inside me but feeling around.

22 Q Oh, okay. I'm sorry. I apologize.

23 A Yeah.

24 Q I'm sorry. So not inside you but around the area.

25 A Yes.

victim 2

1 Q And that around the area was what you didn't tell the
2 male officers before.

3 A I don't think so.

4 Q Because you were uncomfortable talking to a male about
5 that part.

6 A Yes.

7 Q You didn't go all of the way in telling them.

8 A Yes.

9 Q But now you're going all the way.

10 A Yes.

11 Q And you said he picked you up --

12 A Yes.

13 Q -- and did what?

14 A He picked me up to sit me on his private area.

15 Q Okay.

16 A But it wasn't anywhere -- I guess like his private area
17 couldn't fit in me at that point in time so he put me back
18 down, and he picked -- he pulled his pants back up and a
19 little before he did that, like ten minutes, five minutes,
20 my grandmother then came in.

21 Q You mean after that?

22 A Yeah.

23 Q So it the wasn't a whole hour then, was it?

24 A It was like an hour or less, my grandmother wasn't gone
25 too long. They weren't going to leave no little girl in the

victim 2

1 house with a male in the house by themselves for too long.

2 Q Your grandmother would not leave you as a little girl
3 with any man --

4 A Too long.

5 Q -- too long.

6 A Yes.

7 Q Why?

8 A That was just her mentality.

9 Q Okay. Now, the second time you were over at
10 Apartments.

11 A Yes.

12 Q That's off of

13 A Uh-huh.

14 Q By the IHOP?

15 A Yes, near Fernandina Road.

16 Q In front of Fernandina Road?

17 A Yes.

18 Q And your mom had an apartment there?

19 A Yes.

20 Q And you were living with your mom then?

21 A Yes.

22 Q Did she have custody then?

23 A I don't know.

24 Q Okay. Ms. how much time was between what you

25 say happened on and or

victim 2

- 1 A I'm not exactly sure of the time, the time frames, like
2 how many months.
- 3 Q Was it months, was it weeks?
- 4 A Probably months.
- 5 Q Do you remember what season it was?
- 6 A Well, it was kind of warm outside but it wasn't summer,
7 it was probably like spring.
- 8 Q And you trusted your mom, right?
- 9 A Say that again.
- 10 Q You trusted your mom?
- 11 A Did I?
- 12 Q Yes.
- 13 A Yes.
- 14 Q I mean, that's your mother.
- 15 A Yes.
- 16 Q Okay. And she also left like your grandmother and
17 Shannon did off of [REDACTED] and left you according to you
18 with David, with Junior?
- 19 A Yeah, I think so.
- 20 Q You think she left. Did she leave or not leave?
- 21 A She left. She left. She left.
- 22 Q She wasn't in another room or anything like that.
- 23 A No, not --
- 24 Q What time of day or everything was this?
- 25 A It was not like nighttime, it was like around in a day,

victim 2 [REDACTED]

- 1 around like --
- 2 Q The sun was still up?
- 3 A Yeah.
- 4 Q So this time was earlier than the [REDACTED]
- 5 A Yes.
- 6 Q And your mom left. Do you know where she went?
- 7 A Not that I know of, no.
- 8 Q Okay. Was there any other adults there?
- 9 A No, just him.
- 10 Q Do you know why she left -- well, how many siblings was
- 11 there at [REDACTED] [REDACTED]
- 12 A It was me and just my two brothers, my sister.
- 13 Q Oh, everybody was there.
- 14 A Yeah, just about.
- 15 Q Okay. When is your birthday?
- 16 A My birthday?
- 17 Q Uh-huh.
- 18 A [REDACTED] [REDACTED] [REDACTED] [REDACTED]
- 19 Q Okay. And your mom left and you don't recall where she
- 20 went?
- 21 A She told but I forgot where.
- 22 Q Okay. Okay. And then he touched your boob?
- 23 A Yes.
- 24 Q This was your bare boob or did you have clothes on?
- 25 A Like I had my shirt on top but like he did like a

victim 2

1 Q But your brother, the baby would have only been two or
2 three at the most.

3 A Probably like three or whatever, I don't know, he was
4 walking. He was pretty smart.

5 Q He was walking, your mom is gone, according to you
6 David is watching over you all, and Marquel at three is
7 following behind his eight-year-old brother outside to play
8 basketball.

9 A Well, I know Kashawn for a fact was outside but --

10 Q You know for -- I'm sorry. You know for a fact because
11 I thought earlier you said I guess --

12 MS. SIMPSON: Objection, Your Honor, if he would just
13 let the witness answer.

14 THE COURT: I will instruct counsel to allow her to
15 complete her response and then ask the next question. Do
16 you need to explain you're last response? You may do so.

17 A Thank you. My brother, Kashawn, he was outside, I
18 don't know at that point in time where my sister was. I can
19 tell you that right now I didn't know where she was at.
20 Marquel, he probably would have been with Kashawn but I know
21 nobody was in the apartment when he made that comment.

22 Q Are you finished now?

23 A Yeah.

24 Q Okay. So isn't it true that you said earlier that you
25 guess your brother, Kashawn, and your other brother,

victim 2

1 Marquel, was outside?

2 A Yeah.

3 Q And just now you said you know for a fact that your
4 brother, Kashawn, was outside but that Marquel, your
5 three-year-old brother, was probably with Kashawn; is that
6 right?

7 A Yes. Because Kashawn --

8 Q I'm sorry?

9 A Kashawn is always outside playing basketball.

10 Q Okay. And then you said -- tell me your sister's name
11 again.

12 A Jasmine.

13 Q Jasmine. You didn't know where Jasmine was, isn't that
14 your testimony?

15 A Yes.

16 Q But you also know that you and Mr. Carmichael were
17 alone when he made the nasty comments.

18 A Yes. We was in the front area of the apartments.

19 Q And then your mom came home.

20 A Yes, she came back, she wasn't gone for long.

21 Q Okay. Shorter than your grandmother and your Aunt
22 Shannon were at the grocery store?

23 A Yes.

24 Q And when your mom came home, surely you told your mom
25 that he touched your boob and made nasty comments, right?

victim 2

- 1 A No.
- 2 Q But you knew that you were supposed to tell when
- 3 somebody does something bad to you, correct?
- 4 A At this point, yes.
- 5 Q But you didn't do that.
- 6 A No.
- 7 Q Surely you told your grandmother when the
- 8 incident occurred knowing that she doesn't leave you with
- 9 men for too long.
- 10 A Yes.
- 11 Q Surely you told her what happened, right?
- 12 A After she found out?
- 13 Q No, I'm talking about on that day.
- 14 A I didn't tell her.
- 15 Q How about that week later?
- 16 A I didn't tell her.
- 17 Q How about that month later?
- 18 A I didn't tell her.
- 19 Q How about three years later?
- 20 A She found out on her own.
- 21 Q But you never told your grandmother?
- 22 A I never told her.
- 23 Q But you never told your mom?
- 24 A No.
- 25 Q You didn't tell your teachers?

victim 2

- 1 A No.
- 2 Q You didn't tell your guidance counselor?
- 3 A No.
- 4 Q Did you know **vic 1** back then?
- 5 A Yes.
- 6 Q Did you tell her then?
- 7 A No.
- 8 Q You trusted her.
- 9 A I trusted her.
- 10 Q Now, you didn't volunteer this information, did you?
- 11 A What?
- 12 Q About what happened on or about what happened
- 13 at .
- 14 A I didn't.
- 15 Q Okay. But this third time -- now this is -- I want to
- 16 make sure I got this clear, this third time you were at
- 17 Davetta's house.
- 18 A Yes, sir.
- 19 Q Davetta owned this house, right?
- 20 A I don't know, but it was her house.
- 21 Q Where was it?
- 22 A I don't know where -- the address of it.
- 23 Q Yes, ma'am. But you know exactly -- I'm sorry, go
- 24 ahead.
- 25 A Huh?

1 Q Oh, I'm sorry, I think I interrupted you, you were
2 still talking.

3 A I know where the house was at.

4 Q Okay. Where is the house?

5 A I don't know the name of the street.

6 Q Right. But you told us earlier you know exactly how to
7 get there.

8 A Like I don't know the name of like the street but I
9 know like it's -- it was like -- it's some bridge, you have
10 to take like a little mini-bridge to get there.

11 Q And this is a house?

12 A Yes, it was a house.

13 Q Not an apartment.

14 A No.

15 Q Had you been over to their mother's house?

16 A I think so, yeah, probably.

17 Q Okay. So this time over at Davetta's house Davetta was
18 there.

19 A Yeah.

20 Q So this was the first time that we're hearing that
21 another adult was there but you're saying Junior did
22 something to you.

23 A Yes, when he came.

24 Q And you were taking a nap?

25 A We both were.

victim 2

1 Q Who is we?

2 A Me and Ms. Davetta.

3 Q Was anybody else? I mean any of your siblings or
4 anything?

5 A No.

6 Q Why were your siblings not there with you?

7 A I came from somewhere, I forgot where, but I got
8 dropped off so she could watch me.

9 Q Okay. How many months was this after the Willow Creek?

10 A I'm not sure.

11 Q Was it weeks or months?

12 A It was probably like a couple of months.

13 Q Okay. How old were you?

14 A I would say I was about like 12.

15 Q 12 years old?

16 A Probably twelve or around that time.

17 Q What school are you going to at 12 years old?

18 A I'm trying to think because I went to a lot of schools.

19 I'm not sure what school I went to I went to so many.

20 Q But you were in elementary school.

21 A Let me think.

22 Q At 12?

23 A Yes.

24 Q You were in elementary school at 12?

25 A I think I was at nine -- I don't know what middle

victim 2

1 school there was.

2 Q All right. So both of y'all went to sleep.

3 A Uh-huh.

4 Q And where did you go to sleep?

5 A We was at -- at first we was in the front room and then
6 she went -- she was like still sleepy or whatever and so she
7 was in her room, she went in her room. And that's when I
8 woke up and I went in Junior's room to watch TV.

9 Q Why did you go in his room?

10 A To watch TV.

11 Q There wasn't a TV in the front room.

12 A Yes.

13 Q Why didn't you go there?

14 A Yeah, but there was no cable in there.

15 Q The cable was in Junior's room?

16 A Yes, sir.

17 Q Okay. Describe the furniture in his room.

18 A He had like a -- I could say like a king size bed --

19 Q Okay.

20 A -- like it was a full bed. I believe it was like the
21 headboard only but his dresser was black.

22 Q Okay.

23 A And he had like a little TV on top of his dresser --

24 Q Okay.

25 A -- so like you could actually see the TV.

victim 2

1 Q And had you been in that room before?

2 A Not like just to sit in there and watch TV by myself,
3 no.

4 Q Okay. But you had been there before.

5 A To get to Davetta's because they were right next to
6 each other.

7 Q Oh, you can go from her bedroom to his room?

8 A No. It's like her room is right there and his room is
9 like right there so it's like when you walk down the hall
10 her room is right there and his room is right there.

11 Q Okay. So they are next to each other but you had been
12 to his room before that at other times.

13 A No.

14 Q Okay. Was that your first and only time being in his
15 bedroom at all?

16 A Yes. Yes.

17 Q Okay. You had never taken a nap in there before.

18 A No.

19 Q You had never gone in his room to watch TV before.

20 A You're talking about before the incident?

21 Q Yes.

22 A No, I hadn't watched TV in his room.

23 Q Well, how did you know he had cable in there?

24 A Because like before she went to sleep we was all in the
25 front and she was asleep and so she went in her room because

victim 2

1 I guess she didn't have no TV in her room, it was only TV in
2 the front and in his room and she told me I could watch TV
3 so I went in his room, and I'm still short so he had -- the
4 TV was on top of his dresser so I remembered it was on
5 Sponge Bob, though. I had to go in there and watch TV
6 because she was still sleepy.

7 Q And you said he came in and shut the door.

8 A He came home from wherever he was at, I don't know
9 where he came from. But as he came, like he came straight
10 to his room and like that's when he got on the bed and --

11 Q How many times have you been over to Davetta's house at
12 this house?

13 A It had been awhile.

14 Q Had you been to her room before?

15 A Yes, I have.

16 Q In order to get to her room did you have to walk past
17 Junior's room?

18 A You could see his room because it's like right next to
19 each other.

20 Q So you could see in his room each time you went to go
21 to her room?

22 A Yes.

23 Q So you are aware already of what his furniture looked
24 like just by walking past his room, right?

25 A Yeah, you could see. It wasn't a lot of furniture.

victim 2

1 Q Now, you believe you were 12 at this time.

2 A Yes.

3 Q And he tried to unzip your pants, or he did unzip your
4 pants?

5 A He did.

6 Q So he unzipped your pants. You said Hand I wrote this
7 down because I thought it was a little curious, "He
8 proceeded to play."

9 A Yeah.

10 Q What does that mean?

11 A Well, like I said, he proceeded to play, like he
12 unzipped my pants down and like I guess like put his hands
13 in my panties and he played with my area.

14 Q Where would you get that phrase from that he played in
15 your private area?

16 A Junior.

17 Q Why did you use that word that he began to play?

18 A I don't know.

19 Q You don't know? Did somebody tell you that?

20 A No.

21 Q That's your word.

22 A Yes.

23 Q He unzipped your pants and that he began to play in
24 your private area.

25 A Yes.

victim 2

1 Q But his fingers didn't go inside, right?

2 A Yeah, his fingers was still there. He never put his
3 finger in but it was always just around.

4 Q Just around?

5 A Yeah.

6 Q Okay. And your response was you didn't get loud.

7 A Yeah.

8 Q You didn't scream.

9 A No.

10 Q You didn't tell him to stop.

11 A I did.

12 Q You did? You whispered it or said it?

13 A I whispered, "Just stop, stop."

14 Q Did you do anything else?

15 A No.

16 Q Is that a no?

17 A No.

18 Q Did you tell Davetta what happened?

19 A No.

20 Q Why not?

21 A Because like I said, I didn't want her to think like I
22 wanted this to happen or anything. I just didn't want like
23 to cause no trouble.

24 Q Ms. [REDACTED] according to you on three occasions this man
25 has touched you; is that right?

victim 2

1 A Yes.

2 Q On two of those occasions at least he made nasty
3 comments to you, or at least one.

4 A Yes.

5 Q Is that right?

6 A Yes.

7 Q You already knew about good touches and bad touches,
8 right?

9 A Yes.

10 Q But you didn't want to tell anybody because you didn't
11 want to cause trouble?

12 A (Indicating in the negative.)

13 Q That's a no?

14 A Yes.

15 Q And according to you he said if you told then you would
16 be the one in the wrong.

17 A Yes.

18 Q Wrong for what?

19 A I don't know.

20 Q You didn't do anything wrong, did you?

21 A No.

22 Q And I believe back when you talked over at Davetta's
23 house it was one or three rubs; is that right?

24 A Yes.

25 Q I wrote that down, you said one of three rubs?

victim 2

1 A It was like between one to three before my aunt came.

2 Q Okay. And the aunt blew the horn, your Aunt Shirley,

3 not Shannon.

4 A Shirley, yeah.

5 Q Your Auntie Shirley came and that's when it was time

6 for you to go.

7 A Yes.

8 Q Is that when you said goodbye to Davetta?

9 A No.

10 Q Did you know if she knew that you even left?

11 A No. I don't think she knew I left.

12 Q Then she asked you what's wrong?

13 A Yes.

14 Q Did she know something is wrong with you?

15 A I just came to the car and as I came to the car and she

16 asked me what was wrong with me I said nothing.

17 Q And that was your opportunity to tell her what

18 happened, right?

19 A Yes.

20 Q But you didn't tell her. So you lied to her.

21 A To who?

22 Q Your Auntie Shirley.

23 A About telling her nothing was wrong with me.

24 Q That was a lie.

25 A Yes.

victim 2

- 1 Q In fact, you said, "I played it like it was cool,"
2 right? At 12 years old you was playing it like it was cool
3 after this man was playing with you.
- 4 A Yeah, like nothing happened.
- 5 Q And then we fast forward six years later you haven't
6 told anybody about this.
- 7 A No.
- 8 Q You saw him in church during these six?
- 9 A You're talking about during the revival?
- 10 Q No. During this six years you're still going to Bible
11 Way of piedmont.
- 12 A At that time like he wasn't -- I don't think he was
13 going -- he wasn't going to Piedmont, Like He found some
14 other churches there.
- 15 Q Okay. How many years after the what you said happened
16 on [REDACTED] -- I'm sorry, Davetta's house -- was he
17 still going to church? When did he stop?
- 18 A When he stopped going to our church? He probably
19 stopped -- I don't know what made him stop going.
- 20 Q No. I didn't ask you what made him stop, I asked you
21 when did he stop.
- 22 A I don't know.
- 23 Q Was it a year later?
- 24 A It probably could have been.
- 25 Q Could it have been two years later?

victim 2

1 A I'm not sure.

2 Q Do you know how old you were when he left?

3 A Probably like around -- probably about two years later.

4 Q About two years later probably?

5 A Yeah.

6 Q And in those two years you saw him at church, right?

7 A No. I really didn't go to my church, I didn't feel
8 like I wanted to go to my grandmother's church.

9 Q You told your grandmother that?

10 A No. She always asked me like why are you not coming to
11 church. And so my mom, like we went up to Atlas Road,
12 started going to Bible Way Church off Atlas.

13 Q Right. Okay. Well, who -- how do you know that Mr.
14 Carmichael left two years after this happened if you wasn't
15 going to Bible Way Piedmont anymore?

16 A Because from time to time I was with my grandmother
17 still so when I am at her house we have to go to church.

18 Q Whether you want to or not.

19 A Yes.

20 Q So you were still going to Bible Way Piedmont at least
21 while you were living with your grandmama.

22 A Probably like once a month maybe.

23 Q So at least once a month. And your grandmother's rule
24 is you're going to church.

25 A Yes.

1 Q And you stayed with your grandmother but just not
2 consistently.

3 A Yes.

4 Q Sometimes you stayed with your mom, sometimes you
5 stayed with your grandmother.

6 A Yes.

7 Q And did you ever stay with your aunt?

8 A My Auntie Shannon always like stayed with my
9 grandmother.

10 Q I'm talking about Shirley.

11 A My Auntie Shirley, no.

12 Q Okay. Between your mother's house and your
13 grandmother's house you would go to church to Bible Way
14 Atlas Road?

15 A Or if my auntie would come down I would go to Refuge
16 Temple.

17 Q Refuge Temple?

18 A Right.

19 Q But still on at least one time per month when you was
20 in your grandmother's home and you went to Bible Way of
21 Piedmont for these two years David Carmichael was there.

22 A I don't think he was, because usually when I come to my
23 grandmother's it was like he wasn't there.

24 Q But yet you still didn't want to go.

25 A No, I didn't.

victim 2

- 1 Q Why?
- 2 A I just didn't want to go.
- 3 Q vic 1 was there, right?
- 4 A I think she was.
- 5 Q She was your friend then?
- 6 A Yes. We've been friends for a long time.
- 7 Q You told secrets to each other?
- 8 A It wasn't really that much of a secret around that age.
- 9 Q It wasn't really a secret around that age?
- 10 A I said it wasn't much secrets around.
- 11 Q You all made the pinky promises, right?
- 12 A Right.
- 13 Q Pinky promise means if I tell you something we put your
- 14 pinkies and promise not to tell anybody.
- 15 A Yes.
- 16 Q You trusted her not to tell?
- 17 A No.
- 18 Q You didn't trust her not to tell anyone.
- 19 A Yes.
- 20 Q Okay. So when y'all are at the women's lounge six
- 21 years later you told her to pinky promise first and then you
- 22 trusted her and then you told her everything you told us now
- 23 or that "I've been touched?"
- 24 A Like, "I've been touched."
- 25 Q By?

victim 2

- 1 A Junior.
- 2 Q Anybody else?
- 3 A Excuse me?
- 4 Q Touched by anybody else?
- 5 A No, just by him.
- 6 Q That's all you told her?
- 7 A Yes.
- 8 Q You would obviously agree with me that these were bad
- 9 touches, right?
- 10 A Yes.
- 11 Q Were there any other bad touches?
- 12 A In my life?
- 13 Q Yes.
- 14 A No, just Junior.
- 15 Q So after you told her I believe the cousin came by and
- 16 talked to you all, right?
- 17 A Her cousin came at the door and asked us what we were
- 18 doing and we both was like nothing, we both said nothing.
- 19 After that we went back upstairs to the church.
- 20 Q I thought you were crying at this point.
- 21 A Yeah, we did shed a few tears.
- 22 Q You shed a few tears?
- 23 A Yeah. Because it was like emotions.
- 24 Q Right. And when Jessica asked you what you were doing
- 25 down here and you said nothing, y'all went right back up

victim 2

1 stairs.

2 A Right. She came in like probably after we finished, it
3 wasn't that much, it was like emotion. I don't know what
4 made her come in, she just came in and asked and we said
5 nothing, and she just said, "What are you talking about?"
6 You know, when you cry your face be dry.

7 Q Let me back up a little bit. The only reason you went
8 downstairs was because vic 1 had to help change a baby.

9 A Yeah.

10 Q That's what caused you to go down with your friend?

11 A Yes.

12 Q Not a sermon or anything, you just went downstairs
13 because your good friend was taking care of a baby.

14 A Yes.

15 Q And then you didn't tell anyone else until someone came
16 to you about it.

17 A Yes.

18 Q And that was your grandmother?

19 A Yes.

20 Q But then you lied to her.

21 A No. I didn't lie to my grandmother when she came and
22 asked me, I thought I was in trouble when she called my name
23 because I just came from school and this is when we was
24 living in [REDACTED] and --

25 Q Where?

victim 2

- 1 A On [REDACTED]
- 2 Q That's a street, [REDACTED] [REDACTED]?
- 3 A Right.
- 4 Q Okay.
- 5 A And she called my name like I had gotten scolded, I
- 6 came to her and she asked me what's going on or what
- 7 happened and I was like, "Oh, what are you talking about?"
- 8 And she was like, "I know." So I had to tell her what was
- 9 going -- what happened with Junior.
- 10 Q But at this stage you don't know what she's talking
- 11 about because you thought you were in trouble for something
- 12 else and all she said was, "I know." So how is it that you
- 13 know she was talking about Junior?
- 14 A Because the way my grandmother looked at me at this
- 15 point it was like I know that she told her.
- 16 Q But you said you played it off.
- 17 A Yes, like, "What are you talking about?"
- 18 Q "What are you talking about?"
- 19 A Yes.
- 20 Q At this stage you still are not telling her what you
- 21 said happened.
- 22 A Not until she told me that she knows.
- 23 Q And then an officer came -- the resource officer came
- 24 from -- a Joseph Keels?
- 25 A Yeah, he did.

victim 2

- 1 Q And you talked to him.
- 2 A Yeah. He pulled me out of class, like I don't know how
- 3 he found out or whatever but he questioned me about it. I
- 4 really at this point in time didn't feel comfortable telling
- 5 him so when my mom found out that the resource officer was
- 6 questioning me she got upset.
- 7 Q She what?
- 8 A She got a little upset.
- 9 Q Oh, that the officer was talking to you alone?
- 10 A Yeah.
- 11 Q Okay. And then you talked to another officer.
- 12 A I remember talking to an investigator.
- 13 Q Was that with your mom?
- 14 A She actually came with me and had to sit outside of the
- 15 office.
- 16 Q But before that you told your mom -- your mom told you
- 17 to tell everything.
- 18 A Yes.
- 19 Q Did you tell that officer everything after your mom said
- 20 that?
- 21 A Yes.
- 22 Q After that your grandmother knows, your mom knows but
- 23 she told you to tell everything, right?
- 24 A She told me to tell her.
- 25 Q What happened?

victim 2

1 A Yes, what had happened.

2 Q And you did that.

3 A Yes, I did.

4 MR. SHADD: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 Q Do you know this gentleman here?

7 A (Indicating in the negative.)

8 Q How about this gentleman over here?

9 A (Indicating in the negative.)

10 MR. SHADD: Okay. That's all I have.

11 THE COURT: Redirect.

12 MS. SIMPSON: Briefly, Your Honor.

13 THE COURT: Yes, ma'am.

14 REDIRECT EXAMINATION

15 BY MS. SIMPSON:

16 Q victim 2 you said the last time that Junior had touched
17 on you, you indicated to defense counsel -- he said, "You
18 lied to your aunt and didn't tell her what happened," right?

19 A My grandmother?

20 Q To your Aunt Shirley when she picked you up.

21 A Yes.

22 Q What had the defendant just told you would happened to
23 you if you told?

24 A As I was getting ready to leave I was going out the
25 door, my Auntie is very impatient, he told me if I told

victim 2

- 1 anyone that he was going to kill me, he would hurt me.
- 2 Q And before that had he made you believe that you would
- 3 actually get in trouble if you told anyone?
- 4 A That's why I didn't tell anyone.
- 5 Q Because you didn't want to get anybody in trouble.
- 6 A Yes.
- 7 Q And what made you tell victim 1
- 8 A To be honest I really don't know. I think like when we
- 9 was at church like it was -- I really don't know what the
- 10 preaching was, I can't remember what he was preaching about
- 11 but it was just something.
- 12 Q It was just something that made you tell.
- 13 A Yes.
- 14 Q And, you know, he addressed a lot about your family
- 15 relationship and who you've lived with and you've gone to a
- 16 lot of schools, you've been through a lot. You're mother,
- 17 who was her best friend?
- 18 A Mrs. Davetta Carmichael.
- 19 Q And Davetta was Junior's sister, right?
- 20 A Yes.
- 21 Q Did you want to tell anybody about this?
- 22 A Deep down inside I really did.
- 23 Q Were you scared?
- 24 A Yeah.
- 25 MR. SHADD: Objection, Your Honor, leading.

victim 2

1 THE COURT: Sustain that objection, don't lead the
2 witness.

3 MS. SIMPSON: Thank you, victim 2

4 THE COURT: Recross?

5 MR. SHADD: No, sir.

6 THE COURT: All right, ma'am, you may step down from
7 the witness stand. Thank you very much. All right. Ladies
8 and gentlemen of the jury, we're going to break for lunch at
9 this point in time, you will be leaving the courthouse. The
10 same instructions I gave you when you left yesterday will
11 apply in this case as well and that is not to watch or
12 listen to or read media reports, don't attempt to gather
13 information on your own from any source, don't discuss the
14 case and don't allow anyone to discuss it with you. Report
15 any contacts you might have from people who are trying to
16 somehow discuss your participation in this trial with you.
17 At this point in time we will take that break for lunch,
18 I'll ask that you be back in the jury room that's in use for
19 this trial at 1:30 this afternoon and so we'll be in recess
20 until that time. At this time the bailiffs will show you
21 out, if you will, any note taking material that you have
22 leave that in the jury room, I would appreciate that. Thank
23 you very much.

24 (The jury the courtroom.)

25 THE COURT: All right. Court will be in recess until

victim 2

1 1:30, the defendant remains in custody. Thank you very
2 much.

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: All right. State read to proceed?

5 MS. CAMPBELL: One housekeeping matter. The next

6 witness who would be Ms. victim 1

7 she went to The ARC and was interviewed, she disclosed
8 about another touching from a separate case, we are not
9 going into that, it would not be relevant to this case,
10 there was no false reporting or anything of that nature. So
11 we just want to make sure we're all on the same page that we
12 will not be going into that in any way.

13 THE COURT: All right. Is that your understanding,

14 Mr. Shadd? Is that all right with you?

15 MR. SHADD: That she won't discuss --

16 THE COURT: She disclosed a touching involving another
17 individual and the State is indicating they're not going to
18 ask any questions and has instructed the witness not to
19 discuss that.

20 MR. SHADD: Beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 (Break in proceedings.)

23 MR. SHADD: Okay. That's fine.

24 THE COURT: Thank you. All right. Defense ready to
25 proceed?

victim 2

1 MR. SHADD: Can we approach on at least that?

2 THE COURT: Yes, sir.

3 (A bench conference was held.)

4 MS. CAMPBELL: Your Honor --

5 THE COURT: Yes, ma'am.

6 MS. CAMPBELL: -- may we approach again?

7 THE COURT: Please.

8 (A bench conference was held.)

9 THE COURT: All right. We're going to be in recess
10 just a minute while we check on one thing. I'll stay on the
11 bench but court is in recess right now. If you need to move
12 about you can.

13 (WHEREUPON, a short break was taken.)

14 THE COURT: All right. Ms. Campbell, if we could,
15 let's put on the record information about the events.

16 MS. CAMPBELL: Yes, Your Honor. We did research this
17 through our system and it shows that Xavier Williams was
18 detained in juvenile court on petition JU21509, it was
19 obtained on October 9th 2002 and then pled guilty in June of
20 2003, it shows the charge as a lewd act, the victim in the
21 case is listed as victim 1

22 THE COURT: And the disposition was a guilty plea; is
23 that correct?

24 MS. CAMPBELL: That's what's showing, Your Honor, yes,
25 sir.

victim 2

1 THE COURT: Any other information that you have
2 concerning that, Ms. Campbell? That's the information you
3 have at this time?

4 MS. CAMPBELL: That's the information I have at this
5 time. I did send somebody down to get the petition but I
6 was able to get back in our system and pull up the victim
7 which I believe was Mr. Shadd's concern.

8 THE COURT: Has the information been provided to the
9 defense?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Is the defense ready to proceed, Mr. Shadd?

12 MR. SHADD: Yes, sir.

13 THE COURT: Bring the jury in.

14 (The jury returned to the courtroom.)

15 THE BAILIFF: The jurors are all present, Your Honor.

16 THE COURT: Thank you, sir. I trust everyone had a
17 good lunch and if any member of the jury panel had any
18 difficulty in complying with my instructions, please stand.

19 (There was no response.)

20 THE COURT: It appears that all jurors have been able
21 to comply with my instructions. I want to apologize to you
22 for our tardiness in getting started, there was some
23 information, though, that we have cleared up that will
24 perhaps help the trial move along a little more smoothly at
25 this point in time and we have been able to do that at this

victim 1 [REDACTED]

1 point in time. At this point the State has the right to
2 call its next witness.

3 MS. CAMPBELL: May it please the Court? The State
4 could call victim 1 [REDACTED]

5 The witness, victim 1 [REDACTED], was first
6 duly sworn and testified as victim 1 [REDACTED]

7 [REDACTED] Ma'am, once your seated I'll ask that you
8 state your name, please.

9 THE WITNESS: victim 1 [REDACTED]

10 THE COURT: You're going to have to speak up, move
11 closer to the microphone.

12 THE WITNESS: victim 1 [REDACTED]

13 THE COURT: Much better, thank you.

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL

16 Q Ms. victim 1 [REDACTED] how old are you?

17 A 17.

18 Q And do you live here in the Columbia area?

19 A Yes.

20 Q And how long have you been living in Columbia?

21 A My whole life.

22 Q Do you go to school?

23 A Yes.

24 Q And where are you currently enrolled in school?

25 A Ridgeview.

victim 1

1 Q What grade are you in there?

2 A Twelfth.

3 Q At school currently are you involved in any
4 extracurricular activities?

5 A No, ma'am. I did sports medicine at school for when
6 like football players get injured.

7 Q So you do sports medicine?

8 A Yes.

9 Q And tell the jury as far as helping out with the
10 medicine program what your duties include.

11 A If a player was to get injured we take care of them,
12 ice them up, wrap up hands, ankles, arms.

13 Q And who do you currently live with?

14 A My mother and my stepfather and my two sisters and my
15 brother.

16 Q Your two sisters and your brothers?

17 A One brother.

18 Q One brother. How old are your sisters and brothers?

19 A Six, two and 14.

20 Q What are their names?

21 A Deatrick, Maria and Sophia.

22 Q Are they older than you or younger than you?

23 A Younger.

24 Q We're real picky where you get around the microphone in
25 here, sorry. It's bad acoustics. Do you remember where you

victim 1

- 1 went to elementary school?
- 2 A I went to Bradley and Satchel Ford.
- 3 Q So you were at those two schools at different times?
- 4 A Yes.
- 5 Q Was that because your family moved?
- 6 A I don't know.
- 7 Q What's your mom's name?
- 8 A Sabrina Sanders.
- 9 Q And is she here in the courtroom?
- 10 A Yes.
- 11 Q And is she seated right behind our table?
- 12 A Yes.
- 13 Q Do you know a young lady named victim 2
- 14 A Yes.
- 15 Q And can you tell the jury how you know victim 2
- 16 A We grew up in the same church.
- 17 Q And what church was that?
- 18 A Bible Way Piedmont.
- 19 Q And was your family active in church?
- 20 A Yes.
- 21 Q And what were some of the favorite things y'all did
- 22 involving the church as far as you and your family?
- 23 A Sung in the choir.
- 24 Q You sung in the choir. And did you actually sing in
- 25 the choir?

victim 1

- 1 A Yeah, and I danced.
- 2 Q You also danced? Back when you were growing up, did
- 3 you attend church pretty regularly?
- 4 A Yeah, every Sunday.
- 5 Q Are you familiar with the Carmichaels?
- 6 A Yes.
- 7 Q And tell the jury how you know the Carmichael family.
- 8 A They went to church with us.
- 9 Q Who all did you know in the Carmichael family, do you
- 10 remember?
- 11 A Davetta and David.
- 12 Q Were they older or younger than you?
- 13 A Older.
- 14 Q And who were they friends with in your family?
- 15 A My mom and my auntie.
- 16 Q Your mom and your auntie?
- 17 A Yes.
- 18 Q What's your auntie's name?
- 19 A Misty Mack.
- 20 Q Would y'all see the Carmichaels, David and Davetta, on
- 21 a pretty regular basis when you were younger?
- 22 A Only at church.
- 23 Q Only at church?
- 24 A Yes.
- 25 Q In any occasion did Davetta and David come over to your

victim 1

1 house?

2 A No, other than the occasion that happened with me.

3 Q And did you all ever have groups from the church over

4 to your house?

5 A Nuh-uh.

6 Q But you would see them in church activities.

7 A Yeah.

8 Q I'll turn your attention back when you were seven or

9 eight years old. Did you have an occasion to be with the

10 defendant, David Carmichael?

11 A Yes. He babysat me and my brother.

12 Q Who all was he baby-sitting that day?

13 A Me and my brother.

14 Q And which brother was it?

15 A My 14-year-old brother.

16 Q Your 14-year-old brother? Where was he baby-sitting

17 you that day?

18 A My house.

19 Q Who was he babysitting for? You're mother?

20 A Yes.

21 Q And at that point was your mother married?

22 A No.

23 Q So she later married your stepfather?

24 A Uh-huh.

25 Q On the day in question, do you remember what time of

victim I

1 year it was?

2 A No.

3 Q What were you and your brother doing, or how did David
4 come to the house, do you remember?

5 A No.

6 Q Once he got to the house, can you tell the jury what
7 you remember?

8 A He got to the house, spoke to us, we sat on the couch
9 and watched cartoons.

10 Q And what type of cartoons were you watching that day?

11 A We watched Lion King.

12 Q It was you and your brother?

13 A Yeah.

14 Q How many years younger was he than you?

15 A Three.

16 Q Three years younger?

17 A Yeah.

18 Q You would have been about how old on this day when
19 David Carmichael came to baby-sit you all?

20 A Seven or eight, I believe eight.

21 Q Okay. After you sat on the couch and watched the Lion
22 King for a while, what happened?

23 A My brother fell asleep and he was told to go to bed.

24 Q Let me back up for a second or two. Was David active
25 in the church y'all went to?

victim 1

- 1 A Yes.
- 2 Q Did he have a position there?
- 3 A He sung in the choir, directed and played the organ and
- 4 piano.
- 5 Q The organ and piano? Where did your brother fall
- 6 asleep?
- 7 A On the couch.
- 8 Q In which room?
- 9 A The living room.
- 10 Q And what were you and David doing at that point?
- 11 A We were still watching cartoons.
- 12 Q Did you call him David or did you call him something
- 13 else?
- 14 A I called him Junior.
- 15 Q Junior?
- 16 A Uh-huh.
- 17 Q And y'all were still watching cartoons?
- 18 A Yes.
- 19 Q What happened next?
- 20 A He told my brother to go to bed.
- 21 Q He did what? I'm sorry.
- 22 A He told my brother to go get in the bed.
- 23 Q And what did your brother do at that point?
- 24 A Get up and go to bed.
- 25 Q And did he tell you to go to bed?

victim I

- 1 A No, I wasn't sleepy.
- 2 Q Do you remember what time of day this was?
- 3 A It was that night.
- 4 Q At night. In the evening?
- 5 A Yeah.
- 6 Q And do you remember falling asleep on the couch that
- 7 day as well?
- 8 A Yes.
- 9 Q And was that after your brother went to bed?
- 10 A Yes.
- 11 Q Was David there when you fell asleep, or Junior?
- 12 A Yes.
- 13 Q Once you fell asleep what's the next thing you
- 14 remember?
- 15 A Waking up on his lap.
- 16 Q When you had fallen asleep had you been on his lap?
- 17 A No.
- 18 Q But when you woke up you were on his lap. Where were
- 19 y'all in the house?
- 20 A On the couch in the living room.
- 21 Q When you say you were on his lap, where were you on his
- 22 lap exactly?
- 23 A I was sitting on his side and I was laying my head on
- 24 his chest.
- 25 Q You were lying on his chest?

victim 1

- 1 A (Nods in the affirmative.)
- 2 Q Where were your hands?
- 3 A My right hand was touching his private area.
- 4 Q His private area?
- 5 A Yes.
- 6 Q How was he clothed at that point?
- 7 A He had his pants down a little bit.
- 8 Q When you say he had his pants down a little bit, what
- 9 pants did he have down a little bit?
- 10 A Both his pants and boxers.
- 11 Q And he was sitting on the couch?
- 12 A Yes.
- 13 Q And you would have been on his lap?
- 14 A Yes.
- 15 Q And your right hand would have been where?
- 16 A On his private area.
- 17 Q And is that something you would have put there?
- 18 A No.
- 19 Q Do you remember how it felt?
- 20 A Yes.
- 21 Q And how did it feel?
- 22 A Soft but lumpy.
- 23 Q What happened next?
- 24 A He had his hand on top of my hand.
- 25 Q He had his hand on top of your hand?

victim 1

- 1 A Yes.
- 2 Q Which was still touching his private part?
- 3 A Yes.
- 4 Q And when you're saying private part, and I'm sorry to
- 5 be graphic, are you referring to his penis?
- 6 A His penis.
- 7 Q Okay. What was he doing with his hand on your hand?
- 8 A Making me rub it.
- 9 Q What happened next?
- 10 A I heard my mom and auntie pull up outside.
- 11 Q You could hear them from outside?
- 12 A Yeah, the door when they closed it.
- 13 Q The car door?
- 14 A Yeah.
- 15 Q And at that point what happened?
- 16 A He told me to get up and go, "shh, shh, don't say
- 17 nothing." I ran down the hallway, I had on pink shorts and
- 18 white underwear and I pulled them up and I ran up to my mom
- 19 and said, "Hey," like nothing happened.
- 20 Q At that point you pulled up your shorts. Had your
- 21 shorts been on and panties on you when you went to sleep?
- 22 A Yeah. They were on me when I fell asleep and when I
- 23 woke up they were down.
- 24 Q Is that something you had done?
- 25 A No.

victim I

- 1 Q And you mentioned that you jumped up when you heard the
2 car door.
- 3 A Yes.
- 4 Q And he allowed you to go.
- 5 A Uh-huh.
- 6 Q And what did he say to you?
- 7 A "Shh, shh, don't say nothing."
- 8 Q Then did your mom and your auntie come in?
- 9 A Yes.
- 10 Q Did you say anything to them?
- 11 A No. I just said, "Hey," with a smile.
- 12 Q And at that point you had gotten your clothes back on?
- 13 A Yes.
- 14 Q Do you remember whether or not he was touching you?
- 15 A No, I was asleep.
- 16 Q Did you tell anybody right then about what happened?
- 17 A No.
- 18 Q Why not?
- 19 A Scared.
- 20 Q And who were you scared of?
- 21 A Him.
- 22 Q Did you say anything for a long time about what
23 happened?
- 24 A No.
- 25 Q Later on did -- after this happened did you continue to

victim 1

- 1 go to the church?
- 2 A Yes.
- 3 Q Did you continue to see him?
- 4 A For a little while I guess.
- 5 Q Did you know what was going on with victim 2
- 6 A Not until she told me.
- 7 Q Do you remember the day that victim 2 told you what was
- 8 going on with her?
- 9 A No, I just know we were at church.
- 10 Q You were at church that day with victim 2
- 11 A Yes.
- 12 Q Do you remember after the sermon going downstairs?
- 13 A Yes.
- 14 Q Do you remember what part of the church you went to?
- 15 A The ladies lounge.
- 16 Q And why were you going down there that day, do you
- 17 remember?
- 18 A I had to change my baby sister.
- 19 Q You had to change what?
- 20 A My baby sister.
- 21 Q Once you got down there did victim 2 start talking to
- 22 you?
- 23 A At first she was talking to my sister, then she just
- 24 came out and said she had something to tell me, I was like
- 25 "what, what."

victim 1

- 1 Q She had something to tell you?
- 2 A Yeah.
- 3 Q And did she tell you about what had been going on with
- 4 her?
- 5 A Yes.
- 6 Q And what did she tell you?
- 7 A That Junior had tried to put his private in her private
- 8 area.
- 9 Q At that point what did you tell her?
- 10 A "Oh my gosh," and then I started crying and I said,
- 11 "Well, he's been touching me too."
- 12 Q And you're referring to when he touched you that time
- 13 at your mama's?
- 14 A Yes.
- 15 Q Did y'all make any promises that day?
- 16 A Yes.
- 17 Q Tell the jury what you promised.
- 18 A We pinky promised not to say anything to anybody.
- 19 Q And neither one of you wanted to tell what happened?
- 20 A No.
- 21 Q Why did you not want to tell what happened?
- 22 A We were both scared.
- 23 Q Later did someone come and talk to you about what
- 24 Junior had done to you?
- 25 A Some years had passed and then my mom came to school to

victim 1

1 get me when I was going to Crossroads Middle School and
2 that's when she brought up the situation.

3 Q And that was years after it actually occurred, right?

4 A Yeah.

5 Q And when she came and talked to you, did you tell her
6 what had happened?

7 A Yes. We pulled over -- we was leaving out of school
8 and we pulled over to the median and I told her.

9 Q At that point what happened?

10 A We both cried, we cried and I don't remember where we
11 went afterwards.

12 Q Okay. Did you get contacted by police in this
13 situation?

14 A Yes.

15 Q And did you talk to them about what had happened?

16 A Yes.

17 Q And do you remember going to a place called The ARC or
18 The Assessment Resource Center?

19 A Yes.

20 Q And talking to a young woman there?

21 A Yes.

22 Q And that was actually videotaped, I believe.

23 A Yes.

24 Q Did you tell them what had happened when you were seven
25 or eight?

victim

1 A Yes.

2 Q With Junior?

3 A Yes.

4 Q Did they have some dolls there and you showed them what
5 happened?

6 A Yes.

7 Q Did they actually ask you to identify certain body
8 parts so they knew what you were talking about?

9 A Yes.

10 Q And you were, I believe, 11 years old when you went
11 down there?

12 A Yes.

13 Q Once the police became involved and he got arrested,
14 did y'all have anymore interaction with Junior?

15 A Years had passed and I saw him, if I'm not mistaken it
16 was last year when we had a youth explosion at my church and
17 his choir came to sing.

18 Q As a youth?

19 A Yes, and that's when I saw him again.

20 Q You didn't speak to him or anything.

21 A No, just looked, smiled.

22 MS. CAMPBELL: Beg the Court's indulgence.

23 THE COURT: Yes, ma'am.

24 (Break in proceedings.)

25 Q The person, Junior, whose lap you ended up who put his

victim 1

1 hand -- your hand on his penis and got you to rub it, do you
2 see him in the courtroom?

3 A Yes.

4 Q Where is he seated?

5 A To the right, a guy in a black suit, white shirt with a
6 greenish tie.

7 MS. CAMPBELL: Your Honor, may the record reflect she
8 has identified the defendant?

9 THE COURT: It shall so reflect, you may proceed.

10 MS. CAMPBELL: Thank you. I don't have anything
11 further.

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

13 MR. SHADD: Thank you, Your Honor. May it please the
14 Court?

15 THE COURT: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. SHADD:

18 Q Are you Ms. victim 1

19 A Yes.

20 Q Ms. victim 1 you go by victim 1

21 A I go by victim 1

22 Q Okay. Did you ever go by vic 1

23 A Yes, victim 1 -- vic 1 is my first name.

24 Q You're first name is victim 1 and middle is vic 1

25 A Yes.

victim 1

- 1 Q And some people call you victim 1 and some people call
2 you vic 1.
- 3 A Yes.
- 4 Q And Ms. victim 1 you go to Ridgeview High School?
- 5 A Yes.
- 6 Q You're a senior?
- 7 A Yes.
- 8 Q What's your date of birth?
- 9 A .
- 10 Q ?
- 11 A Yes.
- 12 Q So in 1999, in January of 1999 you would have been how
13 old?
- 14 A Four.
- 15 Q All right. December of '99 how old would you have
16 been?
- 17 A Four.
- 18 Q Five, wouldn't it? You would have had a birthday in
19 May of '99 and then you would have turned five.
- 20 A Four.
- 21 Q Which is it? I'm sorry, is this funny to you?
- 22 A Five.
- 23 Q Is this funny to you?
- 24 A Five.
- 25 Q Okay. You're not saying David Carmichael touched you

victim 1

1 when you were five years old, are you?

2 A No.

3 Q So in 2000 you would have been how old?

4 A Five going on six, or six.

5 Q You're not saying that Mr. Carmichael touched you when
6 you were five or six, right?

7 A No.

8 Q So in 2001 how old would you have been?

9 A Seven.

10 Q What month did you say this happened?

11 A I don't know.

12 Q You don't know the month?

13 A No.

14 Q Do you know the year?

15 A No.

16 Q You don't know the month or the year that you say Mr.
17 Carmichael touched you, had your hand on his penis, had his
18 hand on top of your hand and rubbing him but you don't know
19 a month or a year that this occurred.

20 A No.

21 Q Do you recall when Ms. Campbell asked you how his penis
22 felt, do you remember when she asked you that?

23 A Yes.

24 Q Do you remember chuckling or laughing when she
25 questioned you about that? Do you remember that was your

victim I [REDACTED]

- 1 initial response?
- 2 A I don't know.
- 3 Q Is that a funny thing to talk about?
- 4 A I said I don't know.
- 5 Q I'm asking you is that a funny thing to talk about?
- 6 A No.
- 7 Q And you said that it was -- his penis was soft and
- 8 lumpy?
- 9 A Yes.
- 10 Q Now, Mr. Carmichael played the piano and organ in the
- 11 church.
- 12 A Yes.
- 13 Q Mr. Carmichael was a friend of the family, correct?
- 14 A Yes.
- 15 Q You're mother trusted Mr. Carmichael.
- 16 A Yes.
- 17 Q Do you know why -- what was your mother's name at the
- 18 time that this allegedly occurred?
- 19 A Sabrina [REDACTED] or Mack, I don't know,
- 20 Mack- [REDACTED].
- 21 Q She wasn't married at that time?
- 22 A No.
- 23 Q Okay. How many children did she have at that time when
- 24 you were seven or eight?
- 25 A Two.

victim 1

- 1 Q You and your brother.
- 2 A Yes.
- 3 Q So your mother, Ms. Mack- , allowed -- let me
- 4 ask you this, do you know how old David was when you said
- 5 this happened?
- 6 A No.
- 7 Q Was he over -- was he still in high school?
- 8 A I don't know, I know he was older than me.
- 9 Q How much older?
- 10 A I don't know.
- 11 Q You've been around him before, right?
- 12 A Yes.
- 13 Q You've seen him in church.
- 14 A Yes.
- 15 Q Do you know what school he went to?
- 16 A No.
- 17 Q You don't know if he was in college?
- 18 A No.
- 19 Q Do you know if he was 16 or not?
- 20 A I don't know.
- 21 Q Did your mom allow David to come babysit you and your
- 22 brother when you were seven or eight years old?
- 23 A Yes.
- 24 Q And this was at your house?
- 25 A Yes.

victim 1

- 1 Q Did she allow other people to baby-sit you?
- 2 A I don't know.
- 3 Q How about other males?
- 4 A I don't know.
- 5 Q You don't know if any other male -- that only male that
- 6 you can testify to today that ever babysat you that you're
- 7 sure of is David Carmichael.
- 8 A Yes.
- 9 Q Your mom left the house and left David there with you
- 10 and your brother; is that right?
- 11 A Yes.
- 12 Q You all were watching cartoons?
- 13 A Yes.
- 14 Q You were watching the Lion King, that's a movie?
- 15 A Yes.
- 16 Q And did y'all make it through the Lion King and started
- 17 watching something else --
- 18 A I don't remember.
- 19 Q You don't remember. Do you remember if your brother
- 20 stayed in the room the entire time that you say this
- 21 happened?
- 22 A Yes.
- 23 Q He did?
- 24 A Yes.
- 25 Q So your testimony is that your brother stayed in the

victim I

- 1 same room with you all the entire time --
- 2 A Oh, no. He didn't stay in the living room with us, he
- 3 went to the bedroom.
- 4 Q Well, why did you say he stayed with you the entire
- 5 time?
- 6 A I'm sorry, I was confused by your question.
- 7 Q You were confused when I asked if your brother --
- 8 A I thought you meant did he stay in the bedroom the
- 9 whole time, not the living room, that's why I said yes.
- 10 Q How long was your mom away?
- 11 A I don't remember.
- 12 Q How long was the Lion King movie?
- 13 A I don't know.
- 14 Q Was the movie over with when you say he touched you?
- 15 A I don't remember.
- 16 Q Was the TV on?
- 17 A Yes.
- 18 Q Was the light on?
- 19 A I don't remember.
- 20 Q Did Mr. Carmichael have his pants -- and you said he
- 21 was wearing boxers?
- 22 A Yes.
- 23 Q What color were the boxers?
- 24 A I don't know.
- 25 Q What color were the pants?

victim 1

- 1 A I don't remember.
- 2 Q Did he have his pants and his boxers down when your
- 3 brother was still in the room?
- 4 A No.
- 5 Q In the room that y'all were in watching TV?
- 6 A No.
- 7 Q How long after your brother left the living room did
- 8 you say this happened?
- 9 A I don't remember.
- 10 Q And then your mom came back or y'all heard the door, I
- 11 guess?
- 12 A Yes.
- 13 Q And then you jumped out of his lap, that's what you
- 14 said.
- 15 A He said "Go. Shh, shh, don't say anything."
- 16 Q Okay. Is that what you told the lady when y'all had
- 17 that conversation over at The ARC, that he said, "Go. Shh,
- 18 shh, don't say anything?" Did you tell that lady that?
- 19 A No, I said he said go.
- 20 Q You only said go when you talked to her --
- 21 A Yes.
- 22 Q -- about five years ago, right?
- 23 A Yes.
- 24 Q I'm sorry, six years ago, right?
- 25 A Yes.

victim I

1 Q Do you -- would you agree with me that your memory was
2 better then instead of six years later because it was closer
3 to the time that you said it occurred?

4 A Yes.

5 Q Why would you say today that now some seven years
6 later, six years later that he said, "Go. Shh, shh, don't
7 tell anybody?"

8 A I thought hard about it and that's the words that he
9 told me.

10 Q You thought hard about it?

11 A Yes.

12 Q Before you talked to the lady at ARC you had talked to
13 a number of people, correct?

14 A Yes.

15 Q You wasn't thinking hard back then?

16 A No.

17 Q Now, when you said that he had you on his lap, you woke
18 up and you was on his lap, right?

19 A Yes.

20 Q And your head was on his chest?

21 A Yes.

22 Q Which side of your head was lying on his chest?

23 A The left.

24 Q So --

25 A I was sitting on the side. I was sitting on the side.

victim 1

- 1 Q Right. All right.
- 2 A This is him, this is me on the side, this is my left.
- 3 Q Right. So you're facing to his left as well.
- 4 A Yes.
- 5 Q And you're sitting in his lap.
- 6 A Yes.
- 7 Q Not on his knees but on his lap?
- 8 A On his lap, sir.
- 9 Q Well ma'am, if you sat on his lap how was you able to
- 10 get your hand on his penis?
- 11 A My right hand. I was sitting on the side of him which
- 12 leaves open space between --
- 13 Q On his lap?
- 14 A Yes. This is how I was, there's a little area, I saw
- 15 his penis, my right hand, his left hand on top of mine on
- 16 his penis.
- 17 Q And you're still on his lap when this is happening?
- 18 A Yes.
- 19 Q And this is the only time according to you that this
- 20 happened, right?
- 21 A Yes.
- 22 Q Anything like this had happened with him.
- 23 A Yes.
- 24 Q Any comments that he made?
- 25 A No nasty comments.

victim 1

1 Q No nasty comment. You heard victim 2 testifying earlier
2 that he made nasty comments to her, right?

3 A Yes.

4 Q He didn't do that with you, did he?

5 A No.

6 Q He didn't tell you to do anything to him, did he?

7 A No.

8 Q He didn't tell you to turn around, bend over or
9 anything like that, did he?

10 A No.

11 Q Then when your mother came home -- and you said she
12 came with your Auntie?

13 A Yes.

14 Q And when you got up where did you go?

15 A Down the hall.

16 Q Down the hall past the door that they were coming in or
17 you went to your room?

18 A I went down the hall.

19 Q Were you back in your room before they came inside the
20 house?

21 A Yes.

22 Q So you didn't get a chance to talk to them?

23 A Yeah. I ran down the hall and I said hey to my mom.

24 Q And this had just happened but you didn't tell your mom
25 what happened.

victim I

- 1 A No.
- 2 Q You didn't tell your auntie what happened.
- 3 A No.
- 4 Q Because you were scared.
- 5 A Yes.
- 6 Q Are you closer to your mom or are you closer to Junior?
- 7 A My mom.
- 8 Q You trust your mom, don't you?
- 9 A Yes.
- 10 Q You want her to protect you.
- 11 A Yes.
- 12 Q You want her in as well, right?
- 13 A Yes.
- 14 Q You don't think she would protect you if you told her
- 15 about that?
- 16 A I know she would have.
- 17 Q Why didn't you tell her?
- 18 A Because I was eight and I was scared.
- 19 Q Of who? Of what?
- 20 A I was just scared.
- 21 Q You were scared?
- 22 A Yes.
- 23 Q Did you tell the teacher?
- 24 A No.
- 25 Q Did you tell the guidance counselor then?

victim 1

- 1 A No.
- 2 Q Did you tell a resource officer who was there?
- 3 A No.
- 4 Q Do you recall the lady at ARC asking you several times
- 5 was there any other times Mr. Carmichael had done anything
- 6 to you, do you remember her asking you that?
- 7 A Yes.
- 8 Q And every single time she asked you said no, he didn't,
- 9 right?
- 10 A Correct.
- 11 Q You weren't nervous about talking to her about it,
- 12 right?
- 13 A Yes, I was.
- 14 Q You was? Were you scared?
- 15 A Yes, I was.
- 16 Q You knew at that age that if someone touched you
- 17 inappropriately you need to first try to get away from the
- 18 person, right?
- 19 A Correct.
- 20 Q You learned that? Your mom taught you that, or who
- 21 taught you that?
- 22 A My mom.
- 23 Q Did you do that this time?
- 24 A No.
- 25 Q You also are told to tell someone, correct?

victim 1

- 1 A Yes.
- 2 Q Did you -- but you didn't do that.
- 3 A No.
- 4 Q Not until you were how old?
- 5 A My mom found out when I was like 11, 12.
- 6 Q And you told who?
- 7 A I told my friend, victim 2
- 8 Q victim 2 who you had been going to church with for a
- 9 while?
- 10 A Yes.
- 11 Q Okay. And have you and victim 2 been doing these pinky
- 12 promises before this?
- 13 A I mean, we had little baby secrets.
- 14 Q Secrets that y'all don't tell your parents or other
- 15 friends or what have you, right?
- 16 A Yeah.
- 17 Q Okay. But this was a serious pinky promise, right?
- 18 A Yes.
- 19 Q Even after y'all made this promise did you say
- 20 something about what happened?
- 21 A No.
- 22 Q To an adult?
- 23 A No.
- 24 Q Well, when is the first time that you knew that anybody
- 25 other than victim 2 had learned about what allegedly

victim I

1 occurred?

2 A My mom came home and asked me when she got it from
3 school.

4 Q So you never broke your promise until your mom asked
5 you.

6 A Yes.

7 Q When you said that he put -- Mr. Carmichael put his
8 left hand on your right hand on top of his penis you said no
9 comments were made, right? Did he do anything else as far
10 as touching you?

11 A No.

12 Q And describe the clothing that you were wearing again,
13 what kind of shorts were you wearing?

14 A I had on pink shorts and a t-shirt.

15 Q And since you told the police, told ARC, told your mom,
16 David continued to go to that church, right?

17 A Well, after everything got out I guess he stopped
18 coming because I didn't see him no more after that.

19 Q How long was it after you told your mom after she
20 pulled you out of Crossroads and asked you did he stop going
21 to the church?

22 A I don't know.

23 Q You don't know if it was a few days, several days?

24 A I don't remember.

25 Q But you still went to church after you said this

victim 1

- 1 occurred at your mom's house and he was there, correct?
- 2 A Yes.
- 3 Q And he was still playing the piano, right?
- 4 A Yes.
- 5 Q He was still playing the organ, right?
- 6 A Yes.
- 7 Q He was still singing in the choir.
- 8 A Yes.
- 9 Q Actually he was leading the choir, a choir that you was
- 10 a part of.
- 11 A I wasn't part of it because I was little, he was over
- 12 the adults.
- 13 Q Oh, he wasn't over the children's choir?
- 14 A No.
- 15 Q All right. Obviously you would agree with us that
- 16 years went by from when you said this occurred and from when
- 17 you told your mom at Crossroads.
- 18 A Yes.
- 19 Q And since he stopped going to the church you said you
- 20 saw him one time and that was at your church?
- 21 A Yes.
- 22 Q And was that something that your mom planned?
- 23 A No.
- 24 Q I think it was a youth night. Do you know if that was
- 25 something that your mom planned?

victim 1

1 A Yeah, she planned the youth explosion.

2 Q The youth explosion. I think it was in December 2010,
3 do you remember?

4 A I don't remember the date.

5 Q Okay. I think you said it might have been some time
6 last year.

7 A Yeah, if I'm not mistaken when I was 16.

8 Q And this was at Bible Way Piedmont.

9 A Yes.

10 Q Do you still go there?

11 A No.

12 Q Okay. When did you all stop going there?

13 A I don't remember.

14 Q So the youth explosion which was at the Bible Way
15 Piedmont that your mom helped plan, Mr. Carmichael came.

16 A Yes.

17 Q And he was with his gospel group, right?

18 A Yes.

19 Q He's a singer.

20 A Yes.

21 Q Okay. And you were aware that your mom invited him to
22 come to perform.

23 A I don't remember.

24 Q Okay. And you said earlier you looked at him and
25 smiled.

victim 1

1 A Yes.

2 Q Did you hug him?

3 A No.

4 Q Since this time have you ever gone up to him and hugged
5 him?

6 A No.

7 Q Did victim 2 hug him?

8 A No.

9 Q And you do know his sister, Davetta?

10 A No.

11 Q I just want to be clear, you're not saying that he did
12 anything to you over at Davetta's house, right?

13 A Yep.

14 Q Did Davetta ever baby-sit you?

15 A No.

16 Q Do you know if your mom ever asked Davetta to baby-sit
17 you?

18 A No, sir.

19 Q But you're saying she asked this man to baby-sit you.

20 A Yes.

21 MR. SHADD: Thank you. That's all that I have.

22 THE COURT: Redirect?

23 MS. CAMPBELL: No, sir.

24 THE COURT: Ma'am, you may step down. The State may
25 call its next witness.

JANIE [REDACTED]

1 MS. SIMPSON: The State calls Janie [REDACTED].

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

3 The witness, JANIE [REDACTED], was first duly sworn
4 and testified as follows:

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

7 THE WITNESS: My name is Janie [REDACTED].

8 THE COURT: Thank you. Ms. Simpson, you're witness.

9 MS. SIMPSON: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MS. SIMPSON

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

13 A I'm 60 now.

14 MR. SHADD: Objection.

15 MS. SIMPSON: I'm sorry (laughing.)

16 Q I'm sorry. And where do you live? Here in Columbia?

17 A Here in Columbia.

18 Q Have you lived in Columbia all of your life?

19 A From the time I was 16 up until now.

20 Q Up until now? Tell us about your family, do you have
21 any children?

22 A I have three girls.

23 Q And what are their names?

24 A [REDACTED] victim 2 -- I mean vic 2, Renee Saxon, Shannon [REDACTED] and
25 Lashanda [REDACTED].

JANIE [REDACTED]

1 Q So Shannon and Lashanda, those are two of [REDACTED] victim 2 s
2 aunts.

3 A No, Lashanda is [REDACTED] victim 2 s mother.

4 Q I mean mom and aunt. And you're named Janie and then
5 [REDACTED] victim 2 is your granddaughter.

6 A Yes.

7 Q Is there a Janice in your family to?

8 A Yeah, that's my daughter.

9 Q That's your daughter?

10 A Uh-huh.

11 Q And do you know David Carmichael?

12 A Yes.

13 Q How do you know David?

14 A I knew him through the church, we have all attended the
15 same church. I was a friend of his mother, you know, I knew
16 him from a baby. We would visit each other on rare
17 occasions and we ate dinner one time at his house, that's
18 what it was. And we had children and they would play
19 together.

20 Q. So the families kind of grew up together.

21 A Yes.

22 Q Were you friends with his mom?

23 A Yes.

24 Q So your families and his families were close.

25 A Yes.

JANIE [REDACTED]

1 Q Was your daughter, Lashanda, pretty close to the
2 Carmichael family?

3 A Yeah. Like I said, they were children and grew up
4 together.

5 Q And do you know David's sister, Davetta?

6 A Yes.

7 Q You knew her, too?

8 A Yes.

9 Q You said that sometimes they would be over at your
10 house, maybe you would go over there but you primarily know
11 them from the church and the neighborhood.

12 A Yes. I also let Davetta work with me during the time
13 the stuff was going on, whatever.

14 Q What kind of work do you do?

15 A I'm a home health aid nurse, nurse sitter.

16 Q So what do you do? What is required of a home health
17 nurse?

18 A Well, it varies from different patients. In this
19 instance I was like everything from bathing, doctor's
20 appointments, cooking, cleaning, vital signs.

21 Q Everything.

22 A Yes.

23 Q So did Lashanda work for you to some too?

24 A Yes.

25 Q So Lashanda and Davetta both worked for you.

JANIE [REDACTED]

- 1 A Yes.
- 2 Q And [REDACTED] victim 2 is your granddaughter.
- 3 A Yes.
- 4 Q And you have actually taken of her pretty much most of
5 her life.
- 6 A Yes. With that exception of one year I gave her back
7 to her mother.
- 8 Q So you've had custody of her most of her life.
- 9 A Yes.
- 10 Q And what about her siblings? Did they live with you,
11 too?
- 12 A Yes, they did.
- 13 Q Okay. Who all has lived with you?
- 14 A You mean in my family?
- 15 Q Yeah.
- 16 A Just Shannon. After my husband passed Shannon moved
17 back in with me, then Lashanda decided to move back in and
18 then she left and she left the children so we just kept the
19 children like that.
- 20 Q Okay. So the children --
- 21 A She's been --
- 22 Q Say that again.
- 23 A She has been on and off with her children up until now,
24 she has them now.
- 25 Q But you've been there permanently throughout?

JANIE [REDACTED]

1 A Yeah.

2 Q You said that your husband passed, what year was that,
3 do you remember?

4 A That was June 6th, 2003.

5 Q 2003?

6 A Yes.

7 Q So just a few years before all of this came about?

8 A I don't know to be honest with you. I did not know
9 about it until later on.

10 Q So you knew about it later on. Can you tell us a
11 little bit -- and I know it's been awhile -- about what you
12 remember when you found how out?

13 A Well, I'm trying to remember. See, I've had so much
14 going on I can't -- I heard them talking about it, I heard,
15 you know, they wasn't talking to me, I heard them talking
16 about it and eventually I asked [REDACTED] victim 2 Then, I mean --
17 well, I told her later on I heard -- I said, "I know what's
18 going on, you didn't have to tell me what's going on now,
19 why didn't you tell me earlier?" It was a bitter -- it was
20 a hurtful, it was very -- because you know the family but
21 yet I have to protect her, it was kind of like, "Oh God."

22 Q So this was a hard position to be in.

23 A Yes.

24 Q So essentially you asked her, you said, "I know what's
25 going on too."

JANIE [REDACTED]

1 A Uh-huh.

2 Q And knowing [REDACTED] victim 2 pretty well, had you noticed some
3 things about her behavior when she was around the defendant?

4 A I can't remember exactly. She had came to the point
5 where she didn't want to go to church and I sort of wanted
6 to know why she didn't want to go to church and like I said,
7 it came out then so I did not put a lot of pressure on her
8 going to church. Somewhere down the line -- well, I
9 guess --

10 Q I know it's lot to think about. So before when you
11 first started noticing that she didn't want to go to church
12 this was before you actually knew what happened, right?

13 A Yes.

14 Q Did she really want to be around David at all?

15 MR. SHADD: Objection to leading.

16 THE COURT: I don't find that's a leading question. It
17 suggests an answer, is that what you're saying?

18 MR. SHADD: Yes, sir. Especially in light of the
19 earlier question about her behavior around him and then
20 her --

21 THE COURT: I'm going ask the attorney not to ask
22 leading questions, rephrase the question.

23 Q Did you observe some of the behaviors between [REDACTED] victim 2
24 and David?

25 A Well, she had got a little cold, I would say a little

JANIE [REDACTED]

1 cold, you know, like you didn't really want to be around a
2 person, just kind of make due with it.

3 Q Just make due. And then once you confronted her with
4 the information that you had about what happened to her,
5 what did you do, or what do you remember that you did?

6 A What did I do? Oh God, it was so long ago I can't
7 remember exactly what went down, you know, bit by bit.

8 Q And a lot -- was a lot going on at the same time once
9 everything kind of came out?

10 A Yeah. I'm trying -- I can't remember exactly. I know
11 they went to school, I can't remember exactly how it went
12 but I know in the end we all -- I don't know if I'm supposed
13 to say this or not but we're all in court and he was ordered
14 not to --

15 MR. SHADD: Objection, Your Honor.

16 MS. SIMPSON: You can't go there.

17 THE WITNESS: Whatever, whatever.

18 THE COURT: I sustain the objection.

19 Q Okay. Not there.

20 A Not there.

21 Q So once you found out and [REDACTED] told, did her mama
22 find out about that?

23 A I believe her other found out before I did if I'm not
24 mistaken.

25 Q Maybe before. And it's been awhile.

JANIE [REDACTED]

1 A Uh-huh, it's been awhile.

2 Q But you did observe [REDACTED] victim 2 behavior.

3 A Yes.

4 Q Was there a time period where she liked to be around
5 the defendant?

6 A I'm not going to say liked to be around him but it
7 didn't bother her to be around him, she was younger then.
8 And he was just a friendly person, that's all I can say
9 about him.

10 Q Like you said, your families were close.

11 A Uh-huh.

12 Q Other than that is that pretty much what you remember
13 about what happened?

14 A Yes.

15 Q And you never saw anything happen at your house or
16 between them, right?

17 A No.

18 Q But you were close with her and you've taken care of
19 her most of her life.

20 A Yes, I did.

21 MS. SIMPSON: Thank you, Ms. [REDACTED].

22 MR. SHADD: May it please the Court, Your Honor?

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION

25 BY MR. SHADD:

JANIE [REDACTED]

1 Q Ms. [REDACTED], Ms. Simpson asked you how many kids you
2 have.

3 A Uh-huh.

4 Q You've got more than three, though, don't you?

5 A All I know is I've got three.

6 Q You got three biological children?

7 A Yes.

8 Q How many have you raised?

9 A How many have I raised?

10 Q Uh-huh.

11 A I've raised my grandchildren.

12 Q They're your children too, aren't they?

13 A Yeah.

14 Q So you have more than just your three girls, you have
15 your grandbabies, too.

16 A Yes.

17 Q And you did a good job raising them, don't you think?

18 A I believe I did.

19 Q You made sure they went to school?

20 A Yes.

21 Q Made sure that they were fed, put a roof over their
22 head.

23 A Yes.

24 Q And before your husband passed both of you did that,
25 correct?

JANIE [REDACTED]

- 1 A Yes, we did.
- 2 Q Made sure that they did -- you taught them right from
3 wrong.
- 4 A Yes.
- 5 Q You made sure that they went to church.
- 6 A Yes.
- 7 Q I think [REDACTED] victim 2 said earlier that you have a rule,
8 you're going to church; is that right?
- 9 A Yes.
- 10 Q In fact, probably the only reason why they wouldn't go
11 to church is if they were with somebody else and going to
12 their church or they may have been sick, correct?
- 13 A Yes.
- 14 Q You just said a little while ago though she wasn't
15 feeling like going church. Is it unusual that kids don't
16 want to go to church, Ms. [REDACTED]?
- 17 A It all depends.
- 18 Q It depends on the child?
- 19 A I depends, it's an individual thing.
- 20 Q Okay. Whether they wanted to go or not unless they
21 were sick or going to another church they were going to
22 church under Janie [REDACTED], right?
- 23 A Yes.
- 24 Q Now, Ms. Simpson asked you about behaviors of your
25 granddaughter. Is this your oldest grandchild?

JANIE [REDACTED]

1 A No, it is the oldest granddaughter.

2 Q And let me ask you this, when your husband passed you
3 were on [REDACTED] right?

4 A Yes.

5 Q Back in 2003.

6 A Yes.

7 Q And then probably because of his passing that's when
8 y'all moved.

9 A Yes.

10 Q And y'all were at [REDACTED] I think?

11 A Yes.

12 Q Okay. Ms. [REDACTED], isn't it true that you had David to
13 come over to your house, I think, to move some furniture or
14 move some things for you?

15 A I may have.

16 Q Okay. Would you have let David, who is I think several
17 years older than [REDACTED] victim 2 who was under your care, baby-sit
18 your children -- your grandchildren? Would you do that?

19 A No. I would not let him baby-sit the children, not
20 just say come out and baby-sit, no.

21 Q Okay. And when [REDACTED] victim 2 told you -- well, [REDACTED] victim 2 says
22 that he was babysitting when you and your daughter, Shannon,
23 were living on [REDACTED] and you all went to the grocery
24 store. Didn't you expect if that had happened for your
25 granddaughter to tell you?

JANIE [REDACTED]

- 1 A Yes. I guess she would have, I can't say that because
2 I don't know if she would have told me. Like I said, it's
3 an individual thing, you may would and you may not would
4 have.
- 5 Q Yes, ma'am. But you taught her to do that, correct?
- 6 A Yeah. I always tell them don't let nobody touch you
7 inappropriate or tell somebody or holler or do whatever you
8 got to do, knock them out.
- 9 Q Knock them out, do what you have to do, right?
- 10 A Exactly, just get out of the way.
- 11 Q But definitely tell somebody, right?
- 12 A Yes.
- 13 Q But she did not tell you about what happened when
14 according to her you and your daughter, Shannon, went to the
15 grocery store, right?
- 16 A No, she did not tell me then.
- 17 Q All right. Do you still attend Bible Way Piedmont?
- 18 A Yes, I do.
- 19 Q Bishop Belton is not there anymore, right?
- 20 A No, he is not.
- 21 Q You are an usher there?
- 22 A He is there but he's not -- say that again.
- 23 Q Is Bishop Belton there or is he not there?
- 24 A He's sick right now.
- 25 Q Oh, okay. So someone else is leading the church?

JANIE [REDACTED]

1 A Yes.

2 Q Preaching just about every Sunday.

3 A Yes.

4 Q Okay. All right. And [REDACTED] victim 2 I think she testified
5 that she still comes there sometimes.

6 A Yes, she comes there sometimes.

7 Q Now, she's 18 years old now.

8 A Yes.

9 Q So she's an adult, right?

10 A Yes.

11 Q Do you consider her an adult now?

12 A Now, that's a hard -- yes and no. As long as you're in
13 my house you have to abide by what I say.

14 Q Yes, ma'am. Is she still in your house?

15 A Well, she said she wanted to go back to her mother's
16 house so, you know.

17 Q She doesn't like your rules?

18 A No, she doesn't like my rules.

19 Q Yes, ma'am. When she -- now, I think you said out of
20 the 18 years of her life one year was spent with her mom?

21 A Yes.

22 Q Like one full calendar year or school year?

23 A Maybe school year.

24 Q But the other 17 she was with you?

25 A Yes.

JANIE [REDACTED]

1 Q I'm still unclear. Why was she with you and not her
2 mother?

3 A I really don't want to go into it.

4 Q I'm sorry?

5 A It really doesn't pertain to the case, I really don't
6 want to go into it.

7 Q Yes, ma'am, but I get to ask the questions and you have
8 to answer them.

9 A Well, she told you, she was a young lady, young ladies
10 don't keep their children so I wanted to make sure they were
11 taken care of.

12 Q I don't understand. How young was she when she had
13 [REDACTED] victim 2

14 A She was 14 or 15.

15 Q And then she had Kashawn at how old?

16 A I really -- I guess -- I don't know, 16, I guess, might
17 have been 18 or something now.

18 Q Okay. But when she had [REDACTED] victim 2 she was still living in
19 your house, right?

20 A Yes.

21 Q So wasn't she taking care of her daughter then.

22 A Yeah. In her own way, yeah, she took care of her.

23 Q Okay.

24 A She was going to school and taking care of her.

25 Q And when did she leave your house, meaning Lashanda?

JANIE [REDACTED]

1 A About -- maybe about four years after that.

2 Q And surely she took [REDACTED] victim 2 and Kashawn with her,

3 right? When she left the house she took [REDACTED] victim 2 and Kashawn
4 with her.

5 A I'm trying -- yes.

6 Q Okay. But for how long?

7 A For a school term.

8 Q And then they came back to you to stay and go to school
9 under your care.

10 A Yes.

11 Q And I think you said earlier that her mother, [REDACTED] victim 2 s
12 mom, Lashanda, she would be in and out of the house through
13 this 18 years; is that right?

14 A Yes.

15 Q [REDACTED] victim 2 and her siblings moved around quite often, did
16 they not?

17 A Not really. Well, they stayed with me -- well,
18 nevermind, nevermind, I'm getting mixed up. They were born
19 on Welwood Court and they went with their mother and then
20 came back on [REDACTED] then I moved on [REDACTED] [REDACTED] and I
21 was living with another daughter. I had a house for fire
22 and it's been awhile and I'm just moving back into my house.
23 It's a long story behind that one, too.

24 Q That's one on [REDACTED]

25 A Yes.

JANIE [REDACTED]

1 Q Oh, there was a fire at [REDACTED]

2 A Yes.

3 Q And that caused her to go from school to school,

4 correct?

5 A Yes.

6 Q [REDACTED] victim 2

7 A Yes.

8 Q Okay. [REDACTED] victim 2 said that there were two other incidents
9 with Mr. Carmichael but not at your house. Were you aware
10 of that before they were at the lady's lounge and she was
11 talking to [REDACTED] vic 1

12 A No, sir.

13 Q Okay. She never told you?

14 A She never told me.

15 Q Ms. [REDACTED], isn't it true that when you all stayed at
16 [REDACTED] -- well, you're husband passed in 2003 but while he
17 was still at home -- well, he was still alive and at home
18 when she says you and Shannon went to the grocery store,
19 right?

20 A I really don't know.

21 Q Okay.

22 MR. SHADD: Thank you, ma'am. That's all I have.

23 THE COURT: Redirect?

24 MS. SIMPSON: No, Your Honor.

25 THE COURT: Ma'am, you may step down. Thank you very

LASHANDA [REDACTED]

1 much.

2 THE WITNESS: You're welcome.

3 THE COURT: The State may have call its next witness.

4 MS. CAMPBELL: The State calls Lashanda [REDACTED].

5 THE COURT: Come forward, please, ma'am.

6 The witness, LASHANDA [REDACTED], was first duly

7 sworn and testified as follows:

8 THE COURT: Once you're seated, ma'am, state your full
9 name, please.

10 BY THE WITNESS:

11 Q. My name is Lashanda [REDACTED].

12 THE COURT: You're witness.

13 MS. CAMPBELL: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL

16 Q Ms. [REDACTED], how old are you?

17 A I'm 33.

18 Q Do you live in Columbia?

19 A Yes, ma'am.

20 Q How long have you been living in the Columbia area?

21 A All of my life.

22 Q Are you employed?

23 A Yes, ma'am.

24 Q What do you do for a living?

25 A I'm a dental assistant.

- 1 Q Do you have plans to go back to school?
- 2 A Yes, ma'am.
- 3 Q What are you trying to get a degree in?
- 4 A To complete my bachelors in hygiene.
- 5 Q In dental hygiene?
- 6 A Yes, ma'am.
- 7 Q That's the field you want to get into.
- 8 A Yes, ma'am.
- 9 Q You're already in the dental field.
- 10 A Yes.
- 11 Q Do you have any children?
- 12 A Yes, ma'am.
- 13 Q How many children do you have?
- 14 A Four.
- 15 Q What are your children's names?
- 16 A [redacted] victim 2 she is my oldest, last name [redacted], Kashawn
- 17 [redacted], Jasmine [redacted] and Marquel [redacted].
- 18 Q And your oldest is how old, [redacted] victim 2
- 19 A [redacted] victim 2 is 18.
- 20 Q And where does she go to school?
- 21 A Richland Northeast School.
- 22 Q And does she participate in certain activities at
- 23 Richland Northeast High School?
- 24 A Yes.
- 25 Q What do those include?

1 A She started off in ROTC Navy, also cheerleading,
2 multimedia and dance.

3 Q Things of that nature?

4 A Yeah. She also does special programs on the side like
5 feed the homeless.

6 Q Feed the homeless?

7 A Yes.

8 Q That's one of her projects?

9 A Yes.

10 Q And your next in line would be who?

11 A Kashawn [REDACTED].

12 Q And how old is Kashawn?

13 A He is 16, he will be 17 next month.

14 Q And does he have any disabilities, ma'am?

15 A Yes, ma'am.

16 Q And what type of disability does Kashawn have?

17 A He's ADHD also, but mental disability.

18 Q Mental disabilities?

19 A Yes, ma'am.

20 Q But is he able to function to some degree?

21 A To some degree.

22 Q And is he in special programs to help as far as his
23 abilities go?

24 A Yes, ma'am, he's in special needs.

25 Q So he attends school as well?

1 A Yes, ma'am.

2 Q And then you have the two younger ones as well.

3 A Yes, ma'am.

4 Q And are your children currently living you?

5 A My daughter is living with my mother and I had my boys,
6 sometime my sister help me since I work now.

7 Q Since you're working now?

8 A Yes, ma'am.

9 Q And your mother has helped you with the girls pretty
10 much since they were born?

11 A Yes, ma'am, because I was young.

12 Q And how old were you when you had **victim 2**

13 A I was 15.

14 Q And shortly thereafter, a year or so later, you had
15 your second child as well?

16 A Yes, ma'am.

17 Q And he presented with special needs, is that a fair
18 assessment?

19 A Yes, sir.

20 Q And so at some point you would often keep the boys with
21 you?

22 A Yes, ma'am.

23 Q And where would the girls stay?

24 A They always stayed with my mom.

25 Q Did you stay in contact with them however?

1 A Yes, ma'am, everyday.

2 Q But your mom helped you out.

3 A Yes, ma'am.

4 Q Once you had **victim 2** and her brother and the other two
5 as well, were you able to continue with school?

6 A I couldn't but my mom helped me out by letting me work
7 for her.

8 Q And what kind of work did you do with her?

9 A Home health.

10 Q So did you actually complete your high school?

11 A GED.

12 Q So you were able to do that despite having young
13 children?

14 A Yes, ma'am.

15 Q And when you would help her out with home healthcare,
16 what type of work were you doing when you were 16, 17, 18
17 years old?

18 A When I was 16 and 17 I went through a temp. and got a
19 job at Lab Corp. and I worked in radiology at Lexington
20 Hospital.

21 Q And eventually you ended up in the dental field.

22 A Yes, ma'am.

23 Q And you have contact with all your children; is that
24 correct?

25 A Yes, ma'am.

1 Q Kashawn, the one with the special needs, stays with you
2 the majority of the time?

3 A Yes, ma'am.

4 Q Your family as a whole, can you describe it to this
5 jury, your mother, you're sisters?

6 A I have two sisters. My oldest sister, which has ten
7 kids and my middle sister which has none and me, I have
8 four.

9 Q Your middle sister has no kids?

10 A No.

11 Q And you have four?

12 A Yes, ma'am.

13 Q And as a family unit how do y'all function as far as
14 caring for the children that are involved in this family?

15 A Well, we just don't identify as certain kids, we just
16 raise them all together. We come together every Sunday and
17 we have raised other people's kid as well. My oldest sister
18 actually adopted one more herself so she actually has 15
19 now. We just have everybody's kids, not just our kids.

20 Q You're mother's participation, is it fairly remarkable?

21 A Yes.

22 Q Does she help out with everybody?

23 A Yes, everybody.

24 Q And what types of things would she do for her family as
25 well as friends or even just people she meets.

1 A Just -- if I may say she just had a 60th birthday party
2 on the 22nd of September and I think that would have spoke
3 for itself. A lot of people stood up and said -- she
4 brought a lot of people to the church to be saved, she would
5 take some shopping and buy their clothing when she didn't
6 have money and gave give it to the church and different
7 things.

8 Q You mentioned the church. Is the church is big part of
9 your life?

10 A Yes, ma'am.

11 Q And are there specific things within the church such as
12 music that help y'all with your worship that is important to
13 y'all?

14 A Oh, yes, ma'am.

15 Q And which church over the years have y'all attended?

16 A Bible Way Piedmont.

17 Q Is that your mother's church?

18 A Yes, ma'am.

19 Q And do you still attend that church?

20 A Not so much, just --

21 Q Not since all of this?

22 A Yeah.

23 Q Was your mother very active in the church?

24 A Yes, ma'am.

25 Q And were your children as well?

1 A Yes, ma'am.

2 Q Even growing up as young?

3 A Yes, ma'am.

4 Q Did you know the Carmichael family?

5 A Yes, ma'am.

6 Q Can you tell the jury how you knew the Carmichaels?

7 A We grew up together. I remember being young I would
8 spend the night over at the Carmichaels' house and as time
9 passed we would all acquire -- we would occasionally go out
10 together, me and Davetta and some of the other folks were
11 relatives of ours and just -- it was real close.

12 Q Okay. You mentioned David and Davetta, are those two
13 of the children in the Carmichael family that you were close
14 with?

15 A Yes.

16 Q Are any of those about the same age as you?

17 A Davetta.

18 Q And David, is he older or younger than you?

19 A He's younger.

20 Q About three years younger than you?

21 A Yep.

22 Q So he's a good deal older than even your oldest child,

23 **victim 2**

24 A Yes.

25 Q How would you describe your relationship with Davetta,

1 the sister?

2 A I considered her to be my best friend, and up to til
3 today I still continue seeing her as a friend. That may not
4 speak but in my heart that's how I feel.

5 Q Over the years when your children were growing up and
6 they were young elementary school and that age, did you ever
7 have occasions to go to Davetta's house?

8 A Yes.

9 Q And where was she living at the time?

10 A She used to live off of Farrow Road and you take Farrow
11 to [REDACTED].

12 Q To [REDACTED]?

13 A Yes.

14 Q It's near there?

15 A Yes.

16 Q And who all was living with Davetta in her home back
17 when your children were younger?

18 A At that time it was Davetta and her brother.

19 Q Her brother who?

20 A David Carmichael. And then --

21 Q Do you see him here in the courtroom?

22 A Yes, ma'am.

23 Q Can you identify him for the jury?

24 A He's sitting at this table with the black suit.

25 Q Okay.

1 A And the white shirt on the right side of me in front.

2 MS. CAMPBELL: Your Honor, may the record reflect she
3 has identified the defendant.

4 THE COURT: The record shall so reflect. You may
5 proceed, Ms. Campbell.

6 Q So it was David and Davetta. Do you know if anybody
7 else was living there?

8 A The mother came later on and moved in with them.

9 Q At some point the mother also moved into that
10 residence. Did David or Davetta have an active part in your
11 church?

12 A Yes.

13 Q Specifically what was David's role in the church?

14 A David was the choir director, he played the piano and
15 he was a good singer.

16 Q Did you trust him?

17 A Yes, I did.

18 Q Did you trust Davetta?

19 A Yes.

20 Q On occasion when you went to see Davetta over at her
21 house where her brother lived and eventually her mother
22 moved in, would you take one or more of your children there
23 on occasions?

24 A Yes.

25 Q And that was not unusual?

1 A No.

2 Q I'm going to turn your attention to 2006. How did you
3 find out what had happened to your daughter?

4 A My sister had came to me and informed me of what
5 happened --

6 MR. SHADD: Objection, hearsay.

7 A -- and I --

8 THE COURT: Hold on one second, ma'am, don't answer the
9 question after the objection.

10 MR. SHADD: Hearsay on what her sister informed her of,
11 Your Honor.

12 THE COURT: I'll sustain the objection in that this
13 witness cannot quote someone's statement to her who is not a
14 party.

15 MS. CAMPBELL: Okay. And I'll make sure I don't go
16 into the specifics.

17 THE COURT: All right.

18 Q Did she give you information about your daughter
19 without saying what it was?

20 A Yeah. I was wondering why my room door was closed and
21 they were talking.

22 Q And once you got the information from your sister what
23 did you do?

24 A I panicked. I went into anxiety and I lost it.

25 Q You lost it?

1 A Yes.

2 Q And how did that manifest itself when you found out?

3 A I was hurt. I got to the point where I wanted to do
4 something about it. My car wouldn't start and the next
5 thing you know I just went into anxiety and I woke up in my
6 work clothes on the bed and I remember seeing my phone
7 beside me and it appeared, it was David Carmichael's number.

8 Q Was it unusual for David to call you?

9 A It was more like he would call me but not like early in
10 the morning like that.

11 Q And this was early in the morning?

12 A Yes.

13 Q And you had found out the night before?

14 A Yes.

15 Q And do you remember how the night passed once you got
16 so upset?

17 A I can't remember because I --

18 Q You said you picked up your phone and you noticed that
19 he had called you.

20 A Yes.

21 Q And at that point the information was out; is that
22 correct?

23 A Yes. A friend of mine had came over and knocked on my
24 door and my phone kept ringing with the Carmichaels' number,
25 I didn't answer at the time. My friend, she grabbed the

1 phone and she answered for me, and she said, "It's Junior,
2 he wants to talk to you."

3 Q So what did you do?

4 A I proceeded to talk.

5 Q Why did you want to talk to him at that point with the
6 information that you had?

7 A I just wanted to know why, what did I do to you to
8 deserve this, what happened.

9 Q And did you have a conversation with the defendant?

10 A I did.

11 Q Did you recognize his voice?

12 A Yes.

13 Q And when you talked to him on the phone that day, what
14 was the conversation you had with David Carmichael?

15 A I talked with him and he said, Shan -- because that's
16 what he called me, he said, "What's was going on?" And I
17 proceeded to tell him, you know, what my daughter had said.
18 He said, "Well Shan, listen to me, I never meant to hurt
19 anybody or I would not intentionally hurt y'all like that."
20 And he said, "Don't believe anything, and as far as I'm
21 concerned Sabrina and them was telling a lie." I said,
22 well -- at that time like Sabrina, "What Sabrina has to do
23 with anything?" He said, "Well, just don't believe anybody
24 or anything you hear, they were just jealous of me." I
25 said, "What do they have to do with me and my child? Why

1 did you do this to me?" And he proceeded to just go on
2 rambling about the Sanders but he didn't answer the part
3 about me.

4 Q The part about your child.

5 A Yes.

6 Q But he did tell you he was sorry.

7 A Yes.

8 Q And what did he tell you he was sorry about?

9 A He just said I'm sorry about what I was going through.
10 I mean, he didn't -- at that point in time I felt like he
11 didn't really realize how I was hurting, he just wanted me
12 to calm down and accept his apology and let it roll over and
13 I didn't.

14 Q Because it was your child?

15 A Because it was my child.

16 Q Then he mentioned something about the Sanders?

17 A Yes.

18 Q And what did he say about the Sanders?

19 A He said, "If they tell you don't believe nothing they
20 tell you," they were just jealous of him.

21 Q So he told you not to believe them. Did he ever deny
22 about what he'd done to your child?

23 A No.

24 Q Did you get in touch with the police about this matter?

25 A Yes. After that conversation and I calmed down and

1 after praying about it --

2 Q I was getting ready to get to this. Was this
3 difficult to --

4 A It was.

5 Q Did you care about the Carmichaels?

6 A I did, a lot.

7 Q But did you actually pray on this?

8 A Yes.

9 Q And once you had prayed about it, what did you do?

10 A I just kept hearing those words in my head that, you
11 know, "I'm sorry." So that was -- to me you didn't tell me
12 that you didn't, you just told me you're sorry, so I just
13 have to go to the police at this moment and I have to take
14 my child with me.

15 Q And did you make contact with the police or did the
16 police make contact with you?

17 A In the beginning me and my daughter went to
18 headquarters for Richland County Two Notch Road.

19 Q And when you got there did you make a report about what
20 had happened to your daughter?

21 A Yeah. They took her and had me to wait because I guess
22 they wanted to question her and they made me wait.

23 Q And did you actually meet with investigators from
24 Richland County?

25 A Yes.

1 Q Okay. And did they actually take a statement from your
2 child that day?

3 A Yes.

4 Q Had you already been in contact with a school resource
5 officer that made contact with you over the phone?

6 A The school resource officer contacted me I think a day
7 or two after the report, he contacted me and stated that he
8 got an anonymous call --

9 Q You can't say what he said, I apologize. So you made
10 contact with him as well at some point.

11 A Yeah. I came up to the school and he contacted me.

12 Q Were you aware that Mr. Carmichael was charged with
13 lewd act on your daughter?

14 A Yes.

15 Q I'm going to show you a photograph. Do you recognize
16 that?

17 A Yes.

18 Q And who is this?

19 A That is **victim 2** as a -- that's my daughter.

20 Q How old was she in this picture? Do you know?

21 A Around eight.

22 Q Around eight years old.

23 MS. CAMPBELL: Your Honor, at this time we would offer
24 the photograph into evidence.

25 MR. SHADD: Objection, relevance.

1 THE COURT: Relevance?

2 MS. CAMPBELL: Your Honor, just to show how she
3 appeared back when all of this was occurring.

4 MR. SHADD: And how does that relate to this case, Your
5 Honor, of lewd act on a minor? This is the appearance of
6 the young lady then.

7 THE COURT: Well, age is an element and, of course, it
8 may indicate how she looked as far as appearance, her age
9 appeared. I'm going to overrule the objection, it will
10 admitted.

11 MS. CAMPBELL: Thank you, Your Honor.

12 (The photograph was received as State's 4.)

13 MS. CAMPBELL: Your Honor, permission to publish.

14 THE COURT: You may. - By publish what that means is I'm
15 going to allow the exhibit now that has been mentioned to be
16 passed among you. You can continue with the examination of
17 the witness but try not to let the photo interrupt your
18 attention with that testimony, but you may take a look at
19 that exhibit. You may proceed, Ms. Campbell.

20 MS. CAMPBELL: Thank you. Just one moment.

21 THE COURT: Yes, ma'am.

22 Q Since all this came out and he was arrested and
23 everything, religion continues to be an important part of
24 your life?

25 A Yes, ma'am.

1 Q And as part of that is forgiveness important?

2 A Yes, ma'am.

3 Q And in your heart have you come to terms with how you
4 deal with this?

5 A I have forgave him as a religious purpose so it could
6 help fight that demon, it won't override me, forgiveness
7 allows me to override it.

8 Q Okay. You're here today as you've been for your
9 daughter.

10 A Yes.

11 Q And that's a different matter.

12 A Yes, ma'am.

13 MS. CAMPBELL: Thank you, ma'am.

14 THE COURT: Before you begin we're going to take a
15 short break with the jury panel before we started
16 cross-examination.

17 MR. SHADD: Yes, sir.

18 THE COURT: Ladies and gentlemen of the jury, we'll
19 take a short break. As always, my instructions will be that
20 you should not begin to discuss anything about this case
21 until I ask you to do so. You may retire to the jury room.
22 Thank you.

23 (The jury the courtroom.)

24 THE COURT: I'm going to caution the witness that
25 during the break you are not to discuss your testimony with

1 anyone. Do you understand that, ma'am?

2 THE WITNESS: Yes, sir.

3 THE COURT: You'll be free to move about and take a
4 break yourself, but please do not discuss your testimony.
5 The court is in recess about ten minutes or so. Thank you.

6 (WHEREUPON, a short break was taken.)

7 THE COURT: Ma'am, if you'll resume the stand. Come
8 down, please, thank you. All right. The State ready to
9 proceed at this time?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Mr. Shadd, is the defense ready to proceed?

12 MR. SHADD: Yes, sir.

13 THE COURT: All right. Let's bring the jury in.

14 (The jury returned to the courtroom.)

15 THE WITNESS: Ladies and gentlemen. When we took our
16 break, the State had finished its direct examination of the
17 witness, at this time the defense will begin its cross.
18 Mr. Shadd?

19 MR. SHADD: Thank you, Your Honor. May it please the
20 Court?

21 CROSS EXAMINATION

22 BY MR. SHADD:

23 Q Ms. [REDACTED], give me your full name.

24 A Lashanda Marie [REDACTED].

25 Q Now, Ms. [REDACTED], you are the mother of victim 2 [REDACTED] is

1 that correct?

2 A Yes.

3 Q You're her biological mother.

4 A Yes.

5 Q You're mother, Janie [REDACTED] who testified earlier, has
6 raised her; is that right?

7 A Yes.

8 Q Okay. Do you believe she helped you raise her or did
9 you help your mom raise her?

10 A I mean -- I was only 15 --

11 Q Yes, ma'am.

12 A -- so she was still raising me so she helped raise me
13 as well.

14 Q So when did you leave the house?

15 A I left the house when I got engaged to my youngest
16 son's father.

17 Q To Marquel's father?

18 A Yes.

19 Q And how old were you?

20 A I was around 21, 22, I believe.

21 Q Did y'all get married?

22 A No.

23 Q Okay. So you was 21 or 22. So the first six years of
24 [REDACTED] life you were at home, first five or six years.

25 A Yeah, I was there.

1 Q So you moved out of your mom's home and you took
2 **victim 2** Kashawn, Marquel, and what was your daughter's
3 name?

4 A No, I just took my boys, she didn't let nobody around
5 my girls.

6 Q Say that again.

7 A I took my boys.

8 Q You don't like nobody around your boys, your girls?

9 A That's my fiancée but my mother, she wouldn't, you
10 know, too much let me -- she was cautious with the girls.

11 Q Whose decision was it then, your mom's or your decision
12 to leave the girls?

13 A At that time it was my parents'.

14 Q But you're 21 and 22 years old, right?

15 A Yes.

16 Q You're a grown woman.

17 A Yes.

18 Q You have -- do you have custody of your boys?

19 A Yes. I have custody of my son, Marquel.

20 Q Of Marquel. And you were engaged to Marquel's dad.

21 A Yes.

22 Q And when you left out and wanted to get married to him,
23 y'all moved in together?

24 A Yes.

25 Q And when you moved in together, would -- I'm sorry,

1 tell me your daughter -- your other daughter's name?

2 A Jasmine.

3 Q That's right, Jasmine. Would Jasmine and **victim 2** come
4 visit you and Marquel's dad?

5 A We would come pick them up and take them places and
6 then drop them back off at home.

7 Q So they never visited the home that you and Mister --
8 what's his name?

9 A Yeah, they visit the home.

10 Q What's his name?

11 A Mr. Shepard.

12 Q That's not Marquel's last name, though.

13 A No, Marquel is a **██████**.

14 Q So you and Marquel's dad, Mr. Shepard were, cohabiting.

15 A Yes.

16 Q And the boys came with you.

17 A Yes.

18 Q There was no concern by you and your mom that your boys
19 may be harmed by a man?

20 A No.

21 Q Okay. But there was a concern whether your girls would
22 be harmed by your fiancée.

23 A There was no concern about him being a harm. I just --
24 at that time my mother just prefer that the girls stay there
25 because -- she, you know -- in the streets you don't want to

1 put your child around anybody. She didn't care if I was
2 engaged to get married or anything, she just didn't -- she
3 wasn't having it.

4 Q You loved this man though, right?

5 A Yes, I did.

6 Q You trusted him at that time at least?

7 A Yeah, at that time.

8 Q Yes, ma'am.

9 A The Bible says trust no man.

10 Q The Bible says trust no man? What scripture is that?

11 I'm glad my wife didn't see that. But you were planning on
12 at least getting married to him, so you obviously was in
13 love with him.

14 A Yes.

15 Q And I would hope you would want to spend the rest of
16 your life with him.

17 A Yes.

18 Q And, of course, you exposed him to all of your
19 children.

20 A Yes.

21 Q You didn't see a problem with the separation of the
22 girls and the boys by doing that?

23 A No. I didn't see a problem with that.

24 Q Okay. And how long did that last that the boys were
25 with you with Mr. Shepard under the same roof?

1 A That lasted a long time, we was engaged for like six
2 years.

3 Q So as soon as you got engaged that's when you took off.

4 A Yes.

5 Q So Kashawn and Marquel was out of your mom's care for
6 six years.

7 A Well, my son, Kashawn, is mentally disabled, so my
8 sister Shannon, she would help me out with him because he
9 needed more attention.

10 Q Okay. But they were still out of your mom's care.

11 A Yeah.

12 Q Because Shannon helped you take care of Kashawn because
13 of special needs.

14 A Uh-huh.

15 Q But as far as Marquel is concerned he was with you and
16 not with your mom for six -- yeah, I guess six years.

17 A Yeah, he was with me.

18 Q Okay. Do you remember hearing your mom testify that
19 you only took care of **victim 2** for one year out of your life?

20 A Yes. That was the house had caught on fire.

21 Q Okay. So was it true or not true that out of 17 years
22 she was with her mom and not with you for those six years
23 that you were with Mr. Shepard?

24 A Say that again, repeat it.

25 Q Is it true or not true that your mom said that **victim 2**

1 was with her for 17 of those 18 years when you're saying
2 that she was with you for six years --

3 A No. I'm not saying **victim 2** was with me for those six
4 years, I'm saying my son, Marquel, was with me and his
5 father.

6 Q Okay. I got you. I got you. So his --

7 A We was engaged for six years, me and my son's father,
8 Mr. Shepard.

9 Q So you agree **victim 2** was with your mom --

10 A Yes, **victim 2** was with my mom.

11 Q -- for seventeen of the 18 years.

12 A Yes.

13 Q Is she with you now or her mom -- your mom? I'm sorry.

14 A Well, she goes -- she wants to stay at Richland
15 Northeast with me so she can graduate from Richland
16 Northeast. Because they rezoned the schools so my other
17 kids go to Spring Valley, but since it is her senior year
18 she wanted to graduate so she was staying with me for a
19 couple of months but then my mom wanted her back, so she was
20 just moved back with my mom a couple of weeks ago. I gave
21 her a car and she moved, she's just using me for a car.

22 Q That's not new, is it?

23 A Huh?

24 Q That's not new, is it?

25 A It's just teenagers.

1 Q Right. Okay. So she got the car out of you and now
2 she's with her grandmother.

3 A Yeah.

4 Q But you agree she might not have liked grandmom's rules
5 before.

6 A Yeah, my mom is very strict. You have a curfew, you
7 can't hang out, you can't have no company, just, you know,
8 she didn't trust hardly nobody, that was since I was young.

9 Q Would your grandmother -- would your mom allow men to
10 come in and baby-sit your daughters?

11 A No.

12 Q Or your sons?

13 A No.

14 Q Would your sister, Shannon, allow a man to baby-sit her
15 nieces and nephews?

16 A No. She would not allow men to come to the home and
17 babysit, no.

18 Q Even if it was her boyfriend or an uncle -- I think
19 y'all have one uncle, right? You have one uncle?

20 A My mom had a brother.

21 Q Even he can't come and baby-sit, right?

22 A No, it's all girls. Like my mom got three girls and
23 out of 14 kids you only got six girls, it's mostly just
24 like -- it's just, you know, us girls, we look after each
25 other.

1 Q I'm sorry, I thought that -- maybe I wrote it down
2 wrong. Is it Shirley who has the ten kids?

3 A No, my sister, Janice. Shirley is my mom's sister.

4 Q Okay. So Janice has ten children.

5 A And she adopted one.

6 Q So it's not 15, it is 10.

7 A Fifteen total, with my kids and my sister and the one
8 that she adopted it is 15 kids total.

9 Q Okay. Because Shannon does not have any children.

10 A No, she said she had enough.

11 Q Y'all had the babies for her?

12 A Yeah.

13 Q Okay. All right. Where does Janice live?

14 A My sister lives in Blythewood.

15 Q But you're zoned for the Spring Valley area?

16 A I'm zoned for, yes, the Spring Valley area.

17 Q And you are saying that you and Davetta have been and
18 eventually to this day best friends?

19 A Yes. We used to be very close, best friends.

20 Q How often do you talk to your best friend now?

21 A I haven't talked to her in a while now since, I
22 believe, I attended her wedding.

23 Q Do you remember what year that was?

24 A I think she got married, what, a year ago?

25 Q So in 2011?

1 A I believe summer of 2011.

2 Q Did you have any concern that David Carmichael, her
3 brother, would be at the wedding?

4 A I knew he would be there because that's her brother.

5 Q Did you take your daughter with you?

6 A Yes. She wanted to see the kids, Davetta's kids.

7 Q So **victim 2** went with you.

8 A Yes.

9 Q Okay. You were here when she testified earlier when
10 she said she didn't know why you went to the wedding. Do
11 you remember her saying that?

12 A No.

13 Q But she went. Did your other kids go too?

14 A I believe Jasmine went with me but not the boys, they
15 stayed with my sister.

16 Q Okay. And did **victim 2** have any interaction with David
17 at the wedding?

18 A No. What she did was she went in and said, "I want to
19 see Davetta and I want to see Davetta's little girl," so she
20 immediately just went back to the back where Davetta was to
21 see them.

22 Q What about the reception, or was this at the reception?

23 A She didn't attend the reception.

24 Q What happened when you took her --

25 A She just wanted to see the kids and Davetta and she

1 left.

2 Q During the wedding?

3 A She left right after the wedding, she didn't want to go
4 to the reception.

5 Q Who took her to the wedding, or she drove on her own?

6 A I took her to the wedding and I dropped her off at
7 home, she didn't want to go with me to the reception. I
8 went home, changed clothes and I went to the reception
9 myself.

10 Q Was David in the wedding?

11 A I can't remember, I wasn't focusing on him. I can't
12 remember if he was in the wedding or not.

13 Q Do you know if he sung at his sister's wedding?

14 A I don't remember.

15 Q Okay.

16 A I tried to block him somewhat to an extent if I have to
17 see him or see him pass by, but my main goal is not him. I
18 just --

19 Q Well, you told us earlier that you forgave him.

20 A Yeah.

21 Q When did you forgive him?

22 A I can forgive but some things I just can't forget.

23 Q When did you forgive him?

24 A Did you say when or what?

25 Q When.

1 A I mean, I forgave him -- after years passed by I
2 forgave him. It was more so I was trying to teach my
3 daughter but she just couldn't so I can't make her. But I
4 was just trying to hope one day maybe, I don't know, I can't
5 speak for her. But for myself, I didn't want that demon
6 riding my back so I have to forgive, but, you know --

7 Q You're talking about this demon riding your back, is --

8 MS. CAMPBELL: Objection, Your Honor. She has a right
9 to finish he answer.

10 THE WITNESS: Beg your pardon?

11 MS. CAMPBELL: She has a right to finish her answer,
12 she was still talking.

13 THE COURT: Give her an opportunity to finish.

14 MR. SHADD: I'm sorry, I thought she did.

15 THE COURT: Did you finish your answer, ma'am?

16 THE WITNESS: I was still talking.

17 THE COURT: Well, go ahead and finish your answer then.

18 A As I was saying, too, actually in my belief, in my
19 religion you have to forgive someone but just because you
20 forgive the Bible says you have to obey the law of the land,
21 but you also have to forgive and that's just part of my
22 religion and that's just what I was taught. You can forgive
23 but sometimes you just can't forget, but I have to live by
24 that rule. That's just part of my religion.

25 Q Okay. Now, you talked about this demon that was on

1 you. Do you still have this demon on you?

2 A No. I have forgiven him, I would not allow it to take
3 my joy from me. I mean, music, music plays a big part in my
4 family, after that I didn't sing no more, I didn't even let
5 my daughter -- push her to sing no more and for me to do
6 that I realized that he was getting a victory, that joy was
7 being taken for me. My father played the guitar, drums and
8 piano and he used to make us sing as little girls and all of
9 that was just being taken from us because of this one thing.
10 Once I had to forgive him I was allowed to open myself up
11 and I was allowed to participate back in the choir and
12 participate back on things or just go to my aunt's church
13 and stand up and sing if they wanted me to, you know? I had
14 to let a lot go.

15 Q Isn't it true that David called you and told you --
16 well, asked you what is this that people are saying about
17 people touching your daughter and it's [REDACTED] He told you
18 that, didn't he?

19 A David called my phone and my friend answered the phone.

20 Q Keisha?

21 A Yep.

22 Q Keisha Edmonds?

23 A Yes.

24 Q Okay.

25 A And at that time he proceeded to, you know, want to

1 talk to me about the situation but I was still in shock for
2 a moment. She said, you know, "Just talk to him, find out
3 what happened, what really happened and hear it from him."
4 That's when I questioned him about it.

5 Q Keisha told you to find out what really happened.

6 A Yes. She told me to ask him, you know, hear his point
7 of view, see what he has to say. And that's when I
8 proceeded to take her advice and that's when I asked and
9 that's when he gave me the comment and he apologized and all
10 that.

11 Q All right. Now, you said he apologized and you didn't
12 say that until Ms. Campbell said he was sorry, right?

13 A Excuse me?

14 Q Ms. Campbell said he said he was sorry, right?

15 A No, I said that.

16 Q Okay. I'm sorry, I thought I wrote it down this way,
17 Shan, that's what he calls you, right?

18 A He called me Shan.

19 Q "Shan, what's going on," right?

20 A Yes.

21 Q "I told him what my daughter said," right?

22 A That's right.

23 Q And then according to you he said, "I never meant to
24 hurt," right?

25 A Yes.

1 Q Not I'm sorry, right?

2 A Yes. I'm going to repeat it back to you.

3 Q Did he say I'm sorry?

4 MS. CAMPBELL: Objection, Your Honor.

5 THE WITNESS: Yes, he apologized.

6 THE COURT: The objection is? And you need to stand if
7 you're going to post an objection.

8 MS. CAMPBELL: I'm sorry. She has a right to finish
9 her answer.

10 THE COURT: Ma'am, had you completed your answer?

11 THE WITNESS: No. I was still talking and he just
12 interrupt --

13 THE COURT: Okay. Then I'm going to be allow you to
14 complete your answer, ma'am.

15 A Okay. He called me and he said "Shan," you know, like
16 you said, "What's going on?" I said, "Junior, how could you
17 do this?" And that's when he proceeded to apologize and
18 said that he never meant to hurt anybody and then he, long
19 story short, told me not to believe Sabrina and them, they
20 are just jealous, long story short, but the same thing I
21 said earlier.

22 Q You did not say that he said he was sorry earlier, did
23 you, Ms. [REDACTED]? You said that he said "never meant to
24 hurt," then he went on to say not --

25 A I said --

1 THE COURT: Ma'am, let him finish his question and then
2 I'll let you answer.

3 THE WITNESS: Okay.

4 THE COURT: Let's don't cut each other off. Let me
5 explain it to you, this lady is taking down what's going on
6 in the courtroom and if two people are talking at the same
7 time she can't take that down, she has to have one person
8 talking at a time. So I am going to let him ask his
9 question and then I'll let you finish your answer. All
10 right. Mr. Shadd, ask your question.

11 MR. SHADD: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 Q He went on to say that he never meant to hurt you, all
14 and he did not intentionally hurt y'all, but as far as I'm
15 concerned nothing happened. Isn't that what you told Ms.
16 Campbell earlier?

17 A I did not say as far as nothing, I did not answer that
18 last part. Whatever you said as far as concerned, whatever,
19 that it didn't happen. No, I didn't say that part.

20 Q Okay. And then you said Brina is telling a lie.

21 A Sabrina.

22 Q Okay. I'm sorry, Sabrina is telling -- he actually
23 told you -- he calls you Shan but calls her Sabrina.

24 A He called her Sabrina.

25 Q Is telling a lie.

1 A Yes.

2 Q And then you asked him what is --

3 A No.

4 Q -- I'm sorry, I wrote down Brina --

5 A Then he said not to believe them. "He said, Sabrina is
6 telling a lie, not to believe them." Go ahead.

7 Q No, you go ahead.

8 A That's when I went and said, "What does it got to do
9 with me?"

10 Q Okay. All right. You're right. And you asked what
11 does -- why did he do that to you, right?

12 A I'm going to repeat, I said, "What does that have to do
13 with me?"

14 Q I understood that. After that then you asked him, "Why
15 did you do this to me?"

16 A To my child.

17 Q And then you said he was rambling on about the Sanders.

18 A And about being jealous.

19 Q Right. But not about you and your child.

20 A No.

21 Q Okay. Now, you said -- Ms. Campbell asked you, "He
22 didn't deny it," right?

23 A Yes.

24 Q When the man tells you that it's -- he did not
25 intentionally try to hurt y'all but as far as he is

1 concerned it didn't happen, that's not a denial?

2 A I don't understand what you're saying.

3 Q Is he not denying when he's saying, "I did not
4 intentionally try to hurt y'all," but as far as he's
5 concerned it didn't happen. That's not a denial?

6 A Are you saying that he said, "As far as I'm concerned
7 that didn't happen?"

8 Q Right. As far as he is concerned, yes, ma'am.

9 A Because that's not what he said to me and that's not
10 what I said.

11 Q Okay. But when you first got on the phone he said,
12 "Shan, what's going on, right?"

13 A Yes.

14 Q As if that's news to him about **victim 2** saying something
15 that he did to her, right? That's the first thing that came
16 out of his mouth, right, he is like what's going on,
17 correct?

18 A Uh-huh.

19 Q Is that a yes? I'm sorry, she has to --

20 A Yes.

21 Q Okay. Now, he also did not admit that he had done
22 anything either, did he?

23 A He did not admit and say, "I touched her physically,"
24 no, he did not say that.

25 Q Okay. He did not go into any -- because Keisha advised

1 you to find out what really happened, right? That's what
2 Keisha Edmonds told you, correct?

3 A Yes.

4 Q And you took her advice to find out what really
5 happened, right?

6 A Yes.

7 Q And David did not give any specifics on anything that
8 was done physically between him and your daughter; isn't
9 that true?

10 A Repeat that.

11 Q David did not tell you any specifics about anything
12 that may have occurred between him and your daughter
13 specifically.

14 A He didn't give any specifics but he was questioning me
15 as if he already knew.

16 Q As if he had just been told what was said about him and
17 he asked you first, "What's going on," right?

18 A Yes, he did.

19 Q You didn't call him, he called you.

20 A Yes, he did.

21 Q Y'all had a conversation.

22 A Yes, we did.

23 Q As you said, he rambled on.

24 A Yes, he did.

25 Q He wasn't running from you and not telling what did or

1 did not happen, did he?

2 A Repeat that.

3 Q He wasn't avoiding and not telling you what did and did
4 not happen, correct?

5 A He wasn't avoiding me but he apologized to me and if he
6 didn't know what happened why would he was just apologize
7 when I didn't get a chance to -- I didn't get a chance to
8 say too much because he was just rambling.

9 Q Let me ask you this, if you lose a loved one, okay, and
10 someone tells you "I'm sorry for your loss," is that an
11 apology?

12 A I would say to answer that it's not an apology on their
13 behalf but it's an apology, I guess, on my behalf.

14 Q And it doesn't mean that they killed a person, right?

15 A No.

16 Q If he found out that your daughter says that she had
17 been touched that's an emotional situation, isn't it?

18 A It is.

19 Q He should expect that you should be upset about that,
20 shouldn't he?

21 A Yes.

22 Q In a way that's a loss, isn't it?

23 A That's a loss.

24 Q And what you're saying is he apologized because of this
25 loss of what your daughter said happened; isn't that

1 correct?

2 A Let me say this because I'm not clearly -- I'm trying
3 to get what you're saying but if I may say this, it's not
4 the apology, it's how you apologize and what you say in that
5 apology. Just like if you say -- somebody says, "I
6 apologize for your loss," okay, that's one type of apology.
7 But the apology he gave me was a different type of apology.

8 Q You took it as a different type of apology.

9 A I didn't take anything, I only accepted what he gave me
10 and what he said on the phone.

11 Q All right. I don't know if my pen is wrong, but did he
12 say, "Sorry what you are going through?" I had to write
13 that down for some reason.

14 A Okay.

15 Q Did he -- okay.

16 A Because I'm just saying it's because it seems like
17 sometimes you're twistings things. So I'm going to say it
18 again. He called me and he said, "Shan, what's going on?"
19 And I said, "Junior, how could you do this?" Okay. And he
20 said, "Shan, I apologize, you know I never meant to hurt
21 y'all or anyone." Okay. So when he said, "I never meant to
22 hurt y'all or anyone," that was an apology upon myself,
23 apologizing to me. You don't just apologize and say I
24 apologize when I didn't do anything wrong. If I didn't do
25 anything wrong, I say, "Look, I didn't do anything wrong."

1 Q Are you finished?

2 A I am now.

3 Q Okay. Once again, did he say, "I'm sorry for what you
4 all are going through?"

5 A No. He didn't say, "I'm sorry for what you all are
6 going through."

7 Q Did you testify earlier and say that he said, "I'm
8 sorry what you all are going through?"

9 A He did not say, "I'm sorry for what you all are going
10 through."

11 Q Did he say anything close to that, ma'am? Maybe I just
12 wrote it wrong. Did he say anything sorry for what -- I
13 mean --

14 A I don't know if you can understand me so I'm going to
15 speak a little clearer this time.

16 Q Please do.

17 A And I'm going to say it slower. He said, Shan, what's
18 going on?" And I said, "Junior," okay, "How could you do
19 this?" And that's when he proceeded and he said, "Shan, I
20 never meant to hurt you or anyone." Okay.

21 Q Okay.

22 A I'm sorry. I don't know what -- and that's when he
23 went into the whole Sabrina situation and so I questioned
24 him what does that have to do with me and that's when he
25 kept saying, "Shan, listen, Shan, listen." And as I got

1 further into the details of the topic and as the
2 conversation proceeds and prolongs he kept saying, "Shan,
3 I'm sorry. Shan, listen to me."

4 Q Do you realize this is the first time you're saying
5 Shan, I'm sorry, Shan, I'm sorry? This is the first time
6 you're saying that, isn't it? You didn't say that earlier.

7 A I'm saying later on as the conversation proceeded,
8 because we never got to the end of the conversation yet so
9 I'm trying to proceed to the end of the conversation.

10 Q Well, you had all the time in the world to say that to
11 Ms. Campbell when she was questioning you, right?

12 A I had all the time, but if your stressing the issue so
13 I was saying a little more so you can kind of understand the
14 conversation a little better.

15 Q Oh, I understand what you're saying. So after this you
16 called the police the same night?

17 A I didn't call the police the same night. I went and I
18 thought about it and I had time to pray about it and I
19 went -- and that's when I knew once he said that and it kept
20 playing in my head that I had to do something about it and
21 that's when I went to the police station.

22 Q How many days, weeks, months after that did that occur?

23 A That what occurred?

24 Q That you called the police, that you took her to the
25 police.

1 A That I took her to the police?

2 Q Yes.

3 A I took her to the police station later that afternoon.

4 Q What day, ma'am, compared to --

5 A The day I don't know it has been so long ago.

6 Q Let me finish. What date did that occur compared to

7 when you said this conversation between you and Mr.

8 Carmichael occurred?

9 A It was the same day.

10 Q So you did take her to the police the same day that you

11 say he had this conversation with you?

12 A Yes. He had a conversation with me earlier that

13 morning and I took her to the police station that afternoon.

14 Q And then she met with one of the officers, y'all went

15 back home and then two days later you received a call from

16 the school resource officer at the school?

17 A Yes. I believe it was a day or two days later, might

18 have been a few days later it has been so long. But I did

19 receive a phone call from the resource officer.

20 Q Did you tell the resource officer that you already

21 reported this?

22 A Yes, I did.

23 Q So why did you still have to go down to the school?

24 A Because at that time he did not know, and it was an

25 anonymous phone call made to the school stating accusations

1 about --

2 MR. SHADD: Your Honor, I would object about what an
3 anonymous call that was made to the police officer.

4 MS. CAMPBELL: It's responsive to the question, he
5 asked this question.

6 MR. SHADD: I asked her did -- the only thing I asked
7 her was did she tell the officer that she had already made
8 the report.

9 MS. CAMPBELL: He asked her why and she was explaining
10 why.

11 THE COURT: I'm going to ask the jury to leave the
12 courtroom while I have a discussion with counsel. Thank you
13 very much. Don't begin any discussions until I advise you
14 to.

15 (The jury left the courtroom.)

16 THE COURT: I'll ask the court reporter to read the
17 question and tell exactly what was asked.

18 (The reporter read the question back.)

19 THE COURT: The question was why she did this.

20 MR. SHADD: Why she went down there.

21 THE COURT: If she was responding to that question as
22 to why she did something she's got a right to explain it if
23 that is part of it. I don't know what the call has to do
24 with anything, I don't know --

25 MR. SHADD: Well, okay.

1 THE COURT: Are we aware of what call she's referring
2 to?

3 MR. SHADD: I've got an idea. It is supposed to be
4 anonymous but I've got an idea.

5 MS. CAMPBELL: I think she was explaining that her
6 understanding of why she needed to go down there which he
7 asked her so she was under the impression that there was an
8 anonymous phone call.

9 THE COURT: Had been made from who to who?

10 MS. CAMPBELL: To the school.

11 THE COURT: To the school.

12 MS. CAMPBELL: That was her impression so she is
13 explaining to him why she went down there.

14 THE COURT: She has a right to answer the question that
15 was asked and why she has the right to do something,
16 whatever her reasoning is.

17 MR. SHADD: Including what the information that was
18 given by the anonymous call.

19 THE COURT: Well, again, I was trying to get someone to
20 tell me what kind of call we're talking about and what was
21 in it, I haven't had anybody explain it to me. I'll ask
22 again, tell me about the call.

23 Q What's the anonymous call, what was the information
24 that was given?

25 A The resource officer just told me that I needed to get

1 down to the school, it was an anonymous phone call that my
2 child was being sexually molested in my home by David
3 Carmichael.

4 MR. SHADD: And that's why I objected to the hearsay.
5 I have no problem with her responding to the officer and
6 asking her to call back.

7 THE COURT: I'm going to instruct the witness not to
8 state the content of the call. You can state it was an
9 anonymous call, I'll allow you to say that, that will
10 explain your motivation for why you were going there.

11 THE WITNESS: Okay.

12 THE COURT: Don't explain what the content of the call
13 was or what was alleged, we have don't know who made it and
14 what they based it on. I think the prejudicial affect of
15 that would outweigh its probative value in this case. I'll
16 instruct you not to go into the details of the call, but to
17 explain that, you know, you went down there to check out
18 this anonymous call.

19 THE WITNESS: Okay.

20 THE COURT: That it had something to do with this
21 incident.

22 THE WITNESS: Okay.

23 THE COURT: Bring the jury in.

24 (The jury returned to the courtroom.)

25 THE COURT: Thank you. At this time I'll allow the

1 witness to respond to the last question that was asked.

2 A I came down to the school like the resource officer
3 requested due to an anonymous call.

4 Q Ms. [REDACTED] you believed you daughter.

5 A Yes.

6 Q Has she lied to you before?

7 MS. CAMPBELL: Objection, Your Honor, to her commenting
8 on any other witness' veracity.

9 MR. SHADD: I'll move on.

10 THE COURT: Okay.

11 MR. SHADD: I'll move on.

12 THE COURT: Thank you.

13 Q Ms. [REDACTED], have you ever had David Carmichael to
14 baby-sit your children?

15 A For a long period that I would say is the first time
16 and I believe because I just went right next door. He was
17 just -- I never asked him, he was just always come over and
18 so while he was over I just said, you know, since my son was
19 younger, "Watch him right quick, I'm going right next door,"
20 and didn't stay of there long. I had to do something and
21 came right back.

22 Q You came back by yourself?

23 A Yes.

24 Q Did you hear [REDACTED] victim 2 testify earlier that you came back
25 with your -- well, she said with her aunt. Do you remember

1 your daughter testifying to that?

2 A I remember my daughter testifying saying my mom, but I
3 remember I had stepped out for a second and just came right
4 back. Now, at that time my aunt -- my aunt, her aunt, they
5 were staying there too because the house caught on fire.
6 Maybe she thought my aunt was with me but I was by myself.

7 Q Did you notice her behavior at that time, how she
8 looked when you came back?

9 A No.

10 Q You did not notice it?

11 A No. I noticed some actions towards him and I
12 questioned her about it.

13 Q Why?

14 A Because I felt her to -- she was starting to be
15 disrespectful to him and I remember one time he said, "Come
16 here" and she made an attempt to kick him one time and I
17 maybe punched her for that. I said, "Don't put your feet on
18 people."

19 Q Okay. I'm sorry. I mean on that day did you notice
20 her behavior different than when you left the house?

21 A I mean, she was -- no, she was just quiet, she was
22 just --

23 Q So nothing different, though, she was quiet before you
24 left.

25 A No. She liked the cell phone a lot but at that

1 particular time she was just quiet.

2 Q Now, you said she was disrespectful. Was she
3 disrespectful to other people, too?

4 A No, she's a very respectful person.

5 Q Just when it came to him.

6 A Yes. I noticed she became very disrespectful to him.

7 Q And she kicked him one time?

8 A She made an attempt. He said, "Come here girl," and
9 attempted to grab her and she made an attempt to kick him.

10 Q And you asked her, "Why are you treating him like
11 this?"

12 A I told her, "Put your foot down, don't put your feet on
13 people, that's not what you do."

14 Q And you put her -- I think you -- did you punish her?

15 A I didn't punish her I sent her away and told her to go
16 sit down.

17 Q Did she tell you, "Well mama, Junior has been touching
18 me on three occasions?"

19 A No, she just was obedient. She went and relocated
20 herself.

21 Q Did you tell her to relocate?

22 A Yeah. I told her to go sit down.

23 Q Now, where were you staying when you said you left for
24 a little while? You said you went down the street to
25 another location?

1 A I just went over to my friend's apartment, my best
2 friend's, Jenny, used to stay by him.

3 Q That's another best friend.

4 A Yes.

5 Q And what complex was this?

6 A The same complex off Fernandina.

7 Q What's the name of it?

8 A [REDACTED]

9 Q Okay. So you didn't even drive, you just walked over
10 to where she was?

11 A No.

12 Q Which is it, you drove or you walked?

13 A No, I walked.

14 Q Where were the boys?

15 A My son was playing outside because we have the other
16 kids, and my other son, he would just -- well, he was in the
17 house but since I was just right there I just let him, you
18 know, stay right there with his brother.

19 Q Okay. Where was the basketball goal?

20 A Like this is our parking lot, you know how you have the
21 basketball you can pull out, the portable ones and we would
22 just pull it in front of my building.

23 Q Why was David at your apartment? You weren't dating
24 him or anything.

25 A He's a friend, he's just like -- my sons liked David,

1 and, you know, my mom called him her son, he was just that
2 close.

3 Q And you stayed over at his house with his mom and him
4 and his sister, right?

5 A No. I had my own place, they would come and spend the
6 night over at my place.

7 Q Who?

8 A Davetta and David and then some other friends that we
9 used to be with because we all used to go out.

10 Q What age are we taking about here where these -- David
11 and Davetta stayed at your house?

12 A I was in my twenties, my young twenties.

13 Q Which you mean -- I'm sorry, go ahead and finish. You
14 said what?

15 A I was about maybe 25, 26.

16 Q And David and Davetta would spend the night there
17 because -- you mean go out to parties and clubs and stuff
18 like that?

19 A Yeah. Me and Davetta and a couple of friends
20 occasionally would go out on weekends and David would just
21 pop up, like if he just left church and something like that
22 and he would just pop up, he wouldn't have to have no
23 reason.

24 Q Even if his sister wasn't at the house he would just
25 pop up at your house.

- 1 A Yeah, he was just David, he was Junior. He was like,
2 you know, almost like a brother so he could pop up anytime
3 like if my sister popped up.
- 4 Q Would he pop up if you had food over at your house that
5 you had cooked, too?
- 6 A Yeah, he liked to eat.
- 7 Q He would love to eat at anybody's house who might want
8 him over there or invites him or he might invite himself,
9 right?
- 10 A Yes.
- 11 Q Were you part of the singing group? You mentioned
12 something about singing, were you part of the group?
- 13 A No.
- 14 Q Because Davetta sings too, right. Used to I guess?
- 15 A Yes.
- 16 Q Because she sings with David, or used to, I guess?
- 17 A Yes.
- 18 Q Okay. Michelle, let's talk about the wedding which, of
19 course, is after the arrest, after your daughter has talked
20 to you and a bunch of other people, you decided to take your
21 daughter to a wedding where David Carmichael -- you knew
22 David Carmichael would be, correct?
- 23 A Yes.
- 24 Q You also had a conversation with Mr. Carmichael at the
25 wedding, correct?

1 A I didn't have a conversation with Mr. Carmichael at the
2 wedding. I did let my daughter go speak to Davetta and the
3 kids and we sat down at the wedding, she didn't want to go
4 to the --

5 Q Reception?

6 A Reception, yeah.

7 Q All right. Did you have a conversation with him at the
8 reception at one of the tables?

9 A No. I had a conversation with her sister and, you
10 know, the rest of them that we knew as friends.

11 Q Okay. How about at the youth explosion that we've
12 talked about, did you have a conversation with
13 Mr. Carmichael, David?

14 A Yeah. At that time it had been like six years later so
15 yeah. At that point in time we was in church and, you know,
16 I had, like I said, forgave him. I don't want to stop
17 anybody from coming to church, that's not what I want to do,
18 I wouldn't ever to do that. But at that time I did speak
19 and when he came over, I said, "Hey," but my mother had
20 taken **victim 2** and left.

21 Q So **victim 2** didn't hug him?

22 A No, she left.

23 Q Did **vic 1** hug him?

24 A I can't say that, I didn't see him.

25 Q May have but you didn't see it?

1 A I didn't see anything so I can't say if it happened or
2 not.

3 Q Do you know if there was any other times where after
4 the arrest -- and I know it has been six years later -- but
5 where after the arrest where your daughter had any type of
6 contact with Mr. Carmichael, whether it was a hug, seeing
7 him at church, running up to him?

8 A No hugs, she was at that stage where she was not
9 speaking to him. Before he got arrested again, we saw him
10 at her school at Richland Northeast and she hurried and
11 jumped in the car and said, "Come on, there goes David."
12 And I was like, "victim 2" that's rude, you can't just
13 like "-- she was like, "Oh," she kind of got an attitude,
14 you know. I spoke.

15 Q So this is another time you spoke?

16 A Yes, and then kept going. She said, "Let's go ma." I
17 said. "All right, all right," and left.

18 Q But you thought it was rude to not speak to David.

19 A Because I was trying to at that point counsel her,
20 teach her about forgiving. She has been through that so she
21 have to learn that on her own, I can't force it in her, I
22 can only try to teach that way. I can't never say I taught
23 her to hate, you know.

24 Q Sure. And going back to when you said you found out
25 you said you was wondering why your door was closed to your

1 room.

2 A Yes.

3 Q And do you know who was in that room?

4 A It was my sister and **victim 2**

5 Q Which sister?

6 A Shannon.

7 Q She's here today?

8 A Yes.

9 Q Okay. Keisha Edmonds was there, right?

10 A Keisha showed up the following day.

11 Q But did **victim 2** tell you that same night what happened?

12 A She just started off and she was kind of scared to tell
13 me so my sister finished it for her. And, you know, she
14 told me enough where David had been bothering her and she
15 was just kind of scared to finish the rest and so my sister,
16 she just finished it for her and told her everything that
17 **victim 2** had told her.

18 Q But nothing about his penetrating her, right?

19 A No. They didn't get a chance to go into full details.

20 Q But you had six years to get the full detail, correct?

21 A I had six years. I had to get the full details and as
22 time went past that first year I was hearing more and more.
23 And I do have a bit of a temper and my sisters were afraid
24 to tell me because when they told me that little bit I kind
25 of exploded then.

1 Q Uh-huh.

2 A And they wanted to keep my sanity from happening. But
3 at the end of the day when I was able to cope with it she
4 went back and, you know, my sister told me more and that's
5 when I kind of hid myself from the church, I hid my child
6 from the church, I just didn't want her to be in the midst
7 of nobody where nobody would get a chance to look at her or
8 to question her or any of that.

9 Q Did you know beforehand that David Carmichael was going
10 to be at the youth explosion and your daughter was going to
11 be at the youth explosion?

12 A No, they didn't tell us.

13 Q Did you remember seeing a flyer that Ms. Sanders,
14 vic 1 mom, had created for the youth explosion that listed
15 David Carmichael's group on it?

16 A Yes.

17 Q So it was a surprise to you when you saw that David
18 Carmichael performed at the youth explosion?

19 A It was a surprise, it was very much a surprise.

20 Q Now, you told --

21 A Because I even questioned and I said, "What is he doing
22 here?" And in my mind I was like just puzzled.

23 Q But you wasn't puzzled when would you went to his
24 sister's wedding and you knew that he was going to be at the
25 wedding.

1 A Yes, that was expected. The youth explosion was
2 unexpected.

3 Q Well, it was expected when you brought your daughter to
4 the wedding, too, wasn't it?

5 A Excuse me?

6 Q It was expected that you would see him when you brought
7 your daughter to the wedding, right?

8 A I can shield her when I know things but I can't shield
9 her when I don't know things. I knew about the wedding so I
10 was with her and I had her hand to hand and we sat together
11 and I, you know, left so she wouldn't be in the midst of him
12 or where she came to refrain herself from that.

13 Q Now, you talk about keeping your sanity. Did you keep
14 your sanity when you went of to talk to Davetta and her mom
15 about this?

16 A Yes, I did. Her mother made attempts to talk to me and
17 as her being an older person I'm still going to respect my
18 elders, I still want to talk to her and tell her how I feel
19 and how I felt at that time and so she had wanted to meet me
20 and that's what I did.

21 Q And you met her and Davetta, right?

22 A Yes.

23 Q David was in the other room, wasn't he?

24 A I'm not sure if David was in the other room or not, I
25 just know I was speaking to the mother. If he was in the

1 other room that is news to me.

2 Q But Davetta was there.

3 A Yes.

4 Q You was talking to Davetta and her mom.

5 A I was talking to her mom, yes.

6 Q And you told them you did not want to push this but you
7 were being threatened that you could lose your children;
8 isn't that true?

9 A No. I told them -- no. What I told them, Ms.
10 Carmichael and Davetta, I said, "This is getting out of
11 control," and I told them what happened at the school and
12 all this, with the resource officer and how it's starting to
13 affect my situation and I wanted Davetta to know that I
14 don't blame this on her. I still, you know, want to
15 communicate with her.

16 Q As her best friend.

17 A Yes, as her friend. I wouldn't suspect that she would
18 judge me or hate me for something that her brother did,
19 because my mother didn't fire her when we found out so would
20 she still not be best friends. She kept working for my
21 mother.

22 Q Could it be because she believed her brother?

23 A Could what be?

24 Q The reason she pulled away from you all was because she
25 believed her brother?

1 A She didn't necessarily pull away from us, she would
2 still speak to us. I had got a phone call when her and her
3 sister was going out and they asked me to come so she didn't
4 fully pull away from us.

5 Q You did not -- you were not invited to the wedding
6 though, were you?

7 A Excuse me?

8 Q You were not invited to the wedding.

9 A Were?

10 Q When she got married?

11 A Oh, I was at the wedding. I was invited to the
12 wedding.

13 Q I understand you attended, but were you invited?

14 A I was invited to the wedding.

15 MR. SHADD: Thank you. That's all I have.

16 THE COURT: Redirect?

17 MS. CAMPBELL: Beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 (Break in proceedings.)

20 MS. CAMPBELL: I don't have anything further, Your
21 Honor.

22 THE COURT: All right, ma'am, you may step down. Thank
23 you very much. All right. Ladies and gentlemen, it's about
24 ten minutes to 5:00, we're going to break for the afternoon.
25 I'm going to give you the same instructions I gave you when

1 you left this courthouse yesterday and today, that is not to
2 watch, listen to or read any media reports, don't discuss
3 the case with anyone, don't allow anyone to discuss the case
4 with you. Should anyone attempt to contact you concerning
5 your service on the jury, please report that contact. We're
6 going to start tomorrow at 9:00 in the morning, I'll ask
7 that you be here at that time, we should be able to begin
8 shortly thereafter, and I trust everyone will have a good
9 everything. You're free to go at this time. Thank you very
10 much.

11 MR. SHADD: Your Honor, may we approach before they
12 leave?

13 THE COURT: Take them back to the jury room if you
14 don't mind, Mr. Bailiff, take them back to the jury room,
15 don't release them until I have talked to counsel.

16 (The jury left the courtroom)

17 THE COURT: Yes, sir?

18 MR. SHADD: Your Honor, what's your policy on now that
19 they're taking notes for them to leave their notebooks in
20 the jury room?

21 THE COURT: I instructed them at lunch to leave their
22 notebooks in the jury room, I'll instruct them again as
23 well.

24 MR. SHADD: Looks like one gentleman has his own
25 personal book and I don't want him to take it home with him.

1 THE COURT: Again, I told them at lunch to leave it in
2 the jury room and I'll tell them again. All right.
3 Anything else we needed to cover? Please make sure they
4 leave their note taking material.

5 THE BAILIFF: Yes, sir, we collected everything.

6 THE COURT: We're in recess until 9:00 in the morning.
7 They're free to go. Just let them go out there.

8 (Court recessed for the evening and resumed at 9:00 a.m.
9 on October 10, 2012.)

10 THE COURT: Anything before we bring the jury in?

11 MS. SIMPSON: We have one matter to argue at this
12 point. The State would like to amend the indictment,
13 indictment number 2007-GS-40-3372 with respect to [victim 1]
14 [victim 1] we would like to expand those dates from
15 July 1999 to May 1st of 2004 which would be through the
16 victim's 9th birthday. Your Honor, I have a packet with the
17 case law and the statute supporting our position on this
18 matter. South Carolina Code Section 17-19-100 specifically
19 addresses the amendments to indictments, it states that if
20 there is any defect in the form of the indictment or on the
21 trial of any case there shall appear to be any variance
22 between the allegations of the indictment and the evidence
23 offered in proof thereof the Court before which the trial
24 shall be had may amend the indictment according to the proof
25 if the amendment is because of that variance as long as that

1 amendment doesn't actually change the nature of the offense
2 charged, and after such amendment the trial should proceed
3 in all respects with the same consequences as if the grand
4 jury had indicted the case as is. The defendant is
5 currently charged with lewd act which is set forth in
6 16-15-140 which states that it is unlawful for a person over
7 the age of 14 to willfully and lewdly commit or attempt to
8 commit a lewd or lascivious act or with the body of its
9 parts of a child under the age of 16 years with the intent
10 of arousing, appealing to or to gratify the lusts or
11 passions or sexual desires of the person or the child. Your
12 Honor, the amendment that we are seeking is an amendment to
13 the timeframe of this incident and the testimony has been
14 that the victim believes that this occurred when she was
15 eight years old, her date of -- seven or eight years old,
16 her date of the birth is [REDACTED] [REDACTED] [REDACTED] which would be
17 through her 9th birthday. The statute clearly allows such
18 an amendment because it does not change the nature of the
19 offense, specifically time is not an essential element of a
20 lewd act and this has been addressed by our higher courts
21 which have confirmed that it is neither essential or a
22 material element in either a CSC case as well as
23 specifically in cases of lewd act. In State v. Nicholson,
24 which I passed up to Your Honor, the Court is actually
25 addressing the issue in the context of challenges to the

1 sufficiency of the indictment and the Court held that where
2 time is not an essential element of the offense the
3 indictment need not specifically charge the precise time the
4 offense allegedly occurred. Also additionally, Your Honor,
5 on State v. Thompson the Court held that time is not an
6 essential element of criminal sexual conduct with a minor.
7 And in State v. Baker, this is one which I believe addresses
8 lewd act specifically, it was in the context of the denial
9 of the defendant's motion to quash because the timeframe was
10 overbroad and prevented him from adequately preparing a
11 defense, the Court found the defendant's claims were without
12 merit and in doing so the Court addressed issues surrounding
13 the sufficiency of the indictment and reiterated that it was
14 merely a notice document and the Court must view it with a
15 practical eye and stated the two prong test for addressing
16 the sufficiency. The first prong is whether time is a
17 material element and the second is whether the time period
18 covered by the indictment occurred prior to its return by
19 the grand jury. As to the first prong the Court specifically
20 held that time was not a material element of committing a
21 lewd act upon a minor, as to the second the Court held that
22 it was met as well. Here in our case, Your Honor, the
23 indictment that we are seeking to amend was returned by the
24 grand jury on September 12th of 2007, we are seeking to
25 extend the time period through 2004 which is clearly before

1 the return of the indictment. So as I said, the State is
2 also not seeking to change the nature of the offense and
3 while most of the cases aren't directly addressing the
4 request for amendments but rather the sufficiency of such
5 indictments by the State it does address issues that are
6 helpful to Your Honor. However, I also handed up State v.
7 Riddle where the Court held that the amendment to the
8 indictment -- this is one where the amendment was actually
9 held to be improper. But that is distinguished from our
10 case, because in Riddle the defendant was indicted for
11 assault with intent to commit criminal sexual conduct third
12 degree which carries a maximum penalty of ten years. At the
13 close of the evidence the indictment was then amended to the
14 greater offense of assault with intent to commit criminal
15 sexual conduct first degree and that carries the maximum
16 penalty of 30 years. The Court said that the nature of the
17 offense was clearly changed and the Court found that as a
18 result that amendment specifically or clearly exceeded the
19 terms of the statute. But it's important to note, Your
20 Honor, I think that this amendment was actually done at the
21 close of the evidence and the Court did not take issue with
22 its amendment at this point in the process, so we're even
23 before that and I think reading Riddle together with
24 17-19-100 clearly permits and authorizes the amendment that
25 we are requesting. Additionally, Your Honor, the defendant

1 is not prejudiced in any way, she was eight years old at the
2 time, it's actually mentioned in the video. To be perfectly
3 honest, Your Honor, it's an error on the State. I know that
4 we sought to amend the indictment to [victim 2] before
5 these proceedings commenced and the jury was sworn and
6 should have addressed this at that point, that is actually
7 an oversight on my part specifically.

8 THE COURT: I was going to ask, is the testimony that
9 was given in trial, is it at odds with the forensic
10 interview?

11 MS. SIMPSON: No, Your Honor.

12 THE COURT: It's the same testimony that was given --
13 well, the same statement that was given during the forensic
14 interview.

15 MS. SIMPSON: That's correct, Your Honor.

16 THE COURT: Okay.

17 MR. SHADD: Thank you, Your Honor. May it please the
18 Court?

19 THE COURT: Yes, Mr. Shadd.

20 MR. SHADD: We're in the third day of trial,
21 specifically for these two young ladies in this indictment,
22 these two indictments came back in 2007, I don't even know
23 if Ms. Simpson was with the solicitor's office then, they
24 have had six years to amend this, five years to amend this.
25 They had an opportunity at the beginning of the call of this

1 case and as you know they called the case. And then for
2 [victim 2] on the other indictment they wanted to expand
3 the timeframe, I'm not sure why but I have a good idea, they
4 went -- actually expanded it twice, one to add the time back
5 to I believe '99 and then we agreed on that. And then they
6 said, "Actually we need to expand it further out," and you
7 gave the jury -- well, you had already by that time told the
8 jury about the indictments, but then when they picked a jury
9 then you told them about that and so they operated on that.
10 Nothing was mentioned at all about [victim 1] which
11 is the indictment that they're trying to change now on the
12 third day of trial. I have gone before this jury in my
13 opening statement and pointed out that according to the
14 indictment that addressed Ms. [victim 1] that she had to be
15 like four years old when this first began according to them
16 and went to about --

17 THE COURT: Well, they're not seeking to change the
18 beginning date, they're seeking to change the ending date.

19 MS. SIMPSON: Correct, Your Honor.

20 THE COURT: Okay.

21 MR. SHADD: And then --

22 THE COURT: So that argument is still --

23 MR. SHADD: Yes, sir. And I believe --

24 THE COURT: -- valid if the jury wants to accept it.

25 MR. SHADD: Yes, sir. But the age would still be

1 outside of what they're trying to expand it to now based on
2 the argument I made. They said it started when she was four
3 and -- at least as far as the timeframe continued until she
4 was about I believe six-and-a-half years old and then there
5 was a disclosure at 11 years old. I specifically asked Ms.
6 **victim 1** once she took the stand, "This says that you were
7 four years old, did it happen then?" She affirmatively said
8 no, she said it was seven or eight. She has already
9 testified to that, Your Honor, but this goes to --

10 THE COURT: Apparently that was also, according to what
11 I've heard and I don't know that I would disagree with it,
12 apparently what her statement says as well.

13 MR. SHADD: Yes, sir. So the jury will already have
14 that information, but the jury I believe can also match her
15 testimony with what the indictment says. But once -- I know
16 we're saying time is not an issue but I believe age is.

17 THE COURT: It's not an element.

18 MR. SHADD: It's not an element. But age is something
19 that the jury can take into consideration when they make
20 that ultimate determination beyond a reasonable doubt that
21 this occurred within the timeframe that the State said this
22 occurred, at this point to allow them to expand the date
23 which would allow them to capture the time she has testified
24 to, that's an issue the jury panel may have a problem with
25 especially since I have argued against that and planning on

1 arguing against it because it is not within the timeframe.
2 With Janice [REDACTED] it is, it's within that period of time.
3 This young lady has testified really that this is outside of
4 that time so now they have said on this third day we want to
5 expand so that we can I guess give her credibility to when
6 it occurred. And I don't even know why they gave such an
7 expansive period of time when it is really we're talking
8 about -- she has already testified this was one incident,
9 this is not as serious as they said with [REDACTED] victim 2 [REDACTED] but
10 for [REDACTED] victim 1 [REDACTED] she said affirmatively this is a one
11 time event. My argument will be that it's between the
12 timeframe that they had in the indictment. They knew about
13 this for five years, Your Honor, and they didn't change at
14 the beginning with one indictment, they should not be
15 allowed to make a change at this time now. And if Your
16 Honor is planning on doing that then obviously 17-19-100
17 allows me to ask for a continuance and we would have to ask
18 for that to occur because we would really have to revamp our
19 defense now at least as it pertains to Ms. [REDACTED] victim 1 [REDACTED] because
20 he is severely prejudiced by that.

21 THE COURT: Ms. Simpson?

22 MS. SIMPSON: Yes, Your Honor. As far as the
23 indictment and the defense being prejudiced in this cases,
24 he actually demonstrated in his opening statement by ripping
25 the indictments up essentially saying that they mean

1 nothing, that they're merely notice documents which inform
2 the defendant of what he is accused of so he can come to
3 court. Additionally, Your Honor, you've charged that to the
4 jury and they will again be charged on that. Also, Your
5 Honor, with respect to the prejudice, the defendant had
6 notice so as to the continuance we don't believe that that's
7 warranted in this case. As I said it is in the forensics
8 interview, it's in the discovery and defense counsel is
9 clear and aware that time is not an element of this offense.
10 Additionally, Your Honor, this isn't a case where alibi has
11 been given as notice such as in a murder case or something
12 where in that case the Court may see an instance where
13 changing the timeframe or the date would work as an element
14 of surprise that would warrant a continuance but that is not
15 what we have here, and I think that the amendment is
16 appropriate.

17 THE COURT: Anything further, Mr. Shadd?

18 MR. SHADD: No, sir.

19 THE COURT: All right. I do find that the proposed
20 amendment would not change the nature of the charge that has
21 been filed in this case. Also, in as much as the forensic
22 interview did contain the same information which was
23 testified to during trial, I understand while it is a
24 change -- slight change in the positions of the parties, I
25 do not find that that would operate as a surprise such that

1 would warrant a continuance in the case, therefore I would
2 deny the request for a continuance in the matter. I will
3 allow the amendment. I'm looking at -- be sure I'm looking
4 at the right indictment, it's case number 07-3372?

5 MR. SHADD: That's correct.

6 MS. SIMPSON: That's correct, Your Honor.

7 THE COURT: And the proposed amendment would go to what
8 date in '04?

9 MS. SIMPSON: May 1st 2004.

10 THE COURT: I'm going to make that change in my copy.

11 MS. SIMPSON: Thank you, Your Honor.

12 THE COURT: All right. Anything further from the State
13 before we proceed?

14 MS. SIMPSON: No, Your Honor.

15 THE COURT: Anything we need to take up for the
16 defense?

17 MR. SHADD: Your Honor, we did have testimony from
18 Lashanda [REDACTED] yesterday. As you recall there was mention
19 of a friend that was there when she received the disclosure
20 from her daughter, [REDACTED] victim 2 [REDACTED] that friend's name is
21 Lakeisha Edmonds, I don't know if you recall her being
22 bantered about by Ms. [REDACTED]. Ms. Edmonds is now going to
23 testify on behalf of the defense. I'm going to put the
24 prosecution on notice if you could ask the jury if they
25 recognize her name.

1 THE COURT: That name again is what now?

2 MR. ATTY3: Lakeisha Edmonds.

3 THE COURT: All right. Anything further before we
4 bring the jury? All right. Let's bring the jury in.

5 (WHEREUPON, the jury came into open court at
6 approximately 9:45 a.m.)

7 THE BAILIFF: The jury is all present.

8 THE COURT: Ladies and gentlemen, I want to apologize
9 for our tardiness, I understand that maybe some of you may
10 have experienced the same problem I did on I-26 trying to
11 get into town this morning and sorry we didn't get started
12 on time. For those of you who were here on time, thank you.
13 Maybe tomorrow if we're here tomorrow we will be able to be
14 get into town without all of those problems, so again thank
15 you for being on time, sorry I was running late trying to
16 get into town. I've been informed by the attorneys as a
17 result of some proof in this case that there is now the
18 possibility of another witness being called that was not
19 identified to you during our pretrial discussions, the name
20 of that potential witness is Lakeisha Edmonds. So as to
21 Lakeisha Edmonds, and I'll remind you that you remain under
22 oath, is there any member of this jury panel who has ever
23 been related by marriage or are you related by blood or have
24 you ever had a close social or a personal relationship with
25 an individual by the name of Lakeisha Edmonds? If that's

1 true, please stand. All right. It appears that no one has
2 had any contact with Ms. Edmonds and so we can proceed as we
3 have in the past. Now, if there was any member of the jury
4 panel who had any difficulty in complying with my
5 instructions concerning your behavior during our break,
6 please stand. It appears that all jurors have been able to
7 comply with the Court's instructions. At this time the
8 State is still in the process of calling its witnesses and
9 you may call your next witness.

10 MS. SIMPSON: Thank you, Your Honor. The State is
11 going to call our next witness a little out of the order
12 just because of scheduling issues.

13 THE COURT: All right.

14 MS. SIMPSON: The State calls Deputy Carlson.

15 THE COURT: Sir, come forward and be sworn please.

16 The witness, WILLIAM CARLSON, was first duly
17 sworn and testified as follows:

18 THE COURT: Sir, once you're seated I'm going to ask
19 that you state your name, please.

20 THE WITNESS: William Carlson.

21 THE COURT: Thank you. Ms. Simpson, your witness.

22 DIRECT EXAMINATION

23 BY MS. SIMPSON:

24 Q Deputy Carlson, where are you employed?

25 A The Richland County Sheriff's Department.

WILLIAM CARLSON

1 Q And how long have you been with the Richland County
2 Sheriff's Department?

3 A About a year-and-a-half.

4 Q A year-and-a-half?

5 A Yes, ma'am.

6 Q Ad what do you do there?

7 A Road deputy.

8 Q Road deputy?

9 A Yes, ma'am.

10 Q As a road deputy tell the jury a little bit about what
11 you do, some of your duties.

12 A My primary duties are answering calls for service,
13 protect the community, everybody in it and enforce the laws.

14 Q Okay. And are you on the road and then sometimes also
15 just at the phone taking reports or are you primarily a road
16 deputy?

17 A A road deputy.

18 Q And did you have occasion to become involved in this
19 case?

20 A Yes, ma'am.

21 Q And how did that come about?

22 A On August 28th of 2011 I was dispatched to [REDACTED] [REDACTED].

23 Q Okay. And who -- what was the call regarding?

24 A A possible fondling.

25 Q Okay. What time were you dispatched out on

WILLIAM CARLSON

- 1 August 28th?
- 2 A 12:03.
- 3 Q 12:03?
- 4 A Yes, ma'am.
- 5 Q And when you arrived who did you encounter?
- 6 A I have encountered [victim 3] [REDACTED] and her parents.
- 7 Q Okay. So [victim 3] and her parents?
- 8 A Yes, ma'am.
- 9 Q Who are her parents?
- 10 A Her mother is Cynthia [REDACTED] and her stepfather is
- 11 Patrick Robinson.
- 12 Q Without telling me what they said to you, were you able
- 13 to take a report in that case?
- 14 A Yes, ma'am.
- 15 Q And they reported to you involving a possible fondling,
- 16 correct?
- 17 A Yes, ma'am.
- 18 Q And when did they say that the actual incident
- 19 occurred?
- 20 A The day before.
- 21 Q The day before?
- 22 A Yes, ma'am.
- 23 Q And did they indicate who the suspect or subject was?
- 24 A Yes, ma'am.
- 25 Q And who was that?

WILLIAM CARLSON

- 1 A David Lee Carmichael.
- 2 Q And after taking the report, what did you do?
- 3 A After taking the report?
- 4 Q Yes, sir.
- 5 A I left.
- 6 Q You left?
- 7 A Yes, ma'am.
- 8 Q And in these cases is it typical to turn over to an
- 9 investigator?
- 10 A Yes, ma'am. We send our reports up, it gets proofed by
- 11 a supervisor and then it gets forwarded to investigations.
- 12 Q Is it your responsibility to actually interview the
- 13 witnesses in these types of cases?
- 14 A I do for the report, yes, ma'am.
- 15 Q But you just gather initial contact -- or information
- 16 about the incident, right?
- 17 A Yes, ma'am.
- 18 Q You don't go out and interview all the subjects and
- 19 witnesses involved, correct?
- 20 A No, ma'am, that's correct.
- 21 Q And it was in this case turned over to an investigator?
- 22 A To my knowledge, yes, ma'am.
- 23 Q And does it note which investigator it was turned over
- 24 to?
- 25 A No, ma'am, I have no idea.

WILLIAM CARLSON

1 Q And is that the extent of your involvement in this
2 case?

3 A Yes, ma'am.

4 MS. SIMPSON: Thank you. Nothing further.

5 MR. SHADD: No questions, Your Honor.

6 THE COURT: Thank you. You may step down. Thank you
7 very much.

8 MS. SIMPSON: May he be excused, Your Honor.

9 THE COURT: Any objection?

10 MR. SHADD: No objection.

11 THE COURT: Without objection, you're free to go.
12 Thank you. You may call your next witness.

13 MS. SIMPSON: The State calls Shannon [REDACTED].

14 THE COURT: Come forward please to be sworn.

15 The witness, SHANNON [REDACTED], after being
16 duly sworn, testified as follows:

17 THE COURT: Ma'am, if you would, once you're seated,
18 state your name.

19 THE WITNESS: Shannon [REDACTED].

20 THE COURT: Thank you. You're witness, Ms. Simpson.

21 DIRECT EXAMINATION

22 BY MS. SIMPSON:

23 Q Good morning, Ms. [REDACTED]. How old are you?

24 A Thirty-six.

25 Q And do you live in Columbia?

SHANNON [REDACTED]

- 1 A Yes.
- 2 Q Are you from Columbia?
- 3 A Yes.
- 4 Q Where are you living now?
- 5 A I'm living on [REDACTED] [REDACTED] [REDACTED].
- 6 Q [REDACTED] [REDACTED]?
- 7 A Yes.
- 8 Q Who lives there with you?
- 9 A Me, my mom and my two nieces.
- 10 Q Your two nieces?
- 11 A Yes.
- 12 Q What are their names?
- 13 A [REDACTED] victim 2 [REDACTED] and Jasmine [REDACTED].
- 14 Q And your mother, who is she?
- 15 A Who is she?
- 16 Q What's your mother's name?
- 17 A Janie [REDACTED].
- 18 Q And we've heard from her earlier, right?
- 19 A Yes.
- 20 Q And what is your relationship to [REDACTED] victim 2 [REDACTED]?
- 21 A I'm her aunt.
- 22 Q And y'all are all living together now.
- 23 A Yes.
- 24 Q Do you also know the defendant?
- 25 A Yes.

SHANNON [REDACTED]

1 Q How do you know him?

2 A We grew up in the church together and became friends
3 and hung out together.

4 Q So y'all actually grew up together, too, you've known
5 him for a long time.

6 A Yes.

7 Q And your sister, Lashanda --

8 A Uh-huh.

9 Q -- is she good friends with the defendant, too?

10 A Yes, before all this.

11 Q Before all this happened?

12 A Yes. Yes.

13 Q And I want to turn your attention to I guess the time
14 period, were y'all actually living somewhere else off
15 [REDACTED] [REDACTED] for a period of time?

16 A Before [REDACTED] [REDACTED]?

17 Q Oh, actually [REDACTED] [REDACTED].

18 A Yes.

19 Q Okay. So you did live there?

20 A Yes.

21 Q Was that at your mother's home?

22 A Yes.

23 Q Tell us a little bit about your family and who all
24 lived there.

25 A At the time before my father had died it was -- first I

SHANNON [REDACTED]

1 wasn't staying there at the time, I had my own place and
2 then I moved in and my father was sick, he was in and out of
3 the hospital. So it was me, my mama, my dad at times, the
4 kids, [REDACTED] victim 2 Jasmine and Shanda had the boys at the time.
5 At one time they came back, then stayed and she moved out
6 again.

7 Q Okay. So there have been people in and out --

8 A Yes.

9 Q -- different people at different places?

10 A Yes.

11 Q You said for a period of time your grandfather was
12 sick?

13 A My father.

14 Q Your father was sick. Has he since passed away?

15 A Yes.

16 Q Back when you were living on [REDACTED] [REDACTED] how often --
17 I guess not when you were living there but when you
18 necessarily weren't living there how often would you come by
19 the house?

20 A I came by every other day because my dad was sick.

21 Q And [REDACTED] victim 2 was there --

22 A Yes.

23 Q -- pretty much the whole time.

24 A Yep.

25 Q [REDACTED] victim 2 and her sister.

SHANNON [REDACTED]

1 A Yes.

2 Q And the boys sometimes.

3 A Sometimes, yes.

4 Q Now, you don't like to drive, right?

5 A No.

6 Q And so we've actually talked a lot about the
7 baby-sitting in this case. Did your grandma like for men to
8 baby-sit --

9 A My mom --

10 Q -- the children?

11 A No.

12 Q Your mom, I'm sorry, I keep calling her the
13 grandmother.

14 A No.

15 Q But were there occasions where the defendant, David,
16 would pop up by the house?

17 A Yes.

18 Q Can you just tell us about of those?

19 A On occasion we would have dinners a lot, seafood, stuff
20 like that and he would come over and eat and some days he
21 just said he wanted a break from his house. He would come
22 over and watch TV with us and hang out over at our house.

23 Q Okay. So he would be over there a good deal.

24 A Yes.

25 Q Did your mom consider him like one of the kids?

SHANNON [REDACTED]

1 A Yes.

2 Q And would there be occasions that you might have needed
3 David to come over?

4 A Not really.

5 Q Okay. Well, when he popped up was there an occasion
6 where you had to go to the store?

7 A Yes.

8 Q Can you tell us about that?

9 A Well, it was kind in the evening or late and Jasmine
10 was asleep, [REDACTED] victim 2 was getting ready for the bed and we
11 needed to go to the store right quick because our work time
12 is different so that's the only opportunity we had to run to
13 the store to get some food in the house. We ran to the
14 store and since he was there we asked him can he keep the
15 kids for less than at least an hour or something and he said
16 yes, we said we'll be right back. So we went to the store
17 and came right back.

18 Q So this wasn't babysitting per se.

19 A It wasn't babysitting.

20 Q It was just for a few minutes.

21 A Yes.

22 Q If any male was going to be allowed to stay in the
23 house and watch the children, who would your mother allow?

24 A Her husband.

25 Q Her husband?

SHANNON [REDACTED]

1 A Yeah.

2 Q Would she allow David, too?

3 MR. SHADD: Objection, leading.

4 THE COURT: I'll sustain the objection and ask the
5 attorney not to lead the witness.

6 MS. SIMPSON: I apologize.

7 Q On that occasion David actually stayed with you.

8 A Yes.

9 THE COURT: Again I'm going to ask you not to lead the
10 witness, don't suggest answers.

11 MS. SIMPSON: Yes, Your Honor.

12 THE COURT: You may proceed.

13 Q Did your grandmother really like leaving a male with
14 the children?

15 A No.

16 Q On this occasion do you remember whether all the
17 children were home or just some of them?

18 A At the time I remember being the two girls at the time.

19 Q Okay. And going back to [REDACTED] victim 2 behavior, did you
20 observe some of her behavior and interaction with David?

21 A Yes.

22 Q And how was she in the beginning?

23 A In the beginning she kind of respected him at the
24 beginning and I guess as it came down she showed hate
25 towards him. I could see actually where she kicked him, hit

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SHANNON [REDACTED]

1 him, talked trash to him like when he was around us. And I
2 often tell to not do that to an adult like that and she was
3 like, "He don't know how to treat nobody anyway." And I was
4 like, "What you mean by that?" She said, "I got something
5 to tell you but I can't tell you." And I would ask her to
6 tell me and she was like, "I just don't want to break up a
7 friendship, never mind," and she would walk away.

8 Q Okay. So her behavior actually changed --

9 A Yes.

10 Q -- towards David at some point.

11 A Yes, ma'am.

12 Q And did you call him David?

13 A I called him Junior.

14 Q Junior. Tell us about what you remember when you found
15 out what happened to [REDACTED] victim 2

16 A I got a phone call from my mother. I was at a friend's
17 house, I was staying at a friend's house and I got a phone
18 call from my mother, and at the time I thought my sister had
19 knew.

20 Q And by your sister who do you mean?

21 A I thought Lashanda had knew at the time. Like the next
22 day when she picked me up I questioned her about it in the
23 car and she looked at me crazy like, "What are you talking
24 about?" And I had told her you don't know, whatever and
25 that's when she got all upset and she dropped me off and

1 wanted to go to his house -- David's house but the car
2 wouldn't start and she came back in.

3 Q And I want to back up just a little bit so we're clear.
4 Where did you learn the information? Who did you learn it
5 from?

6 A From my mother.

7 Q And that's [REDACTED] victim 2 [REDACTED]

8 A Yes.

9 Q And you were in the car with Lashanda?

10 A Yes.

11 Q After she learned about it and was upset, do you
12 remember what happened next?

13 A I just know that she was so upset and she -- after I
14 got out of the car -- well, she got out of the car first and
15 she came in the house and she was so upset and she ran back
16 out the door and she went to crank up her car and it --

17 MR. SHADD: Your Honor, I'm sorry, I'm going to have to
18 object. I don't know the relevance of mom's behavior and
19 her response to what she had just heard, what relevance that
20 has to this.

21 THE COURT: Well, I'll ask that the witness be
22 responsive to the questions but she has the right to make
23 her answer. It was not elicited by the State so I'm going
24 to allow her to answer the question.

25 MS. SIMPSON: Thank you.

SHANNON [REDACTED]

1 THE COURT: You may proceed.

2 Q At some point after this what was your involvement with
3 the defendant? Were you involved with him anymore?

4 A No.

5 Q Did you talk to him?

6 A No.

7 Q Have you had interactions with him since then?

8 A I had saw him at a church thing and had spoke to him
9 and he spoke to me.

10 Q And your family is very active -- are they very active
11 in the church?

12 A Yes.

13 Q And has [REDACTED] victim 2 talked to you about this at all?

14 A I had [REDACTED] victim 2 myself at the time and because she talked
15 to me more about it than anybody else so I had approached
16 her and she --

17 Q You can't tell me what she talked about. What happened
18 to her.

19 A She just told me what happened.

20 Q Okay. But you did sit down with her.

21 A Yes.

22 Q Are y'all pretty close?

23 A Yes.

24 Q So she would confide in you?

25 A Yes.

SHANNON [REDACTED]

1 MS. SIMPSON: Thank you, Ms. [REDACTED]

2 THE COURT: Your witness, Mr. Shadd.

3 MR. SHADD: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. SHADD:

6 Q You are Shannon [REDACTED] is that right?

7 A Yes, sir.

8 Q You do not have any children.

9 A No.

10 Q The children that you have are nieces and nephews.

11 A Yes.

12 Q And how many are there?

13 A There are 14 in all.

14 Q And is it Shirley -- who is your oldest sister?

15 A My oldest sister is Janice Sexton.

16 Q Janice Sexton. And she lives where?

17 A She lives in [REDACTED].

18 Q In [REDACTED]. And she has 11 kids?

19 A She has ten kids plus one, nephew on her husband's
20 side.

21 Q That she adopted?

22 A Yes.

23 Q So that's 11 total?

24 A Yes.

25 Q And then your baby sister, Lashanda, has four.

SHANNON [REDACTED]

- 1 A Yes.
- 2 Q Two boys and two girls.
- 3 A Yes.
- 4 Q And the birth order is [REDACTED] victim 2 Kashawn, Jasmine and
- 5 Marquel.
- 6 A Yes.
- 7 Q Kashawn has special needs.
- 8 A Yes.
- 9 Q But you and your mother helped Lashanda raise him,
- 10 right?
- 11 A Yes.
- 12 Q For the first six years of -- well, when Lashanda moved
- 13 out and was engaged for six years the boys stayed with her.
- 14 A Uh-huh.
- 15 Q Is that a yes?
- 16 A Yes.
- 17 Q Is this the occasion -- we're talking about this
- 18 occasion, is this the occasion where you and your mother
- 19 went to a grocery store and asked David to watch the kids
- 20 for -- this would be the girls only -- for about an hour is
- 21 what you said?
- 22 A Yes.
- 23 Q How do you know that that happened, if [REDACTED] victim 2 was
- 24 harmed on that day?
- 25 A How do I know that happened?

1 Q That there was even an indication that you told David
2 that you were going to the grocery store and you and your
3 mom was going to the grocery store?

4 A How do I know what happened?

5 Q You're saying that there was a time when you and your
6 mom went to the store.

7 A Yes.

8 Q And David had popped up.

9 A Uh-huh.

10 Q He pops up when there's food and he wants to get away
11 from home.

12 A Yes.

13 Q On this date he popped up to come eat some of y'all's
14 food.

15 A He didn't pop up to eat food, he just popped up to get
16 away, we didn't cook that day.

17 Q What day was that?

18 A I don't remember the day, it was six years ago.

19 Q How many days was it where he popped up and y'all went
20 to the grocery store?

21 A That was the only day he popped up and we went to the
22 grocery store, it was in the evening or whatever, the
23 nighttime.

24 Q And you agree that's consistent with what [REDACTED] victim 2 said,
25 that it was in the evening around nighttime?

SHANNON [REDACTED]

1 A Yes.

2 Q You agree with that because that's what she said
3 yesterday?

4 A Yes.

5 Q Do you know that she also said that her brothers was
6 home?

7 A Her brothers was with the mother, I don't recall.

8 Q So that's not true then, is it?

9 A I don't recall.

10 MS. SIMPSON: Objection, Your Honor, with respect to
11 commenting on the veracity of another witness.

12 THE COURT: I will sustain the objection. You have the
13 right to inquire as to whether the brother was present but
14 you can't pit witnesses against each other.

15 Q Is it different that the boys were home?

16 A The boys mostly be with their mother when it's time to
17 go to bed or school.

18 Q Okay.

19 A They would come in the daytime and they would leave
20 with their mother.

21 Q And was this occasion that we're talking about where
22 you and your mom went to the grocery store that one time
23 that David popped up and y'all went to the grocery store,
24 right?

25 A Uh-huh.

1 Q You said it was only one time that you went to the
2 grocery store and David popped up and you said, "watch
3 them?"

4 A Yes.

5 Q Not more than one? Are you sure about that?

6 A Yes.

7 Q Ma'am?

8 A Yes.

9 Q Okay. This one time you're saying that just the girls
10 were home.

11 A Yes. To my knowledge, yes.

12 Q Okay. Were you here yesterday when your niece
13 testified?

14 A Yes.

15 MS. SIMPSON: Objection, Your Honor.

16 MR. SHADD: Whether she was here --

17 THE COURT: I don't know where the question is going,
18 but I will caution counsel again that you can't ask her to
19 comment on other witness' testimony. She has a right to
20 testify as to what she testifies and you can draw whatever
21 inferences from that in your arguments.

22 MR. SHADD: Yes, sir. Including what she heard her
23 say, not whether she had an opinion about what she said.

24 THE COURT: Well, I said I didn't know where you were
25 going on that --

SHANNON [REDACTED]

1 MR. SHADD: Yes, sir.

2 THE COURT: -- and I'll see where you're going, but
3 I'll caution you what you can and can't do.

4 MR. SHADD: Yes, sir.

5 Q Do you recall your niece testifying yesterday?

6 A Yes.

7 Q Do you recall her saying who all was home?

8 A Yes.

9 Q Since you recall that day do you recall what your niece
10 was wearing?

11 A She always likes to wear a pink night gown.

12 Q Did she have other night clothes?

13 A She had others but this was given to her by her
14 grandparents at the time and she likes to wear it.

15 Q Okay. Do you know where she got it?

16 A She had got it as a Christmas present from my parents.

17 Q Do you remember which year?

18 A No, sir.

19 Q Okay. You're mother would not let any man watch over
20 these girls; isn't that correct?

21 A Correct.

22 Q Not even for a second; isn't that correct?

23 A Yes.

24 MR. SHADD: Thank you.

25 THE COURT: Redirect?

HEATHER SMITH

1 MS. SIMPSON: No, Your Honor.

2 THE COURT: May the witness be excused?

3 MR. SHADD: No objection.

4 THE COURT: All right. Ma'am, you may step down,
5 you're free to go if you would like. And the State may call
6 its next witness.

7 MS. SIMPSON: The State calls Heather Smith.

8 THE COURT: Come forward, please, ma'am, to be sworn.

9 The witness, HEATHER SMITH, was first duly
10 sworn and testified as follows:

11 THE COURT: Ma'am, when you're seated please state your
12 name.

13 THE WITNESS: Heather Smith.

14 THE COURT: Thank you. Ms. Simpson, your witness.

15 MS. SIMPSON: Thank you.

16 DIRECT EXAMINATION

17 BY MS. SIMPSON:

18 Q Ms. Smith, where do you work?

19 A I work at The Assessment and Resource Center also known
20 as The ARC, it's the children's advocacy center in Richland
21 County.

22 Q And what do you do there?

23 A I'm a forensic interviewer. I also provide clinical
24 supervision for treatment, and I also do training.

25 Q And what exactly is the child advocacy center, what's

HEATHER SMITH

1 its purpose? What do y'all do?

2 A The children's advocacy centers are all over the
3 country. They are centers that provide forensic
4 interviewing of children when any type of child maltreatment
5 is suspected. The interviews are referred by investigative
6 agencies such as law enforcement or child protective
7 services and we provide the forensic interviewing services
8 that are then used as part of an investigation.

9 Q And I believe you said you're a forensic interviewer.
10 and you do some of the coordination for other things. Can
11 you tell us a little bit more about that?

12 A Sure. When a child discloses some type of child
13 maltreatment they may need followup services such as therapy
14 or family counseling, victim advocacy and we provide those
15 services as well.

16 Q Can you tell the jury a little bit about your education
17 and your training?

18 A Sure. I have a Master's Degree in Counseling from the
19 University of South Carolina School of Medicine. I'm also a
20 licensed professional counselor in the State of South
21 Carolina. In order to do forensic interviewing you have to
22 have specialized training, so I have had 40 hours of an
23 intensive forensic interviewing protocol training. I've
24 undergone advanced trainings in forensic interviewing and I
25 also am now on the faculty where I teach. We have a

1 training program called Child First where we train for the
2 State, we train law enforcement and child protective service
3 workers how to in the forensic interviewing protocol and I
4 do that on a quarterly basis.

5 Q And do you belong to any professional organizations?

6 A Yes. I am on a focus group where we are developing a
7 protocol for forensic interviewing of child trafficking
8 victims for the National Center for Missing and Exploited
9 Children and so I do travel sometimes to Washington, D.C. to
10 help develop that protocol while it's in the works right
11 now. I also am a part of our multidisciplinary team of
12 Richland County where we staff cases, it's an
13 interdisciplinary staffing.

14 Q And how many years have you been practicing in this
15 field?

16 A I have been at The ARC ten years in January, but I've
17 been working with children and adolescence for 17 years.

18 Q And how many forensics interviews would you say you
19 actually conducted during that time?

20 A It's over 1,000.

21 Q Over 1,000?

22 A Yes, I lost count.

23 Q And have you been qualified as an expert before?

24 A I have.

25 Q How many times?

HEATHER SMITH

1 A Upwards of 30.

2 MS. SIMPSON: Your Honor, at this time the State would
3 offer Ms. Heather Smith as an expert in forensic
4 interviewing and child abuse assessments.

5 THE COURT: Any objection to that designation, Mr.
6 Shadd?

7 MR. SHADD: No objection, Your Honor.

8 THE COURT: Ladies and gentlemen, let me explain to you
9 what we're doing at this time so you'll have a little bit of
10 knowledge about this exercise. Generally over the rules of
11 the evidence that govern our courts lay witnesses are not
12 allowed to state opinions concerning things, they are
13 required to testify as to facts within their knowledge. An
14 exception to that general rule is for witnesses designated
15 as experts in some field, science or profession. For those
16 witnesses who are designated as experts within their field
17 they are allowed to state opinions within the area of their
18 expertise, and also are allowed to state the reasons or the
19 basis for having those opinions. In this case the witness
20 is being offered as an expert within the field of forensic
21 interviewing and the other designation was?

22 MS. SIMPSON: Child abuse assessment.

23 THE COURT: Child abuse assessment, without objection
24 from the defense so therefore I will designate her as an
25 expert, that allow her to state opinions in the area of that

HEATHER SMITH

1 expertise. I'll give you more instructions on how you
2 should treat or can treat the testimony of an expert during
3 my charge on the law in this matter. You may proceed, Ms.
4 Simpson.

5 Q Ms. Smith, what is a forensic interview?

6 A A forensics interview is different from other
7 interviews such as counseling or psychiatric evaluation. A
8 forensic interview is a fact-finding interview -- I'm sorry,
9 I'm going to get this -- it's a fact-finding interview for
10 the purposes of investigation. So typically when we do
11 forensic interviews we only see the child one time. We may
12 do follow-up interviews if we think that that is necessary,
13 but the majority of forensic interviews are a one time
14 interview referred by investigative agencies such as law
15 enforcement or child protective services where the main
16 purpose is to gather facts so that an investigation can be
17 continued.

18 Q And how are forensic interviews conducted in order to
19 assess a possible child abuse or sexual assaults?

20 A Typically forensic interviews, it's best practice to
21 have a protocol that you follow. In South Carolina we use
22 the RATAC program which is an acronym, it stands for the
23 phases of the interview process, and I can go into that if
24 you would like.

25 Q We'll get there in just a second. Actually you said

HEATHER SMITH

1 RATAAC?

2 A Yes.

3 Q And that's R --

4 A A-T-A-C.

5 Q C. Okay. And this is a specific protocol?

6 A It is.

7 Q What does the acronym stand for?

8 A The R is rapport building.

9 Q And the A?

10 A Anatomical identification.

11 Q At the T?

12 A The T is touch inquiry. The next A is abuse scenario.

13 Q And the C?

14 A Closure.

15 Q And are there -- you said closure?

16 A Closure.

17 Q Do you have some guidelines in place with respect to
18 this protocol that you follow?

19 A Yes, we do. Most of the -- this is a nationally
20 recognized protocol and it's best practice to have -- to
21 follow a nationally recognized protocol. But as part of the
22 protocol it's best practice also to make sure that the types
23 of questions that you use are non-leading and
24 non-suggestive. We're trying to gather facts so we want to
25 make sure that as an interviewer our job is to help a child

1 tell if something happened, to tell what happened in the
2 best way possible. So we don't want to ask leading or
3 suggestive questions because that would give us bad
4 information. We also try to make sure that a child knows to
5 correct us if we get something wrong, we want to make sure
6 that we get the right idea so we allow for correction. We
7 will ask clarification questions to make sure we're getting
8 it right. We want to make sure that the child knows that
9 they, you know, that they're allowed to ask questions of us
10 if they want to. And, you know, we do at the beginning have
11 a conversation with the child about the importance of
12 telling the truth and, you know, not guessing and just
13 saying they don't know if they don't actually know
14 something.

15 Q So they're actually kind of informed I guess in a child
16 friendly or childlike way, child terms of the guidelines of
17 this interview.

18 A Yes, throughout the interview. We don't go over all of
19 the guidelines all at once, that would be too much
20 information for a child. It's kind of a setting, too, where
21 children often aren't in a setting like that, so we try to
22 make them as comfortable as possible and then make sure they
23 understand the rules of the interview throughout the
24 interview so they are able to be in an environment where
25 they can disclose what they need to in the best way

HEATHER SMITH

1 possible.

2 Q Are other people present outside the interview such as
3 parents or guardians?

4 A The caregivers bring them but they are not in the
5 interview, but a caregiver typically brings them to the
6 interview.

7 Q Are there times when anyone might observe the
8 interview? Is that limited to law enforcement or do people
9 even observe?

10 A Yes. The only people allowed to observe an
11 interview -- we use closed circuit monitoring. We video
12 record and then we also have a closed circuit monitoring
13 system where only the investigators are allowed to view the
14 interview, and that is so that if they have further
15 questions at the time of the interview we can know what
16 those are and then ask them in the interview in the
17 appropriate manner.

18 Q And are there measures in place to measure, I guess, a
19 child's competency?

20 A Yes. During the rapport building phase we want to get
21 an idea of the child's language skills and also
22 developmentally where they are. A child may be five but
23 functioning at a lower age or a higher age, so as part of
24 the rapport building phase we are getting a child to talk
25 and use a lot of narrative answers so we want them to -- so

1 we're asking open-ended questions so they'll talk to us so
2 we can gauge what their verbal skills are, whether they have
3 a speech deficit and where they are with cognitive skills,
4 how they're doing.

5 Q We'll go through the phases. The rapport building
6 phase, you say you're asking open-ended questions at that
7 point?

8 A Yes.

9 Q Do you just kind of follow the child or how does it
10 work?

11 A We do. We're trying to get the child to talk so often
12 times children are not allowed, you know, they're following
13 rules with adults so they wait to answer questions when an
14 adult speaks to them, so we want a child to know they can
15 talk to us and tell us lots of different things about their
16 life. So typically we'll ask open-ended questions during
17 the rapport building phase about family, school, friends,
18 those types of subjects, and we want also to have them get
19 into a habit of answering questions in a narrative. So we
20 want them to tell as much as they can about a certain topic
21 so they get into a habit of that so that later if they do
22 disclose something then we can have them answer in the same
23 manner.

24 Q And what about anatomical ID or identification?

25 A During anatomical identification we use anatomical

HEATHER SMITH

1 diagrams of children without clothes on and we're asking
2 them to label their names for body parts. It's very
3 important to use a child's -- a child's names for body parts
4 to help, again, keep the comfort and to use their language
5 so that they are able to talk about something that might
6 have happened in their own language. So in order to know
7 what they call those body parts, we do have them label the
8 names for all of the body parts including, you know, the
9 private parts.

10 Q And touch inquiry?

11 A During the touch inquiry we're asking about a variety
12 of touches that children normally would get such as hugs,
13 kisses, tickles. We may ask about touches for physical
14 discipline that they may get such as spankings and
15 whippings. We also ask if they know where the private parts
16 are on the body and once they identify those parts then we
17 will ask them -- we'll move into the abuse scenario where we
18 ask have those parts ever been touched on your body.

19 Q So the abuse scenario is about the abuse.

20 A Yes.

21 Q And then the closure process, what is that?

22 A The closure process is where we educate children on how
23 to protect themselves so we provide them with a self
24 protection strategy especially for young children since they
25 may not have learned that yet. So we will educate them on

1 how to tell, who they should tell and then we respectfully
2 end the interview.

3 Q And is this a stringent or ridged protocol that has to
4 be followed exactly every time?

5 A It's not scripted so we don't have a script that we
6 follow, it's a semi-structured interview protocol. So if a
7 child were to during the rapport building phase say they
8 were talking about family or friends and they began to tell
9 about an abuse scenario we would follow the child's lead and
10 we would go where they went just to gather more details for
11 an investigation. With older children we tend to -- I'd say
12 between nine and ten and up we don't like to use a touch
13 inquiry where we ask about hugs, kisses and tickles because
14 that can be offensive for older children, they think that's
15 strange to ask about hugs and kisses, but with the younger
16 age we may do that.

17 Q So age may affect what dictates the levels and steps
18 and the protocols used.

19 A Yes.

20 Q Do you actually have a -- I guess prior to the forensic
21 interview are you able to obtain a history be it family or
22 medical history of the child?

23 A We do. We provide -- I want to say -- currently we're
24 using a caregiver form where the caregiver fills out
25 information about their child about developmental issues

HEATHER SMITH

1 where they are in school, where they're going to school, any
2 issues with school or whether they have any type of medical
3 history or mental health history we may have need to know
4 about. We also ask about family just to gather some general
5 background information. I think back in 2006 we were
6 actually doing that interview ourselves with the parent,
7 just looking at my report it seems that I filled that in,
8 but currently we're using a form where we have the caregiver
9 do it themselves.

10 Q And in addition to the I guess general history, do you
11 usually have any information regarding some of the child's
12 initial disclosures that I guess brought them to you?

13 A We do. We have an intake process, we have an intake
14 coordinator who takes the phone calls for all the referrals
15 that come through from law enforcement or child protection.
16 They provide us with a written intake form with a general --
17 just a very short paragraph about the incident being
18 reported to them in some manner, and then we'll have an
19 incident report from law enforcement if a report was made,
20 or we may have DSS notes if it was made to a child
21 protection worker.

22 Q Okay. So you have some limited information?

23 A Yes.

24 Q Is the child directly confronted with that information
25 or do you follow these protocols?

HEATHER SMITH

1 A We follow the protocol. In some cases if we need to
2 clarify some things that were in the intake that weren't
3 touched upon by the child we may ask about that, but for the
4 most part we follow the protocol.

5 Q And in assessing a specific interview what types of
6 things do you look for with respect to details and things of
7 that nature?

8 A Well, it's very important again to use open-ended
9 questions. So first you want to have the child tell
10 everything that they can remember about events once you're
11 in the abuse scenario, and then you may need to go back and
12 clarify with details asking about sensory details, that
13 becomes very important just to gather what a child may have
14 seen, heard, because these are witness interviews. So we
15 definitely need to know sensory information about what they
16 saw, what they heard, what they felt. We also need to
17 gather information that may impact a law enforcement
18 investigation so we may need to ask about surroundings,
19 anything that could be corroborated in an investigation, so
20 we may be asking about just -- we definitely need location,
21 details about where other people may have been, fluid, that
22 type of information.

23 Q And what is the significance of the details that you
24 might receive from a child?

25 A I'm not sure I understand the question.

HEATHER SMITH

1 Q Like if they're able to provide you with details, is
2 that significant to you as a forensic interviewer?

3 A Yes. I definitely am looking to make sure that a child
4 can give me sensory information so that I can understand
5 what their experience and what they remember and what they
6 actually experienced on their own body so it becomes very
7 important. If a child cannot give those details then I may
8 have to find another way to ask it, but I would be concerned
9 if they were not able to provide that.

10 Q Did you have occasion -- I guess you did -- to become
11 involved in this case?

12 A I did.

13 Q Who did you interview?

14 A I interviewed [victim 1] [victim 1]

15 Q [victim 1] [redacted]

16 A Yes.

17 Q When was [victim 1] interviewed?

18 A November 16th, 2006.

19 Q Okay. And how did she present when she arrived?

20 A She was an 11 year old. She had normal development,
21 normal verbal skills. During my interview she definitely
22 appeared to be slightly embarrassed about the process but
23 that's actually kind of normal with kids about talking about
24 certain body parts, but her demeanor was normal. I did not
25 detect anything abnormal about that.

HEATHER SMITH

1 Q So it was appropriate?

2 A Yes.

3 Q And was this interview recorded in some way?

4 A It was.

5 Q And tell us a little bit about the recording process
6 again with respect to **victim 1** **[REDACTED]**

7 A I don't know much about our system, but we do have a
8 high tech. video system. We record onto hard drives where
9 we store the information and burn it onto a DVD for
10 distribution investigators only. We don't ever release that
11 to parents or anybody that's not involved with the
12 investigation except for court purposes under a subpoena,
13 then we finalize this so that nothing can be added.

14 Q And when you interviewed **victim 1** did she disclose
15 sexual abuse in this case?

16 A She did.

17 Q What did she tell you about the time frame of this
18 incident?

19 A She indicated an incident occurred around age seven to
20 eight.

21 Q Seven to eight. And was she able to provide you with
22 the place or location of the sexual assault?

23 A Yes.

24 Q Do you recall what that was?

25 A It was her home where she was living at age seven to

HEATHER SMITH

1 eight.

2 Q And have you had a chance to review the forensic
3 interview in this case?

4 A I did.

5 Q I'm actually going to show you the casing for State's
6 Exhibit 5 which contains the disk that's in the recording.
7 Would State's Exhibit 5 be essentially the interview that
8 you reviewed?

9 A Yes.

10 MS. SIMPSON: Your Honor, at this time the State would
11 seek to introduce State's Exhibit 5 into evidence.

12 THE COURT: Any objections other than previously noted?

13 MR. SHADD: No objections other than previously noted.

14 THE COURT: The Court would make the same ruling it
15 made earlier and it is admitted as marked.

16 (The DVD was received as State's 5.)

17 MS. SIMPSON: Your Honor, at this time I would like to
18 publish to the jury.

19 THE COURT: You may do so.

20 MS. SIMPSON: It may -- our system takes just a few
21 minutes to warm up.

22 THE COURT: Why don't we take a short break, I think
23 the testimony is going to be about 45 minutes long; is that
24 correct?

25 MS. SIMPSON: Correct, Your Honor.

HEATHER SMITH

1 THE COURT: What we're going to do is take a short
2 break and let you stretch your legs while we get this system
3 set up and ready to run. As always when you leave the
4 courtroom I'll ask you not to begin any discussions at this
5 time. You may have retire to the jury room. Thank you very
6 much.

7 (WHEREUPON, the jury left open court at
8 approximately 10:32 p.m.)

9 THE COURT: All right. Court will be at ease while
10 they're going through that process. Ma'am, if you need to
11 step down you can but do not discuss your testimony in your
12 absence. If you wish to, you can remain there if you like.

13 (WHEREUPON, a short break was taken, the video
14 was prepared and was played for the jury.)

15 BY MS. SIMPSON:

16 Q. What were the dates of this interview?

17 A. November 16th of 2006.

18 Q. What is [REDACTED] victim 1 date of birth?

19 A. [REDACTED].

20 Q. I want to talk to you a little bit about some general
21 issues with child abuse and from your experience and
22 training that you've encountered. Are you familiar with the
23 dynamics of child abuse or sexual assaults and delayed
24 disclosure?

25 A. Yes.

HEATHER SMITH

1 Q. Can you tell the jury a little bit about that?

2 A. Sure. It's typical -- it's more typical for children
3 not to tell than to tell right away when something has
4 occurred, particularly sexual abuse. You know, it's kind of
5 counter-intuitive to what we would do as adults, if it
6 happened to us we would immediately run out and tell someone
7 or call the police, find someone that could protect us.
8 With children typically sexual abuse occurs with someone
9 that they know, someone that they trust and so there's a lot
10 of dynamics that prevent a child from running and telling
11 right away. Often times children will say that they're
12 scared that something will happen, people won't believe them
13 or they themselves will get in trouble, particularly
14 children who are over the age of six because they know that
15 that is the wrong thing to do but it's an adult typically
16 that is sexually abusing them and they're taught to obey
17 them. So they're in a complex situation and they're not
18 quite sure what to do, so it's typical for children not to
19 tell right away.

20 Q. So this is pretty common with respect to child abuse, I
21 guess, and child sexual assaults.

22 A. Yes.

23 Q. What factors -- I know you mentioned a couple of
24 them -- commonly play a role in a child's delayed
25 disclosure?

1 A. Whether or not the perpetrator of the abuse is someone
2 that they know, whether or not it's someone that they trust,
3 a part of the family or someone that's close to the family.
4 Also, you know, it really depends on -- you know, often
5 children may wait to tell once they feel safe or away from
6 the person that's hurting them. And family support is also
7 a big factor in terms of when a child will tell.

8 Q. And you said certain factors may affect when they
9 disclose. What -- describe for us what kind of environment
10 or under what circumstances might enable a child to disclose
11 or finally reveal after a period of time?

12 A. Well, there are two types of disclosures, there are
13 accidental disclosure and purposeful disclosure. So when
14 people accidentally disclose often time they're not even
15 intending to tell at all. And so in most cases someone
16 either suspects that something has happened or is suspicious
17 and may ask the child directly like, "Has this happened to
18 you?" With purposeful children may have reached an age
19 where they feel that they are safe or can protect themselves
20 or have people around them that can protect them and they
21 may choose to tell and make a conscious decision to reach
22 out and tell someone, we really see those two types.

23 Q. So the protection of others may be a factor as well.

24 A. Yes.

25 Q. In your professional experience what are some of the

HEATHER SMITH

1 time frames that you've encountered? Is it a period of
2 days, weeks? What all have you seen?

3 A. I have seen delayed disclosure happening, you know,
4 days later, weeks later, months later, even years later,
5 sometimes many years later.

6 Q. And so with respect to the time frame, is that typical
7 or unusual to have a long period of delay?

8 A. It's not unusual.

9 Q. And again, the things that might cause that would be
10 the trust -- trusted --

11 MR. SHADD: Objection, leading.

12 THE COURT: Sustained.

13 MS. SIMPSON: I apologize, I'll move on.

14 Q. Are you familiar with the term of the process of
15 disclosure?

16 A. Yes.

17 Q. Can you tell us about that?

18 A. Sure. What we find is that children often times don't
19 tell everything all at one time right away, it's more of a
20 process because children are going to initially test the
21 waters to see how adults respond. So they may make comments
22 they may make cryptic statements thinking that they're
23 telling but it could be very vague. They really --

24 MR. SHADD: Your Honor, can we approach?

25 THE COURT: You may.

HEATHER SMITH

1 (A bench conference was held.)

2 THE COURT: All right. You may proceed, Ms. Simpson.

3 Q. And I apologize, I'm not sure exactly where we were.

4 You were discussing the tentative disclosures, I think.

5 A. Yes. So the children may initially not tell everything
6 all at once, they may be testing the waters to see how
7 adults respond. Often times if adults respond in anger or
8 in an overly emotional response the children may tend to not
9 tell anymore until a late date, because children are very
10 concerned about the adults around them and how people are
11 doing. They want to make sure that everyone's -- especially
12 in the family are okay and are taken care of. Children do
13 take on a lot of responsibility for grownups around them.

14 Q. So basically are you meaning that there's a tendency to
15 disclose more details over time or there can be in some
16 places?

17 MR. SHADD: Judge, this is what we talked about. Can
18 we have a side bar?

19 THE COURT: Come on up. Why don't we do this, ladies
20 and gentlemen of the jury, step back to the jury room and
21 I'll ask you not to discuss anything about the case. Thank
22 you.

23 (The jury left the courtroom.)

24 THE COURT: You may state your objection.

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

HEATHER SMITH

1 Court? First -- it's two-fold. One is this is a leading
2 question where we just came from the side bar and
3 Ms. Simpson asked is this why children tend to give more
4 details later on. This is with regard to tentative
5 disclosure.

6 THE COURT: That's right. She was asking her about
7 that and she was asking -- she was indicating that it
8 sometimes depends on the response the adults have as to
9 partial disclosure as to whether or not they fully disclose.

10 MR. SHADD: Yes, sir. And if you recall -- and you
11 have viewed the tape, you have heard it again, Your Honor,
12 and you also should recall the testimony of [victim 1]
13 [REDACTED] who this witness -- is the only person that this
14 witness has talked to, not [victim 2] [REDACTED] Ms. [victim 1] I
15 would surmise, has given just about the same account on
16 yesterday that she did on the tape, there was no additional
17 details that came from when she was 11 years old until now.
18 And that's why the second objection is it's not relevant in
19 regard to [victim 1] [REDACTED] because I think we both can
20 agree she did not provide any additional details from what
21 she gave back at 11 years old as of today. That directly,
22 though, applies to [victim 2] [REDACTED] If you'll recall I
23 questioned her. She talked to the male investigators and
24 she didn't tell everything, and then she said later on that
25 I guess she felt stronger or something and so that's why she

HEATHER SMITH

1 now is talking about it, and really it was about two weeks
2 ago that there was a digital penetration which the jury, of
3 course, has heard. I do not believe that it's first of all
4 relevant. I believe that Ms. Simpson just led her with this
5 to explain why perhaps **victim 2** is now coming forward with
6 this relatively new information.

7 THE COURT: Well, they have not made that direct
8 correlation. I can understand that you might feel that that
9 would have some bolstering affect from the other testimony,
10 and I will hear from Ms. Simpson.

11 MR. SHADD: Which is my third as well, Your Honor, it's
12 improper bolstering.

13 THE COURT: Yes. I thought that's where you were
14 going. Yes, ma'am?

15 MS. SIMPSON: Thank you, Your Honor. And I agree
16 entirely if Ms. Smith was commenting on **victim 2**
17 testimony or even Ms. **victim 1** testimony specifically
18 that these did exist and this -- things of that nature would
19 be improper. She's qualified as an expert in both forensic
20 interviewing and child abuse assessment, child abuse sex
21 cases. The reason -- and the purpose for qualifying experts
22 in this field is their unique nature and some of the issues
23 related to sexual assault cases and child abuse cases
24 specifically, the delayed disclosure, the process of
25 disclosure, all of these are within her expertise. They are

HEATHER SMITH

1 relevant based on some of the testimony that has been
2 elicited in this trial including with respect to process of
3 disclosure. I believe counsel yesterday on his cross
4 examination with respect to [victim 1] [REDACTED] actually made
5 a very -- made a point to point out that in her testimony
6 here at trial she said he said, "Go, shh, and shh," and he
7 made a big deal about her the shh, the fact that she's
8 telling us here today it's the first time she ever said it
9 and she didn't say it back then. So I believe it is
10 relevant as to [victim 1] [REDACTED] but I believe she is
11 qualified as an expert in these fields, Ms. Smith knows that
12 she cannot comment on the specific witnesses and victims in
13 this case.

14 THE COURT: All right. Anything further, Mr. Shadd?

15 MR. SHADD: Yes, sir. Other than what was -- we had a
16 problem with her talking about delayed disclosure because
17 obviously that's part of my argument as to why it took
18 supposedly so long with disclosure. But as far as this new
19 area of tentative disclosure I have no problems with experts
20 coming in and talking about their expertise, but when they
21 start dwindling it down to specifics of things that are
22 outside of their competence, and I'm saying competence in
23 the sense that they had no interaction with the victim who I
24 am going to be going after with regard to her inflating the
25 story even more less than a month right before the trial as

1 opposed to why -- I don't want them to try and do an
2 in-round and explain why **victim 2** probably went a little bit
3 more, or a lot more, than what she did six or seven years
4 ago.

5 THE COURT: All right. This witness has been qualified
6 as an expert in the field of forensic interviews and the
7 process that is entailed in doing that properly and she has
8 been qualified on many occasions in the court of law in
9 South Carolina on that subject. At the side bar I indicated
10 to Ms. Simpson that she should not get into specific cases
11 concerning that referring to the other cases involved in
12 this case and particular -- she has a right to make
13 correlations with the child that she did interview and
14 participate with, but I'm not going to limit her from
15 testifying generally as to how these interviews are
16 conducted and what one might encounter or expect in such
17 interviews which is the nature of the testimony that we're
18 hearing at this point in time. I want to caution you again,
19 Ms. Simpson, I would not allow you to draw some correlation
20 between this -- what she's testifying to now and any other
21 disclosure in this case that she didn't participate in,
22 because she really would have no basis of knowledge as to
23 why that particular person or that particular disclosure was
24 not done immediately in full, or if it was done immediately
25 in full she has no knowledge on that. So to that extent I

HEATHER SMITH

1 suppose that I am sustaining your objection in that I won't
2 let her go there. But I'm not going to prevent her from
3 testifying within her area of expertise about what she might
4 expect to encounter in conducting these interviews and what
5 might occur during them. So I will allow you to continue to
6 question her on that point and I would caution you not to
7 lead her in that direction, but you can ask her as to
8 whether or not she has encountered that and whether that's
9 an unusual circumstance in these type of interviews. So
10 I'll allow her to testify generally as to what one might
11 expect in this situation.

12 MR. SHADD: Yes, sir. Thank you, Your Honor.

13 MS. SIMPSON: Yes, Your Honor. And I think I
14 understand the limitations.

15 THE COURT: Yes, and it's a fine line. All right.
16 Let's bring the jury.

17 (The jury returned to the courtroom.)

18 THE COURT: Ladies and gentlemen of the jury, I have
19 partially sustained an objection and offered instruction as
20 to future testimony. You may proceed, Ms. Simpson.

21 MS. SIMPSON: Thank you, Your Honor.

22 Q. In your general experience is it unusual for a child
23 abuse victim to disclose more details at a later time?

24 A. It's not unusual.

25 Q. Are you also familiar with the term, I guess, decoding

1 of memories?

2 A. Yes.

3 Q. Can you tell the jury about that?

4 A. Memories are encoded based on the age and development
5 of a person, so typically when events occur your brain
6 remembers the event. Children, because their brains are
7 young, often encode memories -- well, first of all memories
8 are encoded at the age where an event occurs. So if a child
9 is five then an event that occurs when a child is five is
10 encoded with the brain development of a five year old. So
11 no matter when they are recalling that event later on an
12 adult, you know, much older, the memory is still encoded at
13 the age of a five year old. So sometimes that poses
14 difficulty in recalling as you would as an adult or an older
15 child even just depending on how old they are when the event
16 occurs.

17 Q. And in your experience do children necessarily recall
18 the chronological order of events and timing and sequence
19 very well?

20 A. That actually -- that skill comes much later for older
21 children, so around age 11 to 12 children have an easier
22 time with chronological recall. So you know, younger
23 children when an event would have occurred have difficulty
24 with that. Even older children have difficulty with exact
25 dates and, you know, clock time of when something occurred,

HEATHER SMITH

1 and adults have problems with that as well. It's very
2 difficult for a child to recall when questioned, it's very
3 difficult.

4 Q. Is that affected to by closer in time of the event and
5 the actual conversation regarding the event?

6 A. It makes it easier if a child is questioned closer in
7 time to the event, it would make them -- it would make it
8 easier for them to recall approximate time. But as
9 interviewers what we try to do is angle it in maybe
10 something in a general age or where they were going to
11 school or something else in their lives that was occurring.

12 Q. So kind of like landmarks when you are driving.

13 A. Right.

14 Q. Can you speak a little bit about issues related to I
15 guess coaching or third party influence?

16 A. Yes. So during forensic interviewing it's very
17 important that we are assessing a child for any influence
18 there may be when they're tell us something that happened.
19 Again, we're avoiding any leading or suggestive questions
20 but we're also looking to see whether they're recalling of
21 an event when they are disclosing something to us is in
22 their own words and, you know, their own child development
23 language abilities. So if they're using words that are too
24 advanced or too adult-like or sounds scripted, that would be
25 a warning for us or a concern for us to explore that

1 further.

2 Q. So with a scripted disclosure or story, what things are
3 you looking for? What might indicate to you that it has
4 been scripted?

5 A. If they're only able to say maybe one sentence or
6 one -- a couple of words and not be able to get a sequential
7 account of events and they just keep repeating two words or
8 three words, that would be kind of a concern for me as a
9 forensic interviewer. I want to know if they can tell me
10 how the sequence of events unfolded, whether they're able to
11 give a sensory detail and describe what they saw, heard or
12 felt.

13 Q. So the ability to give details with respect to the
14 suggestibility and the things that you're looking for,
15 that's something that you consider, too.

16 A. Yes.

17 Q. Moving back to [victim 1] interview, did you actually
18 document her disclosure in some form in addition to the
19 video?

20 A. I did, I created a report.

21 Q. What is done with that report?

22 A. It is sent to the investigators on the case.

23 Q. And did you make any further recommendations regarding
24 I guess after the interview what [victim 1] should do?

25 A. Yes.

HEATHER SMITH

1 Q. What were those?

2 A. I'm going to look at the report to refresh if that's
3 okay. I recommended that she continue in therapy with her
4 therapist that she was seeing at the time she came for the
5 interview. I recommended that there -- everyone in the
6 family cooperate with the law enforcement investigation, and
7 that no one in the family discuss this any further, which is
8 a very typical recommendation that there be no discussion of
9 the case in front of her.

10 Q. So these were your normal, I guess, recommendations if
11 there's been a disclosure.

12 A. Yes.

13 MS. SIMPSON: Thank you.

14 THE COURT: Mr. Shadd, your witness.

15 MR. SHADD: Yes, sir.

16 CROSS EXAMINATION

17 BY MR. SHADD:

18 Q. Good morning. You are Dr. Smith?

19 A. I am not, I am a masters level provider.

20 Q. You're not a psychologist.

21 A. No.

22 Q. You received your BA in Psychology.

23 A. Yes.

24 Q. Okay. And double in --

25 A. I did.

HEATHER SMITH

- 1 Q. In Anthropology?
- 2 A. Anthropology.
- 3 Q. And you have a masters in -- what was the full name of
- 4 it again?
- 5 A. Rehabilitation counseling through the school of
- 6 medicine.
- 7 Q. Through USC.
- 8 A. Yes.
- 9 Q. You're a Gamecock?
- 10 A. I am.
- 11 Q. Very good, we agree on something. Ms. Smith, you gave
- 12 us a lot of information about your background and things
- 13 that you have learned throughout. Some of this is through
- 14 theory that you learned too, correct?
- 15 A. Yes.
- 16 Q. And some that is in practice that you've also
- 17 learned --
- 18 A. Correct.
- 19 Q. -- from being in the field.
- 20 A. Yes.
- 21 Q. You are employed by The Assessment and Resource Center.
- 22 A. Yes.
- 23 Q. That is a local -- well, in times past they called it
- 24 an agency but is it really an agency? It's not associated
- 25 with any state group or federal group, correct?

HEATHER SMITH

1 A. Actually it's -- we are under the umbrella of the South
2 Carolina Department of Mental Health.

3 Q. Okay. So sort of an arm of DMH?

4 A. We are one clinic within a huge umbrella of the
5 Department of Mental Health.

6 Q. Are you all a for profit agency or non-profit?

7 A. We are a state agency.

8 Q. You are a state employee.

9 A. I am.

10 Q. And ARC is there to provide information that will
11 assist investigations of disclosed sexual as well as
12 physical abuse; is that correct?

13 A. Actually there's more than just those two typologies.
14 We also investigate child neglect, emotional abuse, witness
15 to any violent crime, domestic violence. I think those are
16 the majority of what we do.

17 Q. And does that come under your expertise as well, those
18 other items, those other typologies?

19 A. Yes.

20 Q. But when you presented with victim 1 [REDACTED] you know
21 that this was -- you were informed that this was an alleged
22 child -- or a touching sexual abuse.

23 A. Right. I knew the allegations involved sexual abuse.

24 Q. And how did you arrive at the allegations? Were you
25 informed by an investigator?

HEATHER SMITH

1 A. Yes. The investigator made the intake referral and
2 provided us with a copy of the incident report.

3 Q. And so you all at least in this case provided more
4 information to the investigator; is that right?

5 A. Correct. They were allowed a copy of our DVD, I'm not
6 sure if they actually got it, and also the report where we
7 summarize what the child told us.

8 Q. But this was initiated in this case by the Richland
9 County Sheriff's Department and not by the family.

10 A. Correct.

11 Q. Do you all receive folks who were not referred by law
12 enforcement?

13 A. We do not take referrals -- the only people that we
14 take referrals from are what we call investigative agencies,
15 law enforcement or child protection, DSS, occasionally we
16 will take a referral from a doctor or pediatrician's office
17 or the hospital. But that -- we do not take referrals from
18 families or -- in some cases we may have a mental health
19 therapist call us. But we often, you know, we require
20 whoever the child first talked with to make a report before
21 we will see them so that they're being referred through the
22 proper channels.

23 Q. To make a report with law enforcement.

24 A. We will advise someone --

25 Q. So that you all will ultimately get the referral from

HEATHER SMITH

1 law enforcement and then provide an evaluation.

2 A. If law enforcement or CPS accepts the referral or the
3 report. Reports get made and sometimes they're not accepted
4 by those agencies for whatever reason.

5 Q. And you are trained to provide forensic evaluations.

6 A. Yes.

7 Q. Specifically in this case for alleged sexual abuse.

8 A. Yes.

9 Q. Would you agree with me that forensic evaluations are
10 no better or worse than evaluations done by -- or interviews
11 done by a trained law enforcement professional?

12 A. Forensic interviews using a protocol are much better
13 than interviews done by trained law enforcement
14 professionals unless they have been trained under the Child
15 First protocol. So we do train law enforcement and child
16 protection to do these interviews and it is per our training
17 and we encourage detectives or child protection
18 investigators to go through the training so they know how to
19 do the interviews. But once they're trained they're able to
20 do -- use the protocol and do forensic interviews.

21 Q. Is that the RATAC protocol?

22 A. Yes.

23 Q. Okay. Just because you receive a referral from the
24 Richland County Sheriff's Department does not mean that that
25 investigator is not trained in RATAC, correct?

- 1 A. I'm sorry, I want to make sure I'm understanding the
2 question. Not all investigators that refer to us are
3 trained in Child First. Some are, some aren't.
- 4 Q. Now, we talked somewhat about delayed disclosure and
5 you said that some children will tell a few days later.
- 6 A. Yes.
- 7 Q. Some children will tell weeks later.
- 8 A. Yes.
- 9 Q. Some children will tell months later.
- 10 A. Yes.
- 11 Q. Some children will tell years later.
- 12 A. That's correct.
- 13 Q. Some children will even tell decades later, correct?
- 14 A. That's correct.
- 15 Q. The fact that they tell a day later, a month later, a
16 year later, ten years later doesn't necessarily mean that
17 they are telling the truth, correct?
- 18 A. Right. You can't -- when they tell whether it's a day,
19 month, years doesn't predict they're telling the truth.
- 20 Q. You said earlier that children don't run and tell right
21 away, I thought I wrote that right; is that correct?
- 22 A. That's correct.
- 23 Q. You would agree that **victim 1** **[REDACTED]** did not run and
24 tell right away, right?
- 25 A. Yes.

HEATHER SMITH

1 Q. In your experience when you have a child who is seven
2 or eight and you talked about encoding a memory, that memory
3 is embedded in their brain at the time that they perceive
4 that it occurred, correct?

5 A. When they experienced it, correct.

6 Q. That they said they experienced it.

7 A. Right.

8 Q. And it's locked in and you would expect their language
9 to remain the same when they're 11? They would use the same
10 language that they had when they were seven or eight years
11 old?

12 A. Well, the language skills will develop based on their
13 age, the recall of the memory will occur based on when the
14 incident happened. So their language will be -- should be
15 typically for their age which is 11 in this case. The
16 actual recall is just it becomes more difficult the younger
17 a child is when a memory is encoded.

18 Q. Right. But it's encoded, it's a snapshot, it's in that
19 child's brain and when the child developments 11 years
20 old -- this is a normally developed child, right?

21 A. Right.

22 Q. And her language skills, her ability to communicate
23 with you was at least age appropriate, right?

24 A. It was.

25 Q. And the language that she used was age appropriate.

HEATHER SMITH

1 A. Correct.

2 Q. For an 11 year old or eight year old?

3 A. Yes.

4 Q. Which one?

5 A. For the 11 year old.

6 Q. So she was able to explain to you at 11 years old, you
7 felt comfortable in saying that she was able to communicate
8 with you as an 11 year old about what she says happened at
9 seven or eight years old.

10 A. Yes.

11 Q. Did you -- and we looked at -- did she impress upon
12 you, **victim 1** **[REDACTED]** as being -- having any problems
13 making this disclosure to you? Did you feel that she was
14 forthright?

15 A. I did.

16 Q. And you would agree with me, though, that at least in
17 the beginning when you were developing in RATAAC the rapport
18 building and you were asking about her family, you weren't
19 really interested in the family, you just wanted to make
20 sure that you gained -- you talk about something on her
21 level something that was comfortable to her which was her
22 family and I think it was actually the people that she
23 loves?

24 A. Family members.

25 Q. Why did she mention Chad **W**?

HEATHER SMITH

- 1 A. She was talking about friends at school and Chad W
2 was in one of her classes.
- 3 Q. Who she liked.
- 4 A. Yes.
- 5 Q. For an 11 year old romantically?
- 6 A. Yes, middle school.
- 7 Q. Right, sixth grade. So you asked her to list these
8 family members. Was there anything that was significant
9 about her having trouble listing some of her family members?
- 10 A. I didn't detect that. Again, during rapport building
11 we often ask -- that's a very typical question we ask is
12 tell me who is in your family. And again, the rapport
13 building we're really wanting children to talk and talk
14 about their family and give us an inherent response and get
15 in the habit of that, but I didn't recall any trouble.
- 16 Q. You don't recall her telling you to scratch out one
17 name and put another name and then she would say, "Oh, we
18 have this person too," and there are two aunts that are
19 named Sharon and put this here. And, "Oh, I forgot about
20 this person." Do you recall those types of comments?
- 21 A. Right. I wouldn't call it a problem, I would call it
22 trying to get me straight.
- 23 Q. How about her ability to recall?
- 24 A. I think she was just trying to keep everybody in her
25 family straight and give it to me straight, that was not

1 unusual.

2 Q. Do you believe that she was pleasant?

3 A. Yes.

4 Q. That she was talkative?

5 A. At the very beginning she was not so talkative, but
6 then as we began to talk about school and friends she became
7 much more talkative, more comfortable, I think.

8 Q. How about did you feel like she was wanting to please
9 you? You developed this rapport and we are talking about a
10 child.

11 A. Yeah. I think all children want to please adults,
12 that's part of being a child.

13 Q. And there was no attitude that she was giving back to
14 you or anything?

15 A. I did not detect any negative behavior or attitude.

16 Q. Even when you all were talking about some insensitive
17 matters.

18 A. Yes.

19 Q. Even when you continued to ask her if there were other
20 occasions between her and my client.

21 A. Correct.

22 Q. Right. She didn't give you any attitude on that?

23 A. No, I didn't detect attitude. I think she had a
24 headache so I think that was it.

25 Q. How about anger?

HEATHER SMITH

1 A. I didn't detect anger.

2 Q. Do you remember or recall after viewing this tape that
3 she took awhile to list the teachers at her new school? She
4 had only been there since August.

5 A. I didn't detect difficulty. She said that she had more
6 than one teacher but I'm not sure I asked her for every name
7 of every teacher.

8 Q. No. I'm sorry, I didn't mean the name, just the number
9 of teachers that she had. Would you agree it took her
10 awhile to list a number?

11 A. No. This is the first year in middle school and first
12 time, I don't think that took too long.

13 Q. This is November, right?

14 A. Right.

15 Q. She had been in school since August.

16 A. Right. I don't think that took too long.

17 Q. Ms. Smith, do you recall when [victim 1] -- you call her
18 [victim 1] right?

19 A. [victim 1]

20 Q. Not [vic 1].

21 A. Not [vic 1].

22 Q. Okay. Do you recall when she said that, "I just want
23 him to go to jail?"

24 A. Yes.

25 Q. Did that cause you any concern?

HEATHER SMITH

1 A. No.

2 Q. Okay. The reason I ask that is your immediate response
3 to her, do you recall your response?

4 A. I think I reflected what she said or I don't recall the
5 immediate response, I would have to have a transcript.

6 Q. Do you recall telling -- how many times have you seen
7 this?

8 A. Today was my second time in six years.

9 Q. You saw it once. When was the first time you saw it in
10 six years?

11 A. This week. Today is Wednesday -- Monday.

12 Q. When you came up here?

13 A. Yes.

14 Q. To prepare for this? Okay. And you don't recall those
15 two times where she said, "I just want him to go to jail,"
16 and your immediate response was, "Well **victim I** I want you
17 to tell the truth." Do you recall that now?

18 A. Yes.

19 Q. When you made that response were you concerned that she
20 perhaps was trying to create something so that she could
21 make sure that he goes to jail and that you wanted to make
22 sure, "No, I just want the truth. Don't give extra, don't
23 give me a false report, I just want the truth."

24 A. That response -- sometimes we do have children that say
25 they want the person that did this to them to go to jail or

HEATHER SMITH

1 to be hurt in some way or to get some punishment. Often
2 times I will follow that up with, "Well, we don't really --
3 my job is not to affect the outcome for anyone, it really
4 isn't, my job is to just do the interview and to get the
5 truth." So that's actually a typical response that I would
6 follow-up with any child that had made a comment about I
7 want something to happen to the person that they're
8 disclosing about is to follow-up with my job is to get the
9 truth.

10 Q. Okay.

11 A. That's a typical response.

12 Q. But you didn't say all of that to her in the meeting.

13 A. I didn't, and it may have been a good thing for her to
14 hear.

15 Q. Generally in your expertise what is false reporting?

16 A. False reporting is when a report is made to the police
17 or to protective services that after investigation is found
18 to be false.

19 Q. So it doesn't become false until the investigation is
20 complete and then someone determines whether it's false.

21 A. For my role and what I do, yes.

22 Q. But people other than the alleged victim makes a
23 determination as to whether the report was false; is that
24 correct?

25 A. Yes. I may have a referral that comes through from the

HEATHER SMITH

1 agency where there are concerns that the report is false and
2 it may change my interview style a bit, I would ask maybe
3 some extra added questions. So sometimes we are alerted
4 that that is a concern by the referral agency.

5 Q. In your over 1,000 evaluations have you had occasion
6 where the false reporting was determined after you had done
7 a forensic evaluation?

8 A. Where someone were to communicate with me that it was
9 determined to be false later, is that --

10 Q. However it was communicated to you, whether it was in a
11 trial or whether the officers came back later on or, you
12 know, the alleged victim recanted later on, yes.

13 A. Yes. I have had children recant at a later date, I've
14 had new information provided to me after my interview, and
15 sometimes that would precipitate another interview to be
16 done.

17 Q. And I'm glad you mentioned that. Why wasn't another
18 interview done with **victim 1** **[REDACTED]**

19 A. Because this one did not require that. Her disclosure
20 was, you know, of a single event so there was really no
21 reason to reinterview.

22 Q. And you were here yesterday.

23 A. Yes.

24 Q. And you heard her testimony.

25 A. I did.

HEATHER SMITH

1 Q. It was consistent with what was on here, correct?

2 A. Yes.

3 Q. I say here, but on the tape.

4 A. Yes, it was consistent.

5 Q. Is there a such thing as imagined memories in your
6 general expertise?

7 A. I haven't heard that term.

8 Q. Well, you're the expert, I'm sorry, what would you call
9 it?

10 A. I have heard terms of false memory or I have heard
11 language such as repressed memory but that is not a science
12 that we -- it's not sound science.

13 Q. That's your opinion that's not sound science.

14 A. Repressed memories.

15 Q. Repressed memories?

16 A. Yes.

17 Q. So educate me and everyone else. Repressed memory,
18 sounds like that would be -- unless I'm wrong here, is that
19 not where you have a memory and it's later on, later, and
20 unfortunately it comes out at some point, sometimes delayed,
21 but it actually may have occurred but it came up so long
22 later.

23 A. Right. Repressed memory is memories that really the
24 person never remembered until much later. Often times it's
25 adults and through a process of not sound science if these

HEATHER SMITH

1 memories are recovered through hypnosis --

2 Q. I was going to say, are you talking about hypnosis?

3 A. -- guided imagery, that type of thing which we would
4 not include in any interview protocol because it does not
5 elicit facts.

6 Q. You all talk about coaching or third party influence,
7 and, of course, you pick up on that to see if the child is
8 being coached, if they're just reading one or two words; is
9 that right?

10 A. That's correct.

11 Q. But that generally would be with children who are under
12 ten years old, wouldn't it typically?

13 A. Younger children are more suggestible to influence. If
14 a child were to come into an interview with me and say, "I
15 was told this, I heard this," that would require me to
16 correct the child and say, "Well, I don't really need to
17 know what you heard or was told, I need to know exactly what
18 happened to you." If I were to hear something like that I
19 would address it in the interview.

20 Q. And the recommendations that you gave to the family,
21 one of them was for no one to discuss the case in front of
22 or to her, correct?

23 A. Yes.

24 Q. What is the purpose of that?

25 A. Often times when family members hear their children

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1 report any type of sexual abuse but also other forms of
2 child maltreatment, parents and family members tend to want
3 to get to the bottom of it, and often times when they want
4 to get to the bottom of it they ask the wrong questions in
5 the wrong manner especially because they aren't trained. So
6 we always advise families not to discuss the case, not to
7 speak about it, try not to question, that professionals need
8 to do that.

9 Q. And your hope is that Ms. [victim 1] family did that,
10 correct?

11 A. Yes.

12 Q. If they did not do that then how would that impact her?

13 A. She may -- I'm not really sure how to answer that.

14 There could be many different responses? She may feel
15 pressured and then shut down, she could recant because she's
16 tired of answering questions. A recantation is when a child
17 just takes it back and says, "I didn't say that, I made that
18 up." She could add some new details. Those are just a few
19 I can think of.

20 Q. Okay. And you recall in the tape that Ms. [victim 1]
21 was saying that she was saying some language about she
22 didn't want to bring her friends to church because -- to
23 church because she doesn't want the same thing to happen to
24 them.

25 A. Yes.

- 1 Q. So this is wanting her to protect her peers?
- 2 A. Correct.
- 3 Q. Ostensibly from Mr. Carmichael.
- 4 A. Yes.
- 5 Q. Are you aware that Mr. Carmichael was not even
- 6 attending the church at this time?
- 7 A. I don't think I was aware of that.
- 8 Q. Did it give you the impression that she just did not
- 9 want to be around him at all?
- 10 A. I think that was after she had talked about the
- 11 preacher in church coming and saying something to the
- 12 audience that was very embarrassing, so I think she didn't
- 13 want to be around him or the church actually.
- 14 Q. The preacher or the church?
- 15 A. Or just the church in general where that statement was
- 16 made out to the audience.
- 17 Q. But it's your understanding that she at least
- 18 continued -- she and her family at least for a period of
- 19 time continued to go to that church.
- 20 A. Yes, that's what I understood.
- 21 Q. And that there was at least one occasion and possibly
- 22 more where she was in the presence of Mr. Carmichael.
- 23 A. I don't think I asked her if she had seen him.
- 24 Q. You heard that yesterday, though.
- 25 A. I did hear that at trial.

HEATHER SMITH

1 Q. And that her response was that she smiled at him.

2 A. I heard her say that, yes.

3 Q. That came out of her mouth, right?

4 A. Yes.

5 Q. Typically is that a response that you would have with
6 your perpetrator after six years of being away from him if
7 he did something to you?

8 A. Children often respond in ways that aren't necessarily
9 I would say --

10 Q. Typical?

11 A. -- or normal. Just because a lot of people smile when
12 they're nervous, a lot of people giggle and smile when
13 they're feeling anxiousness and nervous, so a lot of times
14 you can't predict what they're actually feeling at that
15 moment just with a smile. But I don't -- I have -- in my
16 experience I have encountered where children have been
17 placed in positions where they're around the person that
18 they disclose did something to them and they're taught --
19 again, children are taught to be respectful and to follow
20 certain social rules and so they may speak to them or be
21 forced to talk to the person, so it's not unusual.

22 Q. What about if they're disrespectful to them?

23 A. That could occur especially with teenagers. Teenagers
24 tend to show their displeasure easier than a middle
25 schooler.

1 Q. But you would agree just about -- just because a child
2 is disrespectful to an adult does not mean that that adult
3 abused them, correct?

4 A. Correct.

5 Q. You mentioned about giggling or smiling when they were
6 nervous. You've been doing this for some time and you've
7 handled over 1,000 evaluations and you've been to court a
8 lot, I think you said at least 30 times?

9 A. Upwards of 30.

10 Q. Upwards of 30 times.

11 A. Yes.

12 Q. So you have seen your clients testify.

13 A. I have.

14 Q. **victim 1** **[REDACTED]** did not appear to be nervous
15 yesterday, did she?

16 A. I'm sure she probably was if she's never testified
17 before, often first-timers are very nervous about
18 testifying. I get nervous and I've done it over 30 times, I
19 get nervous every time.

20 Q. I'm nervous too.

21 A. Because you're in front of people.

22 Q. Absolutely. But to get them ready for that you bring
23 them in earlier to help them get familiar with the
24 surroundings.

25 A. It helps if you can do that if you have the resources

HEATHER SMITH

1 to be able to prepare children.

2 Q. Were you aware that this was done with Ms. victim 1

3 A. I don't know the extent, I'm assuming she spoke with
4 the solicitor's office.

5 Q. Yes, ma'am. Okay. When she laughed yesterday when she
6 was asked to describe how David Carmichael's felt, did you
7 think that that was a nervous reaction when she laughed?

8 A. I actually did think that was a nervous reaction. I
9 also thought I noticed when she did the same thing when she
10 asked to identify him in the courtroom and I do think that
11 was a nervous response.

12 Q. Okay. And you think -- she didn't laugh when you asked
13 her at 11 years old what his penis felt like.

14 A. She actually covered her face, I'm not sure if she was
15 smiling, but her face was covered. She was obviously
16 embarrassed.

17 Q. To tell you about someone's penis.

18 A. Yes, what it felt like.

19 Q. At 11 years old.

20 A. Yes.

21 Q. That's a natural response, isn't it?

22 A. To be embarrassed?

23 Q. Yes.

24 A. Very much so.

25 Q. Speaking about someone's private area.

HEATHER SMITH

1 A. Very much so.

2 Q. Last question. No children are typical, are they? No
3 child is typical.

4 A. No.

5 MR. SHADD: Thank you.

6 THE COURT: You may redirect.

7 MS. SIMPSON: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. SIMPSON:

10 Q. Ms. Smith, he just asked you a little while ago about
11 disrespect towards a perpetrator doesn't necessarily mean
12 that the person was sexually assaulted or abused. Could the
13 change in behavior from a victim toward a perpetrator be
14 significant?

15 A. I don't think it's diagnostic of anything but it would
16 not surprise me if there were some type of avoidance or
17 anger.

18 Q. So that would be a normal response, though, in
19 situations where someone had been abused if they were still
20 around the perpetrator.

21 A. It could be a response.

22 Q. It could be. Do you have factors in place to assess
23 for the veracity of a victim within your protocol in your
24 forensic interview?

25 A. Typically we want to remind children of the importance

HEATHER SMITH

1 of truth telling during the forensic interview so we will
2 reference it throughout the interview. We don't use the
3 word truth sometimes, we say, "Don't get the wrong idea,
4 don't guess, if you don't remember just tell me that, I
5 don't want you to guess." But we do make an effort to
6 ensure that the child knows this is what we need from you.
7 In terms of assessments during an interview we don't
8 necessarily have that but -- you know, a measurement of
9 truth telling, but again, we are going to also look for any
10 type of influence. So if there's an influence that we feel
11 is not coming from the child themselves or where a child is
12 reporting something that may have actually happened to them
13 we are going to address that in an interview with a reminder
14 of, "I only want to know what you know, I only want to know
15 what you saw, heard, felt."

16 Q. And did you utilize, I guess, those factors or
17 procedures when interviewing victim 1

18 A. I did.

19 Q. What can you tell us about her demeanor in your
20 interview with respect to when she was talking about her
21 friends versus when she was talking about the sexual abuse
22 especially -- I guess initially when she started talking
23 about the sexual abuse?

24 A. Are you talking about when she talked about her friends
25 during the rapport of it?

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1 Q. Yes.

2 A. So when she was talking about -- during the report
3 building phase where she's talking about friends, school,
4 things she enjoys, obviously her demeanor and her language
5 were open and even her body language was open and she
6 appears to be relaxed. But when she does -- when she starts
7 to disclose, you know, about what happened you can kind of
8 see her -- she covers her face often, she kind of appears
9 embarrassed and kind of withdrawn.

10 Q. Okay. And he asked you about issues with respect to
11 making the disclosure to you in the video and not having any
12 difficulties. How many interviews have you done?

13 A. Over 1,000.

14 Q. So you interview children on a daily basis, that's fair
15 to say.

16 A. I do, yes.

17 Q. And in that same vein with respect to a trained law
18 enforcement officer, while they're trained are they
19 necessarily interviewing children on a daily basis and
20 necessarily conducting thousands of interviews?

21 MR. SHADD: Objection, Your Honor. I think that's
22 outside of the scope of her competency of what law
23 enforcement does and how many interviews they have and
24 trying to compare what they do to what she does.

25 THE COURT: I would sustain the objection unless you

HEATHER SMITH

1 can lay some foundation for that.

2 Q. Do you work closely with law enforcement?

3 A. We work as a multidisciplinary team.

4 Q. And have you found within law enforcement agencies --

5 well, on that team what agencies are on that team?

6 A. We have law enforcement, we have child protection,

7 there's a person from the solicitor's office, the child

8 advocacy centers, medical provider and sometimes we will

9 invite guardian ad litem or mental health professionals if
10 we need their input.

11 Q. And are you familiar with I guess the section within

12 the agencies? Are there certain investigators that can

13 handle sexual assault cases and things of that nature?

14 A. In some jurisdictions. On our team the Richland County

15 Sheriff's Department and City of Columbia have special

16 victims units. And then in child protection for DSS they

17 tend to get -- I don't think they're specific just for

18 sexual abuse or just for -- yeah. There is not just for

19 sexual abuse, they handle all child maltreatment issues.

20 Q. And are you familiar with I guess some of the

21 investigators and the number of forensic interviews they

22 actually conduct or -- I guess explain that with respect to

23 them doing the interview and the usual typical referrals to
24 your agencies.

25 A. So because I am on the faculty of our statewide

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1 training we train law enforcement, child protection for DSS,
2 in the model that we use in the state the RATAC model I am
3 familiar with many law enforcement providers and child
4 protection providers, the investigative team's. What we
5 train on and what we say, what we promote is the best model
6 is to have a team where your interviews are conducted at a
7 children's advocacy center and then those go to law
8 enforcement and DSS and then investigate so we all work
9 together as a team, sometimes you just don't have the
10 resources to do that many interviews. So law enforcement
11 may do interviews with older teenagers and we may get the
12 other -- the child advocacy center may interview younger or
13 more severe cases.

14 Q. And I'm jumping around just a little bit. But would
15 anger be a response that you might expect with respect to
16 someone who has been abused, I guess anger towards the
17 abuser?

18 A. Yes. And we train with adolescence especially, anger
19 is a precipitating feeling or thought that actually
20 precipitates telling. So with teenagers anger can often be
21 the fuel that leaves them to want to reach out and make a
22 disclosure.

23 Q. And you said also with respect to the suggestibility
24 and the coaching and third party influence, the age of the
25 child may necessarily affect how suggestible the child is,

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1 right?

2 A. Yes, younger children.

3 Q. Can you expand on that just a little bit?

4 A. Sure. Younger children are more easily suggestible
5 because they don't have the brain development to really have
6 independent thought, typically that occurs around 12 or so.
7 So it's really -- especially when you're interviewing

8 preschooler, elementary age it's very important that the
9 interview has to make sure that the questions they ask are
10 very simple and very direct and not distract, they need to
11 be based on the child's age and development.

12 Q. So when we're saying younger we're saying preschool age
13 and kindergarten.

14 A. Preschooler.

15 Q. As far as [redacted] interview, was she able to provide
16 you an amount of details that you found to be significant?

17 A. She appeared to function and have language and
18 cognitive skills for an average 11 year old, so she doesn't
19 have the language ability to recall with detail.

20 Q. And were you able to, I guess, determine the detailed
21 nature of her actual disclosure, make any determinations
22 with respect to that as far as of the sexual abuse not --
23 maybe I'm not asking my question correctly. May we
24 approach?

25 THE COURT: You may.

HEATHER SMITH

1 (A bench conference was held.)

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, this is one of those occasions I need to take up
4 something with the attorneys before we go any further and I
5 am going to ask you to step back in the jury room. As
6 always I will ask you not to begin any discussions until I
7 have asked you to do so, you may retire to the jury room.
8 Thank you very much.

9 (The jury left the courtroom.)

10 THE COURT: Ms. Simpson, you asked to be able to take
11 up a matter of law with the Court.

12 MS. SIMPSON: Yes, Your Honor. I believe these
13 questions are with the forensic interviewer, Ms. Smith,
14 she's very familiar with recent case law in these cases so
15 some of my questions elicited were going to point regarding
16 her findings with respect to her report. They have two
17 categories, one of which would be compelling, the other
18 would be problematic. As a general rule the State, we know
19 that we're generally not allowed to go into that anymore,
20 however with respect to defense counsel's cross examination
21 I believe he's opened the door, specific questions not only
22 as to her forensic interview with **victim 1** on the video from
23 the time that she was 11, but also from her testimony from
24 the witness stand. He has made connections and correlations
25 based on her behavior and the actual truth telling and

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1 veracity of [victim 1] as well as implications as to that that
2 I believe has opened the door to allow Ms. Smith to be able
3 to comment on the interview.

4 THE COURT: Yes, sir, Mr. Shadd?

5 MR. SHADD: Your Honor, I did nothing of the sort. I
6 did not go into specifics about being on the lap, with her
7 touching the penis, only with regard to her demeanor. I
8 agree with that on the demeanor, we both touched on that as
9 she provided information on the tape again.

10 THE COURT: But one of the questions you asked her was
11 she forthright, I believe that was one of the questions you
12 asked her as I recall.

13 MR. SHADD: Yes, sir, she said yes.

14 THE COURT: I understand that, but that could be
15 interpreted as was she being honest.

16 MR. SHADD: No. Forthright means was she volunteering
17 the information, that's my understanding of what forthright
18 means, she wasn't hesitant in providing the information, she
19 provided details. Probably the question I should have asked
20 and I should have known the answer to it was was she
21 forthright and she was. It actually -- well -- and for the
22 State to now go and say that this expert now finds that it
23 was compelling obviously improperly bolsters this witness'
24 veracity and truth. I asked if was she forthright, I didn't
25 ask if she believed she was telling the truth, did she

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1 believe this person, did she believe **victim 1** was lying. I
2 made sure I stayed away from all of those kinds of
3 questions, Your Honor, so no door has been opened. She may
4 can do that but just not with her.

5 THE COURT: Yes, ma'am?

6 MS. SIMPSON: Your Honor, he may have stayed away from
7 the actual terms, "Are you lying? Are you telling the
8 truth?" But the order of the presentation of his questions
9 clearly elicited and went to the truth telling of the child.
10 He addressed the factors regarding the veracity of the child
11 in the context of the forthright comment did she have any
12 issues with disclosing to you, all of these things build up
13 and lead up to a comment on the victim's veracity and it was
14 brought up by defense, he himself is commenting. I believe
15 otherwise it would be improper bolstering and we cannot go
16 into the fact that this interview was compelling.

17 MR. SHADD: Your Honor, if I may?

18 THE COURT: Yes, sir.

19 MR. SHADD: The State is the one who talked about --
20 especially when they came back on redirect, that was asking
21 about the factors that Ms. Smith looks at when judging the
22 child's veracity, I saw where she was going and I was
23 prepared to object but obviously she caught herself and
24 decided to come and do a side bar. But there was no mention
25 on my part with regard to the factors of the child's

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1 veracity as it relates to their protocol, I don't think I
2 know what factors they use in determining protocol. I do
3 believe in defending my client and under the 6th Amendment I
4 need to go in especially when they start off talking about
5 coaching, influence, that leads the jury's impression that
6 we are planning on defending saying this child was coached.
7 I wanted to elicit from this witness that there was no
8 coaching, that there was no third party influence and I
9 believe I can at least address that. And I still wanted to
10 make sure that I was careful not to say, "Do you believe
11 this child? Is this child being truthful?" The fact that
12 she's forthright shows that she's not necessarily, perhaps
13 in the jury's mind, that she's telling an untruth about what
14 occurred. I think counsel has done a very good job on
15 direct in eliciting that from her witness.

16 THE COURT: Yes, ma'am? You got a compliment by the
17 way.

18 MS. SIMPSON: Thank you. With respect to the arguments
19 as to coaching and suggestibility, my understanding from
20 cross examination as well as opening statement is that the
21 child is making it up and that someone is putting her up to
22 this. Specifically with respect to her mother the
23 indications and I'm sure with some of the indication to come
24 that those are issues, and fact that showing -- and I'm a
25 little confused, but the fact that saying that he was

1 eliciting questions from Ms. Smith to show that [victim 1]
2 wasn't coached or wasn't influenced in any way, I think
3 that's inaccurate based on the questions regarding false
4 reporting, repressed memories, things that are made up and
5 of that nature. So as I said, he asked specifically with
6 respect to [victim 1] [REDACTED] and her forensic interview, he
7 wasn't just asking as to issues generally with child abuse
8 or assessment, he directly made that correlation. I think
9 at this point Ms. Smith is allowed to tell the jury that she
10 found this interview to be compelling.

11 MR. SHADD: Your Honor, if I had planned on showing
12 that this young lady was coached, don't you think I would
13 have asked the child yesterday, "Who told you to say this?
14 Who put this in your head? Who pressured you to do that?"
15 None of that came out on in her testimony yesterday so I
16 think they're just speculating.

17 THE COURT: Well, I'm going to find that your
18 questioning while it went to the edge probably didn't go
19 over the edge, I think your questioning was more along with
20 the lines of the way in which the testimony was delivered
21 and the manner in which it was delivered. I've been looking
22 up forthright and it talks about answering questions
23 directly and that when someone is asking your questions you
24 answer different questions and that's not being forthright.
25 It doesn't mean you're not telling the truth when you answer

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1 the different questions, it just means you're being evasive,
2 it doesn't mean you are being dishonest. So I'm going to
3 rule in this case that the State cannot go in to her
4 findings concerning the honesty of the statements, I think
5 that would violate the recent court decision on that
6 particular issue.

7 MR. SHADD: Thank you, Your Honor.

8 MS. SIMPSON: Thank you, Your Honor.

9 THE COURT: Anything else before we bring the jury
10 back?

11 MR. SHADD: No, Your Honor.

12 THE COURT: Okay. Let's bring the jury in.

13 (The jury returned to the courtroom.)

14 THE COURT: I have denied a request by the State
15 concerning the examination of the witness. Does the State
16 have additional questions?

17 MS. SIMPSON: No, Your Honor.

18 THE COURT: Mr. Shadd, you have the right to recross.

19 MR. SHADD: No, Your Honor.

20 THE COURT: All right. Ma'am, you may step down, thank
21 you very much. Do you wish to have the witness excused?

22 MS. SIMPSON: Please, Your Honor.

23 THE COURT: Any objection? You are free to go if you
24 would like, ma'am, you are also free to stay, your choice.
25 All right, ladies and gentlemen of the jury, at this point

HEATHER SMITH

1 in time we are going to break for our lunch break. And I
2 will caution you as I have every time that you left the
3 courthouse not to discuss the case with anyone, not to allow
4 anyone to discuss it with you, don't listen to, watch or
5 read any media reports concerning this case, don't try to
6 gather information on your own. If anyone tries to contact
7 you concerning your service on the jury please report that
8 upon your return. I will ask you to be back in the jury
9 room -- it's about 20 minutes until 1:00, I will ask you to
10 be back in the jury room at about 15 minutes until 2:00,
11 1:45. You are free to go to lunch.

12 (The jury left the courtroom.)

13 THE COURT: Court will be in recess until 1:45, the
14 defendant remains in custody. Thank you very much.

15 (A lunch break was taken.)

16 THE COURT: State ready to go forward?

17 MS. CAMPBELL: State is ready, Your Honor.

18 THE COURT: And is the defense ready to go forward?

19 MR. SHADD: Yes, sir.

20 THE COURT: Bring the jury in.

21 (The jury returned to the courtroom.)

22 THE COURT: Ladies and gentlemen of the jury, I trust
23 you had a good lunch. And I would inquire to you at this
24 time if any of you had any difficulty in complying with my
25 instructions concerning your behavior out of the courtroom,

SABRINA SANDERS

1 please stand. It appears that all jurors have been able to
2 comply with the Court's instructions. And at this time the
3 State may call its next witness.

4 MS. CAMPBELL: Please the Court?

5 THE COURT: Yes, ma'am.

6 MS. CAMPBELL: The State calls Sabrina Sanders.

7 THE COURT: Come forward, please, ma'am.

8 The witness, SABRINA SANDERS, was first duly
9 sworn and testified as follows:

10 THE COURT: Ma'am, once you're seated I will ask that
11 you state your name.

12 THE WITNESS: Sabrina Sanders.

13 THE COURT: Thank you. Your witness, Mr. Campbell.

14 MS. CAMPBELL: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 Q. Ms. Sanders, how old are you?

18 A. I'm 36.

19 Q. Are you employed?

20 A. No, I'm not.

21 Q. Do you have any children?

22 A. I do.

23 Q. And how many children do you have?

24 A. I have four children.

25 Q. And what are your children's names and ages?

SABRINA SANDERS

- 1 A. I have **victim 1** which is 17, Deadrick which is 14, Nania
2 which is six, and Sofia which is two.
- 3 Q. And do you currently live here in the Columbia area?
- 4 A. I do.
- 5 Q. And how long have you lived here in Columbia?
- 6 A. All of my life.
- 7 Q. Are you involved in any church?
- 8 A. I've always been involved in church.
- 9 Q. And that plays a role in your life?
- 10 A. A big role.
- 11 Q. And tell this jury, what church do you currently
12 attend?
- 13 A. I attend Kingdom Life Ministries in Columbia.
- 14 Q. In Columbia, South Carolina?
- 15 A. Uh-huh.
- 16 Q. What part of town is Kingdom Life Ministries in?
- 17 A. It's off Two Notch Road.
- 18 Q. Prior to attending Kingdom Life Ministries, did you
19 attend a different church?
- 20 A. I did.
- 21 Q. What church is that?
- 22 A. Bible Way Piedmont.
- 23 Q. Where is that located?
- 24 A. Off of Farrow Road.
- 25 Q. Off Farrow Road here in Columbia?

SABRINA SANDERS

1 A. In Columbia.

2 Q. And approximately how many years were you affiliated
3 with the Bible Way Piedmont Church?

4 A. I was there for 34, almost 35 years.

5 Q. So that's the church you grew up?

6 A. I was born and raised in that church.

7 Q. And were you active in the church?

8 A. I was very active.

9 Q. And what activities did you participate in?

10 A. I did everything from singing in the choir, I was over
11 the youth choir, I did praise and worship. I was part of
12 youth ministry. Anything and everything that I could do I
13 did.

14 Q. And in raising your children were they also active in
15 the church?

16 A. They were also active in the church.

17 Q. Do you know the Carmichael family?

18 A. I do.

19 Q. And how do you know the Carmichael family?

20 A. I've been knowing them forever from church. I met his
21 sister, I think his oldest sister, we're about around the
22 same age, and I spent the night over at their house, and we
23 were all friends.

24 Q. And you say you knew his older sister, who is the he
25 you're referring to?

SABRINA SANDERS

- 1 A. David Carmichael.
- 2 Q. And when you said you knew his older sister, which
3 sister is that?
- 4 A. Danielle.
- 5 Q. And she's about the same age as you are?
- 6 A. Right.
- 7 Q. And did you also know that he had another sister?
- 8 A. Yes.
- 9 Q. Named Davetta?
- 10 A. Yes.
- 11 Q. And were you familiar with her too?
- 12 A. Yes, we sung together.
- 13 Q. You said that you had known them for a long time. Were
14 you close, or how do you describe your relationship?
- 15 A. We were very close. We had a singing group, Davetta,
16 my sister, myself and another one of the cousins, so we were
17 always together and singing was our connection besides the
18 church.
- 19 Q. And in that church that you attended for most of your
20 life until you moved on, was music a big part of that
21 church?
- 22 A. Yes.
- 23 Q. And a big part of you expressing your religious
24 feelings?
- 25 A. Yes.

SABRINA SANDERS

1 Q. Was David Carmichael involved in the music within that
2 church?

3 A. He was.

4 Q. And what was his role in the church?

5 A. He started off as just a choir member, then he went on
6 to assist my sister with directing the choir, and then he
7 moved over to playing the organ at the church and then later
8 became a minister.

9 Q. A minister?

10 A. Uh-huh.

11 Q. And as one of the ministers of the church what did his
12 duties include?

13 A. He actually just assisted -- well, actually he had just
14 been ordained a minister so he really just stuck with just
15 the music aspect of the church.

16 Q. So he was involved in the music aspect of church.

17 A. Correct.

18 Q. So he wasn't the one that typically preached on Sunday.

19 A. No.

20 Q. Did you allow your children to be around David
21 Carmichael?

22 A. Yes.

23 Q. And up until the point that we get to when you found
24 out what happened, was that ever a concern for you that you
25 knew of?

1 A. No.

2 Q. And in fact on occasion would he be around your
3 children by himself?

4 A. If it's at church. I wouldn't say just by his self by
5 his self, but at church if I'm out or at their choir
6 rehearsal and drop the kids off at rehearsal and he's there
7 then yes, he's there, but not by himself just with my kids,
8 no.

9 Q. On one occasion did he ever have occasion to stay with
10 one of your children or more?

11 A. Yes.

12 Q. Do you know approximately when that was?

13 A. I don't.

14 Q. And on that occasion was your daughter, victim 1 your
15 oldest daughter, was she at home?

16 A. Yes.

17 Q. And do you recall where you went that day when he
18 stayed with your children?

19 A. I think we had a woman's gathering or something to that
20 affect and Junior, David, was not the original person that I
21 asked to watch my children. They had another young lady
22 that stayed with them named Melody and I actually asked her,
23 she was actually supposed to watch the children that day and
24 she told me she wasn't able to and he volunteered so I said
25 okay.

1 Q. And at the time that this occurred do you recall your
2 residence over on is it [REDACTED] [REDACTED]?

3 A. [REDACTED].

4 Q. [REDACTED], I say it wrong all of the time. I believe it
5 was [REDACTED] [REDACTED]?

6 A. [REDACTED], I think.

7 Q. [REDACTED], I'm sorry, I get that wrong too. Do you recall
8 when it was that you actually moved into that residence?

9 A. We moved there in '99.

10 Q. Were you there over the next several years?

11 A. We were there for awhile.

12 Q. Do you know exactly when you moved out?

13 A. I can't recall when I actually moved from there.

14 Q. But did [REDACTED] victim I spend a large part of her younger years
15 at that address?

16 A. At that address, yeah.

17 Q. I want to turn your attention to October of 2006. Tell
18 this jury how you found out about what had happened with
19 your daughter.

20 A. I was at work and my mom called me and told me that I
21 needed to talk to my daughter.

22 Q. And your mother -- is your mother also involved in the
23 church?

24 A. She is.

25 Q. And she called you. And you can't say what she said to

1 you, but she told you you needed to talk to your daughter?

2 A. Correct.

3 Q. And did she tell you the substance of what you needed
4 to -- you can't say what it was, but did she give you more
5 information?

6 A. Right. She said there was a -- yes.

7 Q. I'm sorry, you can't say, it's hearsay. As a result of
8 that phone conversation with your mother, did you then
9 approach your child?

10 A. I did.

11 Q. Tell the jury how that happened.

12 A. I left work, I --

13 Q. Where were you working at the time?

14 A. Verizon Wireless.

15 Q. Okay.

16 A. I left work, I went to her school, I picked her up and
17 I asked her -- I actually pulled off and I asked her --

18 Q. While you were in the car?

19 A. While we were in the car, it was just her and I -- was
20 there something she needed to tell me and it will be okay no
21 matter what it was it's okay.

22 Q. And then what happened?

23 A. I can't recall whether she immediately told me
24 thereafter but she did. I don't know the time span between
25 but that same time that we were in the car she told me what

1 happened.

2 Q. And without saying what she told you was she able to
3 give you information about a sexual assault?

4 A. Yes.

5 Q. And was she able to tell you where it took place?

6 A. Yes.

7 Q. Where did she say it took place?

8 A. At my home.

9 Q. And was she able to give you an approximate time period
10 when it happened to her?

11 A. She told me that it happened when he watched them.

12 Q. Once she had given you that information, I'm sorry you
13 can't say what it was, did you then take further steps?

14 A. I did.

15 Q. What did you do?

16 A. I took her to the police.

17 Q. Did you actually fill out the report and give it to the
18 police?

19 A. I went down to the Two Notch Road office.

20 Q. And they took the initial report?

21 A. Yes, ma'am.

22 Q. And that would have been October 22nd of 2006. Once
23 you made the initial report about what had happened to your
24 daughter, did they follow-up and make any contact with you,
25 an investigator in this case?

SABRINA SANDERS

- 1 A. Yes.
- 2 Q. And specifically Detective Metz here?
- 3 A. Yes.
- 4 Q. And did he make contact with you shortly thereafter
- 5 about the steps that needed to be taken concerning your
- 6 daughter?
- 7 A. Yes.
- 8 Q. As a result of talking to Investigator Metz, did you
- 9 then -- was certain appointments setup for her to be
- 10 interviewed and things of that nature?
- 11 A. Uh-huh.
- 12 Q. Later did you actually take her to The ARC?
- 13 A. I did.
- 14 Q. And were you aware of what was going to go on there?
- 15 A. They just told me that they were going to speak to her
- 16 concerning what happened.
- 17 Q. And how old was your daughter at this point when she
- 18 was reporting this?
- 19 A. I think maybe eight -- she was actually 11 when we took
- 20 her to The Arch.
- 21 Q. Once you took her to The Arch, once the appointment had
- 22 been set up, were you actually present during the interview?
- 23 A. No.
- 24 Q. And where were you when she was being interviewed?
- 25 A. I was in a waiting room.

1 Q. Did the police continue to investigate?

2 A. As far as I know they did.

3 Q. After you made initial contact with the police on the
4 22nd a few days later, was there -- did you also contact
5 another SRO officer about **victim 2** or was contact made with
6 you?

7 A. There was contact made with me.

8 Q. And what information did you give the officer about
9 **victim 2** at that point?

10 A. I didn't know it was -- I don't recall a SOS (sic), I
11 know that someone contacted me and --

12 Q. It was an officer.

13 A. -- it was an officer. And they started off talking
14 about the issue that took place with my child and they asked
15 was there another child, and I did say that there was
16 another child, **victim 2**. And they asked me did I know
17 anything concerning the issues with the child and I told
18 them what I had knew with that child.

19 Q. And the information you got was the information you got
20 from your daughter or your mother.

21 A. No, I actually got it from my daughter.

22 Q. And you were concerned about **victim 2** as well?

23 A. Correct.

24 Q. So you actually gave them that information. Did people
25 in your church become aware that you had reported this to

SABRINA SANDERS

1 the police?

2 A. Yes.

3 Q. Were there any repercussions as far as how they reacted
4 to --

5 MR. SHADD: Objection to relevance as to how the church
6 reacted to what she did.

7 THE COURT: Relevance?

8 MS. CAMPBELL: Your Honor, I believe it would be
9 relevant on how this whole case proceeded and what it is
10 getting ready to get into as far as forgiveness and things
11 of that nature.

12 MR. SHADD: In that case, Your Honor, I've got a rule
13 on all of that as far as religious beliefs and --

14 THE COURT: Maybe we ought to have the jury step out.
15 Ladies and gentlemen of the jury, I'll ask you to step into
16 the jury room at this point in time, do not begin your
17 discussions until I have asked you to do so.

18 (The jury left the courtroom.)

19 THE COURT: Ms. Campbell, tell me again what
20 information you're trying to elicit.

21 MS. CAMPBELL: Basically, Your Honor, there's been and
22 there's going to be I anticipate some argument that this was
23 not pursued religiously. There was and it's already in
24 evidence through the child's statement, which you saw the
25 redacted version, about how they were preaching at the

SABRINA SANDERS

1 A. Yes.

2 Q. And specifically Detective Metz here?

3 A. Yes.

4 Q. And did he make contact with you shortly thereafter
5 about the steps that needed to be taken concerning your
6 daughter?

7 A. Yes.

8 Q. As a result of talking to Investigator Metz, did you
9 then -- was certain appointments setup for her to be
10 interviewed and things of that nature?

11 A. Uh-huh.

12 Q. Later did you actually take her to The ARC?

13 A. I did.

14 Q. And were you aware of what was going to go on there?

15 A. They just told me that they were going to speak to her
16 concerning what happened.

17 Q. And how old was your daughter at this point when she
18 was reporting this?

19 A. I think maybe eight -- she was actually 11 when we took
20 her to The Arch.

21 Q. Once you took her to The Arch, once the appointment had
22 been set up, were you actually present during the interview?

23 A. No.

24 Q. And where were you when she was being interviewed?

25 A. I was in a waiting room.

- 1 Q. Did the police continue to investigate?
- 2 A. As far as I know they did.
- 3 Q. After you made initial contact with the police on the
4 22nd a few days later, was there -- did you also contact
5 another SRO officer about Janiece or was contact made with
6 you?
- 7 A. There was contact made with me.
- 8 Q. And what information did you give the officer about
9 Janiece at that point?
- 10 A. I didn't know it was -- I don't recall a SOS (sic), I
11 know that someone contacted me and --
- 12 Q. It was an officer.
- 13 A. -- it was an officer. And they started off talking
14 about the issue that took place with my child and they asked
15 was there another child, and I did say that there was
16 another child, Janiece. And they asked me did I know
17 anything concerning the issues with the child and I told
18 them what I had knew with that child.
- 19 Q. And the information you got was the information you got
20 from your daughter or your mother.
- 21 A. No, I actually got it from my daughter.
- 22 Q. And you were concerned about Janiece as well?
- 23 A. Correct.
- 24 Q. So you actually gave them that information. Did people
25 in your church become aware that you had reported this to

1 the police?

2 A. Yes.

3 Q. Were there any repercussions as far as how they reacted
4 to --

5 MR. SHADD: Objection to relevance as to how the church
6 reacted to what she did.

7 THE COURT: Relevance?

8 MS. CAMPBELL: Your Honor, I believe it would be
9 relevant on how this whole case proceeded and what it is
10 getting ready to get into as far as forgiveness and things
11 of that nature.

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13 on all of that as far as religious beliefs and --

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16 the jury room at this point in time, do not begin your
17 discussions until I have asked you to do so.

18 (The jury left the courtroom.)

19 THE COURT: Ms. Campbell, tell me again what
20 information you're trying to elicit.

21 MS. CAMPBELL: Basically, Your Honor, there's been and
22 there's going to be I anticipate some argument that this was
23 not pursued religiously. There was and it's already in
24 evidence through the child's statement, which you saw the
25 redacted version, about how they were preaching at the

1 church that they should let the church take care of it and
2 not report it to the police, it was actually a sermon in
3 which she attended. And then in addition to that there's
4 the whole issue because he's going to and right up in his
5 opening go into the fact that there's been contact between
6 the defendant and this young lady here on the stand since
7 then as far as that she's forgiven him and there was contact
8 made. He has provided us pursuant to reciprocal rule a
9 series of emails that went back and forth between them when
10 she was setting up a youth conference and she made contact
11 with the defendant assuming he is going to go into that.
12 Part of the reason that she followed this and was forgiving
13 is part of it was the influence -- and this is just as far
14 as her perception as far as how it influenced her and what
15 she should do in forgiving him and getting on with it and
16 things of that nature. It's similar in what I'm going in to
17 with what I went in to with Ms. [REDACTED] just to explain her
18 behavior which I'm assuming, I could be wrong, that he is
19 going to argue. That's fine, he's arguing.

20 THE COURT: All right, Mr. Shadd?

21 MR. SHADD: Thank you for my argument, Ms. Campbell.
22 First of all the objection is relevance of how the church --
23 the specific question was how the church responded to the
24 fact that she had contacted the police. First of all that's
25 irrelevant, that has nothing to do with the truth or not as

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1 to whether he did this. Now, I know Ms. Campbell mentioned
2 about there was some sermon that was made that upset one of
3 young ladies, I can't remember which one right now, where
4 the pastor -- it's hearsay -- where the pastor said that
5 people are lying to the police and you shouldn't do that. I
6 can understand that and the impact that would have on the
7 kids and it came out, not objectionable at all. But that's
8 a far reach to go on and say that was then used to prevent
9 them from moving forward because they obviously had -- the
10 cat was out of the bag then, the investigation was going on
11 and there was nothing that this lady --

12 THE COURT: Well, I think also the argument is -- and I
13 haven't seen the emails, I don't know what we're talking
14 about specifically, but apparently she feels that an
15 argument might be made that she might have forgiven Mr.
16 Carmichael and didn't want to pursue this any longer and
17 something along those lines.

18 MR. SHADD: And we were absolutely not going to say
19 that she forgave him because there was no reason for her to
20 forgive him because our position is that he didn't do it,
21 there's no need to forgive someone if they didn't do
22 anything wrong, Your Honor, so there's no forgiveness.
23 They're going down this line because as they put it in their
24 theory, there was forgiveness because they were wronged. He
25 is going to say he is not wrong so there's nothing to

1 forgive him for. Now, we do want to question her behavior
2 if your daughter has accused this man of doing this why
3 would you ever had any -- that's not forgiveness.

4 THE COURT: That would seem to make this very relevant
5 then.

6 MR. SHADD: Well, with regard to her behavior but not
7 forgiveness and that sort of thing.

8 THE COURT: Well, tell me what rule are you citing and
9 I will take a look at it but right now it sounds like as far
10 as relevance is concerned it is relevant.

11 MR. SHADD: To how the church responded, Your Honor?

12 THE COURT: No, as to -- you just told me you intended
13 to question her concerning how she reacted to him.

14 MR. SHADD: Yes, sir.

15 THE COURT: Well, then if she was at a church that was
16 espousing a philosophy or belief that it shouldn't be turned
17 over to the police and this shouldn't be pursued in that
18 fashion, that makes it relevant as to how she responded.
19 She went to that church for 30 something years she testified
20 to so that's my ruling, you can question it and take
21 exception to it. Now, what is the rule that you want to
22 cite?

23 MS. SIMPSON: Rule 610, religious beliefs or opinions,
24 this is Rule of Evidence 610. Evidence of the beliefs or
25 opinions of a witness on matters of religion is not

1 admissible for the purpose of showing that by reason of
2 their nature the witness' credibility is impaired or
3 enhanced. And I don't believe that we should --

4 THE COURT: I don't think this is on a question of
5 credibility.

6 MS. CAMPBELL: We agree with rule.

7 THE COURT: I agree with the rule, too. The question
8 is not whether she's telling the truth or not.

9 MR. SHADD: The expectation is if she believes her
10 child and if she believes her child then why would she --

11 THE COURT: The purpose she said she would introduce it
12 for is how this particular person reacted to this, how she
13 dealt with Mr. Carmichael after the report, that's not her
14 credibility, that's why she acted the way she did and you
15 indicated you were going to cross examine her on that point.

16 MR. SHADD: Yes, sir. I can see if the sermon was
17 about forgiving someone who you offed against, that's not
18 what the sermon was about, Your Honor, or the comment in the
19 sermon was about. It was about not reporting to the police
20 and are you lying, that's --

21 THE COURT: Your point is taken and it is overruled,
22 bring the jury back in.

23 (The jury returned to the courtroom.)

24 THE COURT: I have overruled the objection by the
25 defense and you may proceed at this time, Ms. Campbell.

SABRINA SANDERS

1 Q. When you reported this to the police and they started
2 their investigation, did you then attend church with your
3 daughter several week after that?

4 A. Yes.

5 Q. And do you recall a sermon that she referred to in her
6 video that was given at your church after this was reported
7 about Mr. Carmichael to the police?

8 A. Yes.

9 Q. And what was the gist of the sermon?

10 A. I asked her at that time was -- he was talking about
11 people not telling the truth on Junior and -- well, he
12 didn't call his name, he said about people not telling the
13 truth and going to the police and making false reports and,
14 you know, that he will be vindicated, you know.

15 Q. Did he indicate who you should have gone to rather than
16 gone to the police?

17 A. He said it should have been taken care of within the
18 church.

19 Q. And the relationship between that preacher and Mr.
20 Carmichael was what?

21 A. He was his minister. I mean --

22 Q. Okay. Did you continue to attend the church?

23 A. I did. Faithfully, no, but I would come. Because he
24 at the point was playing the organ and then leaving and
25 going to another church so I would come when I know that

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1 he's gone.

2 Q. And after awhile did he quit attending that church?

3 A. Yeah.

4 Q. And he moved on. Did you become aware that an arrest
5 was made in this case?

6 A. When he got arrested it was --

7 Q. Several months after you reported it.

8 A. Right. That's when he left, the week prior to getting
9 arrested.

10 Q. And after this happened did you ever allow your
11 daughter to be alone with him again or anything like that?

12 A. Not alone.

13 Q. Is it -- after his arrest and this time passed did you
14 continue to participate in the church?

15 A. I did.

16 Q. And once he was gone did you return to your status as
17 far as attendance and that thing?

18 A. I did.

19 Q. As part of your faith is forgiveness important?

20 A. It is.

21 Q. Can you explain that to the jury?

22 A. Without forgiveness there's no progression, there is no
23 moving forward, it's always something that's holding you
24 hostage. And I have always been taught that God is a
25 forgiving God and the Bible says forgive 70 times seven, as

1 many times as you have to. That's going to be a requirement
2 for me because I have to stand before God for myself.

3 Q. And as time passed did it become important to you to
4 forgive this defendant?

5 A. Because it had a hold on me, it was taking over my
6 life.

7 Q. And is that a philosophy you try to teach your daughter
8 as well?

9 A. I'm trying.

10 Q. Just because someone is forgiven how do you feel about
11 them being held responsible?

12 MR. SHADD: Objection, relevance. Responsibility?

13 THE COURT: I will sustain the objection.

14 Q. The fact that you have forgiven him, how does that
15 effect you, though, as far as he's concerned?

16 A. Me forgiving him is not for him, it was for me. Him
17 doing what he did doesn't mean that I think that he didn't
18 do it or that I think that it was okay or that I don't think
19 that he needs help for what he did. I just believe that
20 with me I had to forgive him so that I could move forward, I
21 needed my life back.

22 Q. And that's something that is important to you. As part
23 of your duties in the church did you also participate in a
24 youth group?

25 A. I was over the youth choir and they wanted to have a

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1 youth explosion.

2 Q. And last year I believe, or some time within the last
3 year or so -- it's called a youth explosion?

4 A. It was a youth explosion.

5 Q. Did you actually have contact with the defendant in
6 this case?

7 A. I did.

8 Q. And what was your purpose in you having contact with
9 him at that point?

10 A. To see if his group wanted to sing.

11 Q. And was that something that was requested for you to
12 do?

13 A. It was asked.

14 Q. And did you do it?

15 A. I did.

16 Q. As part of your duties?

17 A. I did.

18 Q. And how did you communicate with the defendant?

19 A. Facebook.

20 Q. Over the years since the arrest and all of this has
21 happened, have you seen him on occasion?

22 A. I have seen him at a funeral, he was towards the front
23 I was in the back. I seen him at our youth explosion.
24 Other than that I haven't seen him.

25 Q. David Carmichael, what name did you know him by?

1 A. We call him Junior.

2 Q. Do you see him in the courtroom?

3 A. Yes.

4 Q. Will you identify him for the jury?

5 A. He is sitting here with a striped suit on.

6 Q. A striped suit?

7 A. To the right.

8 Q. To the right?

9 MS. CAMPBELL: Your Honor, may the record reflect she
10 has identified the defendant?

11 THE COURT: It shall so reflect and you may proceed.

12 MS. CAMPBELL: Thank you. I don't have anything
13 further, Your Honor.

14 THE COURT: Your witness, Counsel.

15 MR. SHADD: Thank you, Your Honor. May it please the
16 Court?

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION

19 BY MR. SHADD:

20 Q. You are Ms. Sabrina Mack-Sanders?

21 A. I am Sabrina Sanders.

22 Q. Have you ever gone by Sabrina Mack-Sanders?

23 A. No. I have for Facebook purposes. So my classmates
24 can find me I put Mack in there but my name is Sabrina
25 Sanders.

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- 1 Q. How long have you been Sabrina Sanders?
- 2 A. I've been Sabrina Sanders since 2004.
- 3 Q. That's when you married Mr. Sanders?
- 4 A. That's when I married my husband.
- 5 Q. Is this your first marriage?
- 6 A. This is my second marriage.
- 7 Q. Do you all have any children together?
- 8 A. We have two children together.
- 9 Q. And that is --
- 10 A. Nadia and Sofia.
- 11 Q. Six and two years old?
- 12 A. Yes.
- 13 Q. And your first husband, is that the 14 year old's dad?
- 14 A. It's **victim 1** and Deadrick's father.
- 15 Q. So two sets of kids with two different dads.
- 16 A. Yes. Two different husbands, not dads, husbands.
- 17 Q. And their dad's.
- 18 A. They were my husband.
- 19 Q. And they were their dads.
- 20 A. They were my husband.
- 21 Q. Is that a yes?
- 22 A. They were my husband. Yes, they were my husband.
- 23 Q. Thank you. And they were also their fathers.
- 24 A. They were my husband.
- 25 Q. Is something wrong, Ms. Sanders?

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1 A. No, I'm answering your question.

2 MS. CAMPBELL: Objection.

3 THE COURT: Mr. Shadd, let's move on from that, I think
4 it's been asked and answered about three times, that's the
5 answer you're going to get, let's move on.

6 Q. Now, you -- and you said that you were actively
7 involved in the youth choir, praise and worship, youth
8 ministry and I guess number of other things.

9 A. I was there for 35 years, there is nothing that I
10 wasn't a part of, yes.

11 Q. Okay. Let's go straight to the sermon that you talked
12 about. Who was the pastor?

13 A. Bishop Belton was the pastor.

14 Q. That's the bishop that you have known since you --

15 A. No, he came in --

16 THE COURT: Ma'am, I'm going to ask you to let him
17 finish his question, then I will ask you to give him an
18 answer. Go ahead and finish your question, Mr. Shadd.

19 Q. Was that your bishop when this allegedly occurred?

20 A. I can't recall whether he was the bishop or not.

21 Q. When was he the pastor of your church?

22 A. I don't know when came in.

23 Q. How old were you?

24 A. I can't recall. But I know that he was there for
25 probably over ten years.

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- 1 Q. When did he stop being the minister there?
- 2 A. I'm not quite sure.
- 3 Q. Did he leave before or after you left?
- 4 A. I left before -- well, actually he's not gone, he's
- 5 still there, he's just sick.
- 6 Q. I mean as far as him being a minister.
- 7 A. Functioning?
- 8 Q. Yes, functioning.
- 9 A. It was before I left.
- 10 Q. And when did you leave?
- 11 A. I left in the beginning of 2011.
- 12 Q. The beginning of 2011?
- 13 A. Yes, January 2011.
- 14 Q. So not long after this joy night.
- 15 A. Yes, youth explosion.
- 16 Q. Is the joy night the same thing as a youth explosion?
- 17 A. I don't know, however you want to determine it. I know
- 18 it was a youth explosion, that's what we classified it as.
- 19 Q. This was on December 18th of 2010?
- 20 A. It was in December.
- 21 Q. I just wanted to be sure there's no joy night and also
- 22 a youth explosion.
- 23 A. It was a youth explosion, you brought joy night up. I
- 24 don't know what you're talking about, I know it was a youth
- 25 explosion.

- 1 Q. Let me show you --
- 2 MR. SHADD: May I approach the witness Your Honor?
- 3 THE COURT: You may.
- 4 Q. Please look at that document. Do you recognize that?
- 5 A. Yes.
- 6 Q. Is that the email conversation between you and David
- 7 Carmichael?
- 8 A. Yes, it is.
- 9 Q. Now that you have read that, do you reference a joy
- 10 night or a youth explosion?
- 11 A. It says on there joy night as the subject matter.
- 12 Q. Who typed it?
- 13 A. I typed it. But on the flier it says youth explosion
- 14 if you have a copy of that, too.
- 15 Q. But on this flier does it list that David Carmichael is
- 16 on there?
- 17 A. It does.
- 18 Q. In fact, you asked him to submit a picture so that
- 19 you --
- 20 A. I did.
- 21 THE COURT: Ma'am, I'm going to ask you to let him
- 22 finish the question. Again, I'm not going to get into an
- 23 argumentative situation and we're approaching that. So
- 24 Mr. Shadd, again, finish your question, I'm going to let you
- 25 do that and then I'm going to ask you to answer.

1 Q. All right. You asked him to send a picture of his
2 group on the fliers so that you can help promote the
3 church's youth explosion.

4 A. No. I asked him for a picture because we did a flier
5 not to promote the -- not to actually promote, it's just a
6 flier. When you're doing a program we put fliers out, the
7 fliers went to our church, I think I may have sent him a
8 copy of the flier. I'm not even quite sure if I even sent
9 him a flier but we put it up at our church.

10 Q. Why do you put the flier up?

11 A. So people can be aware of was coming up.

12 Q. Wouldn't that be a promotion?

13 A. If you say promotion, that's your word.

14 Q. You want people to come, don't you?

15 A. That's your word.

16 Q. Do you want people to come to the youth explosion,
17 ma'am?

18 A. If it was just our church it would have been fine
19 because they were coming regardless.

20 Q. Was your daughter singing with the youth choir then?

21 A. She was with me on the youth choir, yes.

22 Q. And in spite of your daughter being on the youth choir
23 you invited David Carmichael and his group to come to joy
24 night.

25 A. I did.

- 1 Q. I'm sorry, youth explosion.
- 2 A. Uh-huh.
- 3 Q. That's a yes?
- 4 A. To the youth explosion, that's a yes.
- 5 Q. And your daughter didn't react in any type of bad way,
- 6 did she?
- 7 A. My daughter was with me so I was there to protect her,
- 8 so no she didn't react out because she was with me.
- 9 Q. Thank you. Were there any other occasions that -- I
- 10 believe you said there was one other time other than the
- 11 youth explosion since this came out in '07 that you saw Mr.
- 12 Carmichael.
- 13 A. I think at his mother's funeral. I think it may have
- 14 been his mother's funeral.
- 15 Q. Do you remember when she passed?
- 16 A. I don't recall.
- 17 Q. Did your daughter attend that funeral?
- 18 A. I don't think she was, I think she was at school.
- 19 Actually she wasn't there, it was my sister and myself.
- 20 Q. Do you know of any other times other than the youth
- 21 night when your daughter was in the same presence as Mr.
- 22 Carmichael?
- 23 A. No. She was never in the presence of him other than
- 24 those times or that one time at the youth explosion.
- 25 Q. Do you recall the time when she testified that she

1 smiled at him?

2 A. That was at the youth explosion.

3 Q. Was there another time when they were -- happened to be
4 at the township auditorium for a gospel concert, I believe?

5 A. No.

6 Q. You don't recall that.

7 A. No. My daughter didn't go to a gospel concert at the
8 township and if she did she would have went with me.

9 Q. Now, you talk about when this happened. You're saying
10 that you don't know when it happened, right? Isn't that
11 what you told Ms. Campbell you said you don't know when it
12 happened?

13 A. I recall when she told me about it.

14 Q. You remember when she told you?

15 A. Yes.

16 Q. Okay. But do you remember when Ms. Campbell asked you
17 if you knew when it happened and you said, "I don't know
18 when it happened."

19 A. When the incident happened?

20 Q. Yes.

21 A. No, because it wasn't out that it happened. I don't
22 know what you want me to say but I'm going to tell you what
23 I do and don't recall. No. I don't recall when it happened
24 because it wasn't out that it happened. But I do recall
25 that she told me at age 11 that it happened.

1 Q. Yes, ma'am.

2 A. Thank you.

3 Q. You're welcome. But you do recall that there was a
4 women's gathering that you went to and that Mr. Carmichael
5 came over because you went over to the women's gathering.

6 A. I don't recall for sure it was a women's gathering, I'm
7 thinking that's what it was. But I do know that that was
8 the only time that he watched my child or my children, so it
9 could have been women's movie night for all I know. But
10 that was the only time that he was left alone with my
11 children.

12 Q. It could have been when you went to go visit a man.

13 A. No, I don't have a man to visit. I had just got rid of
14 a man, so no.

15 Q. Okay. Well, let me draw your attention and memory, do
16 you recall -- first let me give you a little background.
17 Your sister's name is Misty?

18 A. Yes.

19 Q. Okay. Misty worked with David on music for the choir;
20 is that correct?

21 A. Misty was the choir director and he was her assistant.

22 Q. Okay. So they would meet, correct?

23 A. No. They wouldn't meet except at choir rehearsal when
24 they were all there, they wouldn't meet by themselves, no.

25 Q. And Misty was living with you, correct?

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1 A. Misty was living with me.

2 Q. And Misty was working when David came to the house to
3 meet Misty to go over music for the choir; isn't that
4 correct?

5 A. No, that's not correct. That's what someone told you
6 but the correct thing is we were together.

7 Q. And there was a period of time where Misty was there
8 and David came to go over that and you went to go see a man
9 because Misty was home with David and the kids, correct?

10 A. You were there?

11 Q. Ma'am, the good thing about this is I get to ask the
12 questions, you don't.

13 A. The answer is no. And even if I did go see a man it
14 doesn't negate the fact that he did what he did when I
15 wasn't there.

16 Q. And your daughter didn't tell you about it right after
17 it happened, right?

18 A. She told me when she was 11.

19 Q. When you asked her, right?

20 A. Right.

21 Q. Okay. And when you asked her you're saying -- you said
22 you remember when she told you but you can't recall if it
23 was immediate, but she did tell you.

24 A. I couldn't remember whether it was an immediate
25 response because I think she was actually in shock and

1 ashamed that she had to tell me such a thing.

2 Q. Why would you leave your daughter and your son with
3 David Carmichael?

4 A. I left them because David was like a brother. I grew
5 up with him, I knew him since he was a child. If I felt in
6 any way, any way I would not have left them, but because I
7 trusted him, I trusted him, I trusted him, how could he do
8 this to me? I trusted him. That's the question you should
9 ask, I trusted him, that was my child.

10 Q. But why him --

11 A. I trusted him.

12 Q. But why him and not any other female that you also grew
13 up with? Why him?

14 A. If you heard me the first time, I didn't initially ask
15 him, that wasn't my purpose of asking him, I asked someone
16 else that was staying with him which was a female, he
17 volunteered. I've known him since he was a child. I'm 36
18 years old, I've been knowing him since he was little. Why
19 would know I trust him? Why wouldn't I? That's just like
20 if he was my brother.

21 Q. Ma'am, I'm not asking you why did you trust him or not
22 trust him.

23 A. You asked me why didn't I ask any other female and I
24 told you, I did ask another female.

25 Q. Well, why didn't you ask another female after that --

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1 A. Because it was another women's female gathering and all
2 of my female friends are in the church with me.

3 Q. Are you sure it was a women's gathering because --

4 A. It was a women's gathering, movie night, it was a
5 women's gathering. It could have been women's Bible study,
6 it was for women.

7 Q. So you had no other women to ask because everybody else
8 was females --

9 A. All of the other --

10 COURT REPORTER: I'm sorry, Your Honor, I'm having
11 trouble with the questions and answers overlapping.

12 THE COURT: Ma'am, I'm going to caution you again. I
13 know you're agitated apparently so I'm going to take a short
14 break right now and ask the jury to step back to the jury
15 room. Don't begin any discussions until I've had an
16 opportunity to tell you to do so. You may retire.

17 (The jury left the courtroom.)

18 THE COURT: We'll take a five minute break or so. I
19 will allow the witness to step down and gather herself and
20 I'm going to instruct her that during that period of time
21 you are not allowed to discuss your testimony with anyone.
22 We will be in recess for about five or ten minutes maximum.
23 Thank you.

24 (A break was taken.)

25 THE COURT: All right. Now ma'am, let me mention to

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1 you a few things if I could have your attention, please.
2 This gentleman, regardless of your disdain for him or his
3 client, has a constitutional right to ask questions of any
4 witness who appears in this case, I am going to see that
5 that right is protected. For that reason you're going to
6 have to allow him to finish his questions, once he's
7 finished I'll give you an opportunity to answer it. This is
8 not a situation where this will boil down into an argument
9 between you and he. I would like for you to respond to his
10 questions, be responsive to what he asks and I will give you
11 an opportunity to fully explain your answer if you feel
12 additional time is necessary for you to explain your answer.
13 Do you understand, ma'am?

14 THE WITNESS: Yes, sir.

15 THE COURT: And bantering with him or cutting off his
16 questioning only prolongs the length of this process. He
17 will be given an opportunity to ask the questions that are
18 relevant to this case, do you understand that, ma'am?

19 THE WITNESS: Yes.

20 THE COURT: All right. Bring the jury in.

21 (The jury returned to the courtroom.)

22 THE COURT: You may proceed with your questions,
23 Mr. Shadd.

24 MR. SHADD: Thank you. May it please the Court?

25 THE COURT: Yes, sir.

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1 Q. Mrs. Sanders, we stopped off about your decision to
2 have Mr. Carmichael watch your kids. Do you agree that's a
3 fair statement, to watch or babysitting?

4 A. Yes.

5 Q. Did you -- you didn't pay him for this, right?

6 A. I don't recall whether I did.

7 Q. Now, you mentioned a Melody was asked first. A Melody
8 lived over at the Carmichael house at this time?

9 A. Yes.

10 Q. What year was this?

11 A. I don't recall.

12 Q. Was David's mother still alive?

13 A. Yes.

14 Q. Was she capable of taking care of your kids for you at
15 that time?

16 A. Possibly.

17 Q. I know we're talking about going back in hindsight and
18 all that, but did you not think to have your two kids go
19 over to Mrs. Carmichael's house so that she could watch your
20 kids?

21 A. No, I didn't think of that.

22 Q. Now, you mentioned about a sermon that was given by
23 Bishop Belton or a visiting minister.

24 A. Bishop Belton?

25 Q. And Bishop Belton was not only Mr. Carmichael's

1 minister but he was your minister, right?

2 A. Yes.

3 Q. He was -- you call her **vic 1** or **victim 1** or both?

4 A. **vic 1**.

5 Q. He was **vic 1**'s minister too, correct?

6 A. Yes.

7 Q. And it's your testimony that Bishop Belton said from
8 the pulpit that there are people making false accusations to
9 the police, right?

10 A. Right.

11 Q. And that it should be taken care of at the church.

12 A. Within the church.

13 Q. Within the church. Did you seek counsel from Bishop
14 Belton with regard to what you say and your daughter says
15 happened to her?

16 A. No. Because at that time he had already let me know he
17 had taken sides and that's what a lot of people started to
18 do within the church, pick sides, and I never wanted it to
19 be a side thing.

20 Q. Yes, ma'am. But I mean -- and I'm sorry, maybe I said
21 that wrong. I meant before the sermon was given did you all
22 seek his counseling or are you saying he let it be known
23 even before he got on the pulpit that day?

24 A. Why? No. I didn't seek counsel of him prior to this,
25 no. We came to church, it was a surprise to me that he

1 would even say such a thing.

2 Q. Why didn't you seek the counsel of your spiritual
3 leader when this traumatic event happened to you or your
4 daughter?

5 A. Because my first obligation is to my child so the
6 police was the first person I felt like needed to -- I
7 didn't want the situation tanked, I didn't even go and
8 really pry and probe because that wasn't my job. I'm not
9 equipped for that even though I'm her parent, someone needed
10 to talk to her besides me, so my first obligation is to her.
11 Pastor, that's just my pastor, that's my child. So my first
12 job is to not to appease the pastor and get how he think I
13 should proceed with this. My first thing is to speak with
14 my child, get the help that she needs from the police and
15 whoever else they decide that they want to introduce us to.
16 The pastor can wait.

17 Q. You didn't believe it was beneficial to her spiritually
18 and emotionally for her to counsel with the pastor?

19 A. Talking with the pastor would have tainted her story.

20 Q. Why?

21 A. Because now you go into, "Well, how did it happen?
22 What happened? Who did it? Where did it happen?" They
23 didn't need to know that, that's not what his job is, his
24 job is for her spirit. Not to, "Okay. Let me assess this
25 situation and see what we can do as a church to fix it," no.

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- 1 Q. Yes, ma'am. We are not talking about an evaluation,
2 we're talking about giving her counsel, giving her religious
3 support, talking about the issues that have occurred, not
4 getting into specifics about what happened but how this
5 impacted you, where do you go from here, those types of
6 things that a minister is available for, her spiritual
7 leader is available for, that is what under the shepherd of
8 the church was available for. Wasn't that available to you
9 but you didn't take advantage of that for your daughter?
- 10 A. My first priority as I stated was to my child so the
11 police was the first person that she needed to speak with.
12 Any other counsel after that would have come after the fact.
13 And yes, you're right, that's his job. But his job came
14 after the fact that I got my daughter the help that she
15 needed, therefore he can come in and do everything else he
16 needed to do after that.
- 17 Q. Yes, ma'am. And I'm not comparing who you went to
18 first, but you didn't go to him at all.
- 19 A. I did speak to him. He called -- he contacted my
20 mother and wanted to speak with us, but by the time he
21 reached out to me he had already made his sermon over the
22 pulpit. No. I wasn't going to go to you after you had made
23 that statement in church, I'm not.
- 24 Q. And you believed that the comment he made at church was
25 about your daughter and about you and about David

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1 Carmichael, that's how you took it.

2 A. I knew it was about us for the simple fact because when
3 we went to a bond hearing he was not --

4 MR. SHADD: Your Honor, I would object at this time.

5 THE COURT: I'll ask the jury to step out of the
6 courtroom, don't begin your discussions until I ask you to
7 do so. You may retire.

8 (The jury left the courtroom.)

9 THE COURT: Ma'am, I'll ask you to finish the response
10 to the question that you were about to give, something about
11 a bond hearing, that's all I heard and then you may finish.

12 THE WITNESS: I was saying that when we went to a bond
13 hearing our pastor at that time was all of our pastors, he
14 wasn't neutral, he went with David, David's family. My
15 family, we were alone there so at that time no --

16 THE COURT: Did the pastor appear at the bond hearing?

17 THE WITNESS: He did appear at the bond hearing.

18 THE COURT: Did he speak at the bond hearing?

19 THE WITNESS: He did speak at the bond hearing.

20 THE COURT: And on whose behalf did he speak?

21 THE WITNESS: On David Carmichael's his behalf.

22 THE COURT: And Counsel, the objection is?

23 MR. SHADD: The objection is the mention of a bond
24 hearing for this jury.

25 THE COURT: Well, there's no question your client has

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1 been arrested, charged and indicted.

2 MR. SHADD: Yes, sir. I don't want them to be
3 wondering, okay, well, what was the circumstances of the
4 bond hearing. Is he in jail? Is he in --

5 THE COURT: But the context of your question was why
6 did she not talk to the minister at any point in time and
7 she's saying because she felt like he had taken sides in the
8 case.

9 MR. SHADD: Right, based on the sermon that he had
10 given --

11 THE COURT: And on the appearance at the bond hearing
12 as well she just testified.

13 MR. SHADD: Yeah, she added that on now.

14 THE COURT: But she was doing it at the time you
15 interrupted her without any prompting from the Court, that
16 was the answer to the questions that you asked.

17 MR. SHADD: But if she plans on talking to -- okay,
18 that's fine.

19 THE COURT: Well, you asked the question why she was
20 not going to the counseling services of the minister, I find
21 that to be a reason why she might not have done that.
22 That's responsive to your question.

23 MS. SIMPSON: Yes, sir.

24 THE COURT: Okay. Let's bring the jury back.

25 MS. CAMPBELL: Your Honor, will she be allowed to

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1 finish her answer?

2 THE COURT: I'm going to let her finish the answer to
3 her questions.

4 MR. SHADD: And I can go into the bond hearing and the
5 results of it?

6 THE COURT: I think she can improperly -- you are on
7 cross examination. Better leave the jury out, I think we've
8 got another argument cranking up.

9 MS. CAMPBELL: The results of the bond hearing?

10 MR. SHADD: Like I said --

11 THE COURT: See that the jury doesn't come in. Wait a
12 second, Counsel, I want to make sure that the jury is not
13 listening. Yes, ma'am?

14 MS. CAMPBELL: Your Honor, I don't know if the results
15 of the bond hearing he just referred to that he wants to go
16 in to as far as him getting a bond?

17 THE COURT: That's going to be up to him if he opens
18 the door, I suppose.

19 MR. SHADD: She opened the door when she mentioned the
20 bond hearing, Your Honor, I didn't open the door.

21 THE COURT: As to the results of the bond hearing she
22 opened the door?

23 MR. SHADD: I only mentioned the bond hearing, Your
24 Honor, and so they may have some question about --

25 THE COURT: My position would be that everyone here

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1 knows that your client has been charged, arrested, indicted,
2 bond hearings go with that process, I don't think that's a
3 secret. Now, whether or not bond was granted is a whole
4 different matter.

5 MR. SHADD: And that the minister came and spoke --
6 she's going to be allowed to answer this question, that he
7 came and spoke on his behalf.

8 THE COURT: Yes, sir. But I'm not sure the results of
9 the bond hearing are any way relevant for her not to talk --
10 and she didn't give this as a reason for her not to talk to
11 the minister which is the question that you asked.

12 MR. SHADD: Okay.

13 THE COURT: Now, if you can explain to me how the
14 results of the bond hearing are somehow relevant to that
15 inquiry I will be glad to hear from you on that.

16 MR. SHADD: Or even relevant to the minister, him
17 giving his report to the bond judge and that may have had
18 some impact on the bond judge.

19 THE COURT: Again, the issue -- the question you've
20 asked is why she did not go to counsel with the minister,
21 the impact on the judge has nothing to do with that decision
22 that I know of, she hasn't given that as a reason.

23 MR. SHADD: It sounded like she had already told me the
24 reason why she was not going to have any conversation with
25 him is because of what he said at the sermon and that was it

SABRINA SANDERS

1 and that should be enough.

2 THE COURT: Well, you asked the question again about
3 why she didn't do that and she said, "Well, he also appeared
4 at the bond hearing," and was going to say that he appeared
5 on the side of Mr. Carmichael. Now, as far as the results
6 of the bond hearing she didn't -- when I asked her to finish
7 her answer she didn't mention the result, whether it was
8 favorable or unfavorable as far as the decision was
9 concerned. My understanding of her position is that she's
10 saying that she felt like the minister had chosen sides.

11 MR. SHADD: Yes, sir.

12 THE COURT: Bottom line.

13 MR. SHADD: And she felt that she was alone and her
14 family was alone at this bond hearing and everyone else had
15 taken his side.

16 THE COURT: Exactly. Now, what that has got to do with
17 the bond was set or whether or not it was set, I don't know
18 the results either. I don't know if he's in on a bench
19 warrant, I don't know if he got a bond or didn't get a bond
20 and I would instruct the witness not to go into the results
21 of the bond hearing. That has nothing to do with an inquiry
22 as to whether or not she at that point in time trusted the
23 minister and felt like she ought to go to him for
24 counseling.

25 MR. SHADD: Yes, sir.

SABRINA SANDERS

1 THE COURT: Bring the jury back.

2 (The jury returned to the courtroom.)

3 THE COURT: At this point in time the witness was in
4 the process of responding to a question posed by the
5 attorney and I will allow you to complete your answer to
6 that question.

7 A. I was saying that he, our pastor at that time, had
8 appeared at a bond hearing for David Carmichael. My family
9 was there too, we were all members at the church and I felt
10 like he had already taken sides so it wasn't a need for me
11 to seek counseling from him when I felt like he had already
12 taken sides.

13 Q. When he called your mom's house did you think he was
14 taking sides then?

15 A. Yes.

16 Q. When he called your mom's house and said he wanted to
17 talk to you, did you think he was taking sides then?

18 A. He called my mom's house and said that he wanted --
19 apparently David or his mom had reached out to him and
20 wanted us all to meet.

21 Q. Wanted who all to meet?

22 A. He wanted David, his mom, myself and him and my mama to
23 meet.

24 Q. In other words try to have the church work this out
25 amongst the church family.

SABRINA SANDERS

1 A. Right. And no, because the damage had already been
2 done.

3 Q. There were already two sides, correct?

4 A. He had already chosen sides.

5 Q. Did he show you that he took sides if he's trying to
6 bring everybody together?

7 A. He showed me he took sides when he went to court -- he
8 could have been neutral, there was a neutral side that he
9 could have been for both of us.

10 Q. He wasn't being neutral when he --

11 A. He wasn't being neutral with the comments that you
12 (sic) made in church, no that wasn't being neutral.

13 Q. That's not what I asked. Was he being neutral when he
14 tried to get you and David and whoever else to come
15 together?

16 A. How is that being neutral when you had already not been
17 there for me? How is that being neutral?

18 Q. If he would have come to court with you at this hearing
19 do you feel like he would have been neutral if he was taking
20 your side?

21 A. I didn't want him to come to court for me, I wanted him
22 to be there for both of us.

23 Q. But if he had come would you --

24 A. I don't --

25 MS. CAMPBELL: Objection, Your Honor.

SABRINA SANDERS

1 THE COURT: The objection is?

2 MS. CAMPBELL: Asked and answered.

3 MR. SHADD: I don't think that's responsive to the
4 question.

5 THE COURT: We've just been going through this inquiry,
6 her answers are pretty clear to me on this subject and I
7 think it's time that we move onto another subject. I will
8 sustain the objection.

9 Q. Now, you talked about forgiveness. You said
10 forgiveness is for you, not for the person that you forgive;
11 is that correct?

12 A. Right.

13 Q. Just because you forgive someone does not mean they did
14 anything wrong to you, correct?

15 A. In my eyesight he did something wrong to me, so in
16 order for me to be able to forgive him -- there had to be a
17 reason for me to forgive you. I'm not just going to -- oh,
18 I forgive you, there has to be something that was done in
19 order for you to be forgiven. So there was something that
20 was done to me and I had to forgive him.

21 Q. Or you were told that something was done to you and you
22 forgave the person because you felt wronged, correct?

23 A. There was something that was done and I had to forgive
24 him.

25 Q. You were told that something was done --

SABRINA SANDERS

1 MS. CAMPBELL: Objection, Your Honor, asked be
2 answered.

3 MR. SHADD: I haven't finished my question.

4 THE COURT: I will let him finish the question.

5 Q. You were told that something was done but you were not
6 there, correct?

7 A. Something was done and I had to forgive him.

8 Q. You forgave -- you said you forgave David Carmichael
9 because in your words and in your eyesight something was --
10 you were wronged by something that was done; is that right?

11 A. Something was done and I had to forgive him.

12 Q. And as part of your forgiveness you invited him to come
13 back to the church that you and your daughter attended,
14 correct?

15 A. Correct.

16 Q. That's part of your forgiveness.

17 A. In order for me to move forward I had to make sure when
18 I forgave him -- it doesn't mean that it didn't happen, me
19 forgiving him meaning that I could be in the same room with
20 you and it's not going to -- I don't want to hit you, I
21 don't want to attack you, I'm over that because I have
22 forgiven you. But it doesn't mean that it wasn't done.

23 Q. Wouldn't this have been in a conversation that you
24 would have had when the minister reached out to try to get
25 y'all together to talk about it?

SABRINA SANDERS

1 A. I don't know, I don't know. Because I wasn't in that
2 conversation so I can't speculate as to what's going to
3 happen and what come up, I don't know.

4 Q. So in these six years since you were told this happened
5 you're saying the context that you gave him to show that you
6 forgave him was inviting his group to a youth explosion?

7 A. Exactly.

8 MR. SHADD: Thank you.

9 THE COURT: Redirect.

10 MS. CAMPBELL: No, sir.

11 THE COURT: You may step down, thank you very much.

12 The State may call its next witness.

13 MS. CAMPBELL: The state will call Investigator Brian
14 Metz.

15 The witness, BRIAN METZ, was first duly sworn
16 and testified as follows:

17 THE COURT: Sir, once you are seated please state your
18 name.

19 THE WITNESS: Brian Metz, M-e-t-z.

20 THE COURT: Thank you. Ms. Campbell, your witness.

21 MS. CAMPBELL: May it please the Court?

22 THE COURT: Yes, ma'am.

23 DIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q. Investigator Metz, where are you employed?

BRIAN METZ

1 A. At the Richland County Sheriff's Department.

2 Q. What do you currently do there, sir?

3 A. I'm currently a criminal investigator assigned to the
4 technical services unit.

5 Q. And as a criminal investigator assigned to the
6 technical unit, what do you do?

7 A. There are a myriad of things that we do in the
8 technical services unit, myself and one other investigator.
9 It begins with forensic examination of computers, forensic
10 examination of cellphones, the collection of video from
11 stores and homes where crimes occur, also the manipulation
12 or enhancement of that video as needed and assisting the
13 press information people with getting that out to what you
14 would normally see on WIS or whatever TV at night. Also we
15 put out alarm systems at places that are having crime
16 problems and video cameras that have crime problems. And
17 pretty much anything else that has to do with electronic or
18 digital evidence we get called in.

19 Q. So you are the guy that is good with computers and
20 stuff?

21 A. Yes, ma'am.

22 Q. How long have you been in law enforcement?

23 A. A little over 30 years.

24 Q. And as part of your training were you ever assigned to
25 what's known as the special victim's unit?

BRIAN METZ

1 A. I was.

2 Q. And how long did you actually specialize in those
3 areas?

4 A. Over the years of investigation, which I have been in
5 investigations since around 1990, I have had several stints
6 where I was involved or assigned to the special victims
7 unit. For many years I was a missing person's investigator
8 which also included runaways, and then would also be
9 assigned abuse and sexual assault cases, and then at times I
10 was assigned nothing but sexual assault cases. And in the
11 20 years of investigation it has been over five years that I
12 was in those units.

13 Q. And as part of that unit did you have some specialized
14 training as far as child crimes?

15 A. I did.

16 Q. Specifically does that training as far as encompass
17 child abuse cases? Or what was that training?

18 A. First it was a basic detective course that's taught at
19 the criminal justice academy, it's a 40 hour course. I
20 later took a homicide by child abuse course which was
21 another 40 hour course. In there there's some training on
22 interviewing children because often times children can be
23 the witness of another child abuse. And then there was a
24 child sexual assault course that I also took at the academy.

25 Q. And during the course of your five years or more in the

1 special victims unit, did you have occasions to interview
2 witnesses and children involved in these crimes?

3 A. I did.

4 Q. As victims primarily?

5 A. Primarily.

6 Q. I'm going to turn your attention back to the fall of
7 2006. Were you assigned to the special victims unit at that
8 point?

9 A. I was.

10 Q. And we say special victims unit, what does that mean?
11 Tell the jury.

12 A. The special victims units handles all sexual based
13 crimes and in most cases will handle crimes when children
14 are abused.

15 Q. Turning your attention to October of that year, did you
16 make contact or was a case assigned to you involving the
17 victim **victim 1** [REDACTED]

18 A. It was.

19 Q. And were you also assigned a case involving the victim
20 **victim 2** [REDACTED]

21 A. Several days later I was.

22 Q. And can you tell this jury how you initially became
23 involved and what you first did?

24 A. The first case assigned to the unit was assigned to me.
25 After the report was made my Ms. Sabrina Sanders who was

BRIAN METZ

1 just here, I contacted her on the telephone, she briefed me
2 of the circumstances of the case of the allegations that
3 were made. She also told me at that time that there was a
4 second child involved but we had not been reported of that
5 at that time.

6 Q. And in the course of the next day or so did you also
7 have contact with the mother of Ms. [REDACTED] victim 2 [REDACTED] as well?

8 A. I did. Ms. Sanders had given me the phone number for
9 the [REDACTED] household and I had made several calls there
10 talking to the grandmother and chatting with the aunt and
11 the victim's mother.

12 Q. When you made contact with -- and I'm talking about the
13 Sanders case first -- with her having talked with her, did
14 you discover what the age of that child was?

15 A. I did.

16 Q. And how old was the Sanders' child at the time the
17 contact was made with you?

18 A. She was 11 years of age at the time.

19 Q. Based on her age did you make any arrangements for her
20 to be interviewed?

21 A. I did.

22 Q. And what arrangements were those?

23 A. There's a protocol for us to assign or ask for
24 assistance of The ARC, The Assessment Resource Center, so I
25 made contact with them. There's usually a telephone

BRIAN METZ

1 interview where you give them the information that they
2 needed.

3 Q. And were those appointments setup for her to be
4 interviewed?

5 A. It was.

6 Q. And I believe that would have been by Ms. Smith at The
7 Arch?

8 A. She was the one that did the interview, yes.

9 Q. And at a later date I believe in February of that next
10 year did you receive information from them?

11 A. I had received information from them prior to that but
12 got all of the information and completed reviewing it by
13 February.

14 Q. And there's some like two or three months difference,
15 is that abnormal in cases such as this?

16 A. It is not.

17 Q. Why is that, sir?

18 A. First of all we have other cases. Secondly you want to
19 review all of the information, often times that's done, I
20 don't want to say by committee, but you review what you have
21 with other people in the office and sometimes with people at
22 The Assessment Resource Center before we proceed.

23 Q. And in addition to that at the same time you're
24 investigating a case involving -- who was the suspect in
25 that case?

BRIAN METZ

1 A. David Carmichael.

2 Q. And was there any other suspect involved in this case?

3 A. There was not.

4 Q. During the same time were you also making contact with

5 Ms. [REDACTED] and [REDACTED] victim 2 [REDACTED]

6 A. Yes. The report had been made for [REDACTED] victim 2 [REDACTED]

7 several days after the original report.

8 Q. The official report.

9 A. That's right.

10 Q. And at that point did you make contact with Ms. [REDACTED]

11 A. I did.

12 Q. And did she immediately come in with her daughter?

13 A. Not immediately, no.

14 Q. And why was that?

15 A. She explained that she needed to pray about it, think

16 about it and decide what direction they wanted to take.

17 Q. Within a week or a few weeks actually did you make

18 contact with [REDACTED] victim 2 [REDACTED]

19 A. I did.

20 Q. What was the purpose of that contact?

21 A. I had [REDACTED] victim 2 [REDACTED] s mother bring her to my office at the

22 sheriff's department so I could take a written statement

23 from her.

24 Q. Was [REDACTED] victim 2 [REDACTED] older or younger than 12 years of

25 age?

BRIAN METZ

1 A. She was 12 years of age.

2 Q. Over 12?

3 A. Yes.

4 Q. Twelve plus, right? And at that point you took a
5 written state from her. Is that unusual for you?

6 A. It is not.

7 Q. And why did you feel comfortable taking a statement
8 from her at that point?

9 A. Often times it's a tactical thing to go ahead and get
10 the statement taken, and in her case I asked the mother to
11 bring her in. After I spoke to her for a few minutes and
12 let her become comfortable with her with me and me with her
13 I felt she was competent to give me a witness statement.

14 Q. And, in fact, did you interview her that day?

15 A. I did.

16 Q. And this was in November, I believe?

17 A. It was.

18 Q. Were you able to get information pertinent to your
19 investigation? You can't say what she told you.

20 A. That's correct.

21 Q. But she was able to give you information?

22 A. That's correct.

23 Q. Once you had gathered that information from her did you
24 continue investigating the case?

25 A. I did.

BRIAN METZ

1 Q. And in these cases is it always possible to narrow down
2 the timeline exactly to the day it happened?

3 A. No, it is not.

4 Q. And why is that?

5 A. Memory. You're dealing with children trying to
6 remember exact dates and times or even months and it's
7 difficult.

8 Q. Once you had had the opportunity to review the
9 information provided to you by [victim 2] [REDACTED] as well as
10 [victim 1] [REDACTED] did you proceed to get take any action in
11 this case?

12 A. I did.

13 Q. What action did you think was appropriate?

14 A. I obtained two warrants, one for each child from the
15 local magistrate.

16 Q. For what charges?

17 A. For lewd acts upon a child.

18 Q. And in order to get a warrant in this case what steps
19 do you have to go through in order to get a warrant on
20 someone?

21 A. You have to have probable cause. You have to do an
22 affidavit for that judge, present it to the judge and
23 explain the probable cause that you had.

24 Q. And were you able to successfully procure warrants in
25 these two cases?

BRIAN METZ

1 A. I was.

2 Q. And one was for which victim?

3 A. For victim 1 [REDACTED] and the second one was for

4 victim 2 [REDACTED]

5 Q. Once you had gotten the warrant, I believe that was in
6 February of '07?

7 A. That's correct.

8 Q. Did you take any steps in trying to locate the
9 defendant?

10 A. Ms. Sanders had told me the address where he was living
11 and also a vehicle that he operated so I was checking the
12 house for a vehicle.

13 Q. And eventually several weeks later were you able to
14 locate the defendant?

15 A. I was.

16 Q. And were you present when he was actually arrested?

17 A. I was.

18 Q. And where did you actually locate him?

19 A. I located him at his residence.

20 Q. On what street?

21 A. On Shaw Street.

22 Q. Where is Shaw Street?

23 A. Shaw Street is near the lower end of Farrow Road, you
24 can get to it even off Colonial or I believe off of one of
25 the side ones there.

BRIAN METZ

1 Q. And tell the jury how the arrest was effected.

2 A. I had uniform officers go with me, which is standard
3 procedure at the sheriff's department since I wasn't in
4 uniform. We simply knocked on the door, he was there and
5 after a short discussion he appeared to be aware of what I
6 was there for and he was placed under arrest and transported
7 back to the sheriff's department.

8 Q. And how was he transported back to the sheriff's
9 department?

10 A. In a patrol car.

11 Q. While you were transporting him -- you were actually
12 the person who transported him?

13 A. I was.

14 Q. And who all was in the car?

15 A. Just me and him.

16 Q. At that point did you take any steps to ensure his
17 rights were honored?

18 A. I did.

19 Q. What did you do?

20 A. I verbally read him the advice of rights form that's a
21 standard form at the sheriff's department.

22 Q. And is that appropriate in cases where someone is taken
23 into custody and you intend to ask them questions?

24 A. It is.

25 Q. And you say you thoroughly mirandized him in the car

BRIAN METZ

1 while in route. Did you ask him any questions?

2 A. We talked in general, we talk in general and he made
3 statements and I asked him questions based on those
4 statements.

5 Q. Once you got to headquarters did you take any steps to
6 formally document the Miranda rights as you were giving them
7 to him?

8 A. I did.

9 Q. I'm going to show you what's been marked as State's
10 Exhibit Number 1. First, do you recognize that?

11 A. I do.

12 Q. And what is that, sir?

13 A. This is the actual advice of rights form that is used
14 by the sheriff's department and the advice of rights form
15 that I used with Mr. Carmichael.

16 Q. And I believe most of it is in actual typewritten form;
17 is that correct?

18 A. It's a standard form that is typed and then fill in the
19 blank.

20 Q. And at the top I believe is certain personal
21 information concerning the defendant himself?

22 A. That's correct.

23 Q. And who filled that out?

24 A. I did.

25 Q. And then below that there's the actual advice of

BRIAN METZ

1 rights; is that correct?

2 A. That's correct.

3 Q. And then there's a signature line on that. Whose
4 signature is that?

5 A. It's signed by David Carmichael and witnessed by
6 myself.

7 Q. And witnessed by you?

8 A. That's correct.

9 Q. And then at the bottom of the form, what is that?

10 A. It contains what's called the waiver of rights which is
11 his agreeing to talk to us at that time.

12 MS. CAMPBELL: Your Honor, at this time I would offer
13 States Exhibit 1 into evidence.

14 MR. SHADD: No objection, Your Honor.

15 THE COURT: Without objection it will be received into
16 evidence as one. You may proceed.

17 (The rights form was received as State's 1.)

18 Q. Sir, can you go through exactly how you -- and when you
19 said you advised him of those rights generally what rights
20 are those? They're called the Miranda rights; is that
21 right?

22 A. Right. He has the right to remain silent and have an
23 attorney present when he is being interrogated.

24 Q. And once you got back to headquarters can you go
25 through the steps that you went through to formalize his

BRIAN METZ

1 advisement of rights that he was given and his waiver of
2 rights?
3 A. I did. The form starts with his name which I filled in
4 and below it is my name. It has the address, which is 5632
5 Two Notch Road which is the main sheriff's department
6 office. The date being 4/10 of '07 and the time he was out
7 at 09:50 or 9:50 in the morning. Then there is the advice
8 of rights which I read to him, and as I would read them I
9 would check off each one as we went down. They start with,
10 "Before I ask you any questions you must understand your
11 rights. You have the right to remain silent, anything you
12 say can be used against you in court. You have the right to
13 talk to a lawyer for advice before we ask you any questions
14 and to have a lawyer with you during any questioning. If
15 you cannot afford a lawyer one will be appointed for you
16 before any questioning if you wish. If you decide to answer
17 questions now without a lawyer present you still have the
18 right to stop answering at any time. You also have the
19 right to stop answering at any time to talk to a lawyer."
20 And what I was doing is as I read each one of those to him
21 and he acknowledged that he understood I asked him to make a
22 checkmark at the line. I then asked him if he understood it
23 to sign it, which he did. I then explained to him the
24 waiver of rights which I read to him and also had him read
25 along, "I have read the statement of my rights and

BRIAN METZ

1 understand what my rights are. I agree to talk to you now.
2 I understand and know what I am doing, no promises have been
3 made to me and no pressure or coercion of any kind has been
4 used against me." I then asked him to sign that if he
5 agreed with it, he did and I signed it also and then I made
6 some notations at the bottom.

7 Q. What are the notations you actually made at the bottom?

8 A. It's a standard procedure for me on these forms, the
9 first one being advised earlier in the car. I actually had
10 this sheet of paper laying on my dash and when we started
11 going back I read them to him. And then also the next line
12 was no alcohol or drugs. I asked him if he was under any
13 influence, was he on any drugs or alcohol that day that may
14 prevent him from knowing and waiving his rights and he said
15 me he did not. I asked him his education and he told me a
16 junior in college.

17 Q. Let me ask you this, as you were advising his rights
18 and he was responding did he appear to be coherent?

19 A. He did.

20 Q. Did his faculties appear to be impaired in any way?

21 A. They did not.

22 Q. In your opinion did he appear to understand your
23 questions and answer them appropriately?

24 A. He did.

25 Q. Did you threaten him in any way?

BRIAN METZ

1 A. I did not.

2 Q. Did you promise him anything to make him talk to you?

3 A. No, ma'am.

4 Q. And he was fully explained his rights prior to you
5 talking to him?

6 A. That's correct.

7 Q. Once you had advised him of his rights and he had
8 chosen to talk to you, did you ask him any questions about
9 this case?

10 A. We had a short conversation where it was -- I was
11 convinced that he knew why I was there for, the individuals
12 involved, he knew at that time what the charges would be and
13 I asked him for some explanation of it.

14 Q. And when you asked him for an explanation after you
15 explained to him the accusations what he was being charged
16 with and who the victims were involved, what did he say to
17 you?

18 A. He told me that the only thing he would say is it had
19 to do with people in the church being jealous of him. I
20 asked him several times to explain that, what were they
21 jealous for, what was that situation and he could not or
22 would not give me an explanation on why anybody was jealous
23 of him and why that had anything to do with the charges.

24 Q. So the only thing he said in response to you was that
25 people were jealous of him?

BRIAN METZ

- 1 A. That's correct.
- 2 Q. And which people specifically did he say were jealous
- 3 of him?
- 4 A. He would not tell me which people were jealous of him.
- 5 Q. Did he refer to where the people came from?
- 6 A. The church.
- 7 Q. And that was the explanation given.
- 8 A. That's correct.
- 9 Q. And during the course of your investigation as far as
- 10 Ms. [REDACTED] was concerned, the address on it -- is for
- 11 Farrell Street?
- 12 A. That's correct.
- 13 Q. Is that here in Richland County?
- 14 A. It is.
- 15 Q. And there were three different locations mentioned by
- 16 Ms. [REDACTED] where this occurred?
- 17 A. That's correct.
- 18 Q. One of those I believe was an apartment complex?
- 19 A. There was.
- 20 Q. Are you familiar with the three places she mentioned?
- 21 A. I would have to refresh my notes but I know that she
- 22 mentioned three places.
- 23 Q. And in review were all three of those places in
- 24 Richland County?
- 25 A. At that time we confirmed they were.

BRIAN METZ

1 Q. All three of them?

2 A. Yes.

3 Q. So all of the events that happened happened in Richland
4 County?

5 A. Correct.

6 Q. The defendant's date of birth, what is that, Mr.
7 Carmichael's?

8 A. His date of birth was [REDACTED] of [REDACTED].

9 Q. [REDACTED]?

10 A. That's correct.

11 MS. CAMPBELL: Beg the courts indulgence.

12 THE COURT: Yes, ma'am.

13 (Break in proceedings.)

14 Q. The person that you arrested on these charges and gave
15 you this statement about being jealous, do you see him in
16 the courtroom?

17 A. I do.

18 Q. Can you point him out to the jury?

19 A. He is sitting in the brown striped jacket next to the
20 defense counsel with a white I believe it's a turtle neck
21 shirt.

22 MS. CAMPBELL: Your Honor, may the record reflect he
23 has identified the defendant?

24 THE COURT: It so reflects.

25 MS. CAMPBELL: Thank you.

BRIAN METZ

1 THE COURT: Anymore questions?

2 MS. CAMPBELL: No, sir.

3 THE COURT: Counsel, your witness.

4 MR. SHADD: May it please the Court?

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY MR. SHADD:

8 Q. Investigator Metz, have you been trained to speak to
9 people who have reported themselves as being sexually
10 abused; is that correct?

11 A. That's correct.

12 Q. Especially children, correct?

13 A. To some degree, yes, sir.

14 Q. Are you familiar with that RATAC protocol?

15 A. I'm familiar with it, yes, sir.

16 Q. You have been trained on it as well?

17 A. It has been part of some of the courses but I have not
18 been through the course that was talked about earlier today.

19 Q. But you've been exposed to it.

20 A. I have.

21 Q. Did you apply it when you spoke to victim 2 [REDACTED]

22 A. To some degree.

23 Q. Okay. But you felt based on your interview with her, I
24 believe you said it was a tactical interview, that you got
25 what you needed in effect.

BRIAN METZ

1 A. She was interviewed not for tactical reasons, it was an
2 interview of her to determine what she had to say.

3 Q. Did you feel -- were you impressed that she knew what
4 she was there for?

5 A. I was.

6 Q. Did she seem intimidated by you?

7 A. I think at first she was, that's not unusual when we're
8 dealing with a young female and an older male so I talked
9 with her for a few minutes. Her mother was there and then I
10 separated her mother to a waiting area and she seemed
11 comfortable, or more comfortable with her waiting out there.

12 Q. And she disclosed to you alone -- why did you have her
13 alone with you?

14 A. I couldn't hear you, sir.

15 Q. Why did you have her mother leave?

16 A. It's been my experience that it's usually not best to
17 have family members standing there when you're interviewing
18 a child in this manner, I think the same situation as The
19 ARC does, you have a better chance of disclosure without
20 that.

21 Q. Okay. And so you felt like she got comfortable after
22 her mom left?

23 A. I felt she'd got comfortable with me after a short
24 period of time. She was still upset but she was able to
25 talk and converse with me so I thought it was okay for her

BRIAN METZ

1 mother to leave at that time.

2 Q. And was that fact that you made a tactical decision to
3 speak to this 12 year old, was that following your protocol?

4 A. It was.

5 Q. You being an older male and this young female, that was
6 a tactical decision.

7 A. That's not the reason for the tactical decision but it
8 was a decision I made to further the case.

9 Q. Okay. Now, why did you -- well, let me ask you this:
10 After having conversations with both mothers, Mrs. Sanders
11 and Ms. [REDACTED] would you say that Ms. [REDACTED] was more
12 reluctant than Ms. Sanders was?

13 A. I would say no but I would need to explain that.

14 Q. Sure.

15 A. Ms. Sanders from the beginning was, you know, "Let's do
16 what needs to be done." Ms. [REDACTED] wants to think about it.
17 I wouldn't say that she was reluctant, she just hadn't -- it
18 seemed that none of those ladies had made their minds up as
19 to what direction they wanted to take. I decided at that
20 point to give them the time. It came a time when I thought
21 that I didn't need to wait anymore and for those tactical
22 reasons is why I then got in touch with Ms. [REDACTED] and told
23 her I needed her involvement.

24 Q. Now, you aren't the school resource officer at
25 Crossroads Middle School, are you?

BRIAN METZ

1 A. No, sir.

2 Q. You weren't working there in that capacity back in
3 2007, were you?

4 A. No, sir.

5 Q. Obviously you have access to any phone calls that are
6 made with regard to this defendant and with these victims
7 prior to you even contacting Ms. [REDACTED] correct?

8 A. I'm not sure what phone call you're referring to.

9 Q. Well, I know you've been here the entire time so you
10 heard Ms. [REDACTED] saying that she was contacted by the school
11 resource officer with Crossroads and that she informed him
12 that she had already made a report and taken her daughter
13 down to have an interview with an officer, right? Do you
14 recall her saying that?

15 A. Something to that nature, yes.

16 Q. But that was before you had a conversation and you told
17 her to come on down and talk right if that even happened?

18 A. No, sir, that would not be correct.

19 Q. Okay. What part of that is not correct? The whole
20 thing or --

21 A. I had already talked to the [REDACTED] family prior to them
22 making the reports and prior to the report being made to the
23 school resource officer.

24 Q. I see. So as far as you know you were the first law
25 enforcement contact with Ms. Lashanda [REDACTED]

BRIAN METZ

1 A. That I'm not clear on. I know the testimony earlier
2 was that somebody had gone to the sheriff's department to
3 seek advice.

4 Q. That she did, Ms. [REDACTED] did.

5 A. But that was not to me so there may have been another
6 officer there that was spoken to.

7 Q. Okay. What was the date that you talked to
8 Ms. Lashanda [REDACTED]

9 A. The exact date and time I did not record. It was
10 between my first phone call to Ms. Sanders and when the
11 report was made at the school by the school resource
12 officer.

13 Q. I'm sorry, say that again.

14 A. Upon talking to Ms. Sanders --

15 Q. Ms. Sanders. Okay.

16 A. -- she advised me of the existence of a second victim
17 and gave me the phone numbers for that family. So I had
18 called that family even though I didn't have the report, was
19 told at that time they did not know what they were going to
20 do, I told them let me know and we would get back with them.

21 Q. They wanted to pray about it, think about it and
22 then --

23 A. That was my understanding.

24 Q. And you advised them to let you know what they wanted
25 to do.

BRIAN METZ

- 1 A. Correct.
- 2 Q. Okay. But you're saying that is not documented, the
3 date and the time that that conversation occurred.
- 4 A. That's correct.
- 5 Q. And you have been a law enforcement professional for
6 how many years?
- 7 A. For 30 years.
- 8 Q. And you went to the Columbia Police Academy I think on
9 Broad River Road; is that right?
- 10 A. The South Carolina Criminal Justice Academy.
- 11 Q. I'm sorry. And they tell you all -- they teach you
12 over there about taking good notes, correct?
- 13 A. They do.
- 14 Q. They teach you how to take contemporaneous notes so
15 that if you have to come into court later on you could
16 provide chapter and verse of your entire investigation,
17 correct?
- 18 A. That's correct.
- 19 Q. Aren't dates and times important, sir?
- 20 A. In most circumstances they are, yes, sir.
- 21 Q. In fact, it is elementary to list date and time that a
22 potential witness -- you having some contact with a
23 potential witness, correct?
- 24 A. That's correct.
- 25 Q. But you did not do that when you had this conversation

BRIAN METZ

1 with Lashanda [REDACTED] when she said she wanted to pray about
2 it and think about it and get back with you upon your
3 advice.

4 A. I did not, because at that time I did not believe that
5 Lashanda [REDACTED] or any other parents had any knowledge of
6 what had occurred three years earlier, therefore any
7 witnesses that may be talking to.

8 Q. You have the mother of an alleged victim who says she
9 needs to pray about it and think about it, that didn't tell
10 you that she had some idea of what may have happened or may
11 not have happened? And a potential witness, the mother
12 of --

13 A. It doesn't indicate that she had any personal knowledge
14 of what happened.

15 Q. You're an investigator with the Richland County
16 Sheriff's Department, you call a citizen of Richland County
17 and tell them that you want to talk to their daughter about
18 her daughter being sexually abused, right?

19 A. Correct.

20 Q. And her response was she wanted to pray about it and
21 think about it and then you said. "Okay. Well, get back
22 with me when you make a decision."

23 A. Something to that affect, yes, sir.

24 Q. And so I just want to be clear, Investigator Metz, you
25 did not refer [REDACTED] victim 2 [REDACTED] to the ARC; is that right?

BRIAN METZ

1 A. I did not.

2 Q. Investigator Metz, when you came some several months
3 after this and spoke to or actually went to -- or made the
4 decision to arrest on two warrants Mr. David Carmichael; is
5 that correct?

6 A. That's correct.

7 Q. And you believed and it was confirmed by the magistrate
8 that you had at least probable cause to make an arrest,
9 correct?

10 A. That's correct.

11 Q. You are required to arrest a person under an arrest
12 warrant when you have probable cause, correct?

13 A. That's correct.

14 Q. The standard for probable cause means that a crime
15 probably occurred and this is who you as the affiant on the
16 warrant believes perpetrated these crimes; is that right?

17 A. In a loose version, yes, sir.

18 Q. That actually gets the ball rolling with regard to
19 bringing a defendant into court at some point, correct?

20 A. That's correct.

21 Q. But just because you made the decision to seek two
22 arrests -- I'm sorry, arrested for two warrants and there's
23 probable cause that has -- that you believe has been
24 established does not rise to the level of beyond a
25 reasonable doubt which is the State's burden, correct?

BRIAN METZ

1 A. That's correct.

2 Q. In fact as far as the burden of proof probable cause is
3 a much lower standard than beyond a reasonable doubt,
4 correct?

5 A. I'm not sure about the much lower but it's lower.

6 Q. And when you had this arrest of Mr. Carmichael, Jr. you
7 advised him verbally of his Miranda rights, correct?

8 A. That's correct.

9 Q. And no one was with you so if any comments was made
10 between you and him you couldn't -- because you were driving
11 you could not make any contemporaneous notes at that time,
12 correct?

13 A. That's correct.

14 Q. But you have come in today other than talking to
15 **victim 2** and her mom and Ms. **victim 1-** and her mom as
16 far as your effectuating the arrest and having the
17 interrogation of my client you advised him of his rights
18 verbally and written, right?

19 A. Right.

20 Q. And you said he signed it in front of you, right?

21 A. That's correct.

22 Q. You advised him that he had a right to remain silent,
23 correct?

24 A. That's correct.

25 Q. And he understood that.

BRIAN METZ

1 A. He did.

2 Q. You advised him if he said anything to you anything
3 that he said to you could be used against him in court,
4 correct?

5 A. That's correct.

6 Q. And you're in court now. You advised him that he had a
7 right to talk to a lawyer for advice before you asked him
8 any questions, right?

9 A. That's correct.

10 Q. And he could even have his lawyer present while you
11 were asking questions, correct?

12 A. That's correct.

13 Q. You even advised him that if he wants a lawyer but
14 can't afford it right then and there you would provide a
15 lawyer for him; is that right?

16 A. The State of South Carolina would, yes, sir.

17 Q. And even if he decides to start without a lawyer and if
18 he decides to stop at any time then you can no longer ask
19 him questions.

20 A. That's correct.

21 Q. And he signed it?

22 A. He did.

23 Q. He understood it as far as you were concerned?

24 A. Yes, sir.

25 Q. And he ended up signing again saying that he waived

BRIAN METZ

1 saying he was willing to talk and answer questions.

2 A. That's correct.

3 Q. You don't get to choose the answers that he gives,
4 right?

5 A. I do not.

6 Q. The only answers that he gives you take down. Well,
7 you didn't take down his answers though actually, did you?

8 MS. CAMPBELL: Objection, Your Honor. We have a matter
9 of law.

10 THE COURT: At this time, ladies and gentlemen, I will
11 ask that you step back in the jury room, don't begin any
12 discussions until such time as I ask you to do so.

13 (The jury left the courtroom.)

14 THE COURT: Yes, ma'am?

15 MS. CAMPBELL: Your Honor, I would just bring up at
16 this point -- we've been meticulous to make sure we don't
17 have any violations, at this point what is not in the record
18 yet is once he questioned him he gave those responses, at
19 that point they had a discussion about taking a polygraph
20 which initially he said, "Yes, I will take it." Then
21 immediately he said, "No, I don't want to take a polygraph
22 and I don't want to talk to you anymore without my attorney
23 being present and I don't want to answer any more
24 questions." So he invoked, so that's the reason that
25 nothing is reduced into writing. At this point I just

BRIAN METZ

1 didn't want to go any further because I think it might open
2 the door to some of that because that's the reason that
3 nothing was reduced to writing.

4 MR. SHADD: Sure.

5 MS. CAMPBELL: And we made sure that we didn't go into
6 any of that, of course, of a violation of his rights and I'm
7 just saying that at this point he's like, well, nothing was
8 reduced. And there is a very good explanation why it wasn't
9 reduced to writing because his client invoked and he
10 couldn't reduce anything to writing.

11 THE COURT: Do you want to leave that alone?

12 MR. SHADD: Absolutely.

13 THE COURT: All right. Bring the jury back.

14 (The jury returned to the courtroom.)

15 THE COURT: I have not made any rulings in the case,
16 just received some information. And at this time,
17 Mr. Shadd, you may proceed with your cross examination.

18 MR. SHADD: Thank you, Your Honor. May it please the
19 Court?

20 THE COURT: Yes, sir.

21 Q. Mr. Carmichael -- you again were asking questions again
22 of Mr. Carmichael. I believe you testified already that he
23 said that the people that were at the church were jealous of
24 him.

25 A. That's correct.

BRIAN METZ

1 Q. But he did not go into specifics about jealous of what,
2 right?

3 A. That's correct.

4 Q. He did not go into specifics about which people at the
5 church he was talking about.

6 A. That's correct.

7 Q. He did not identify whether it was children versus
8 adults, adults versus children, ministers, his pastor, he
9 didn't go in to any of that when he said, "They're just
10 jealous of me," or something to that affect I believe; is
11 that right?

12 A. That's correct.

13 Q. And that ended the conversation with you. The arrest
14 was already made and you had him to go wherever he needed to
15 go after you arrested him, right?

16 MS. CAMPBELL: Objection, Your Honor. May we approach?

17 THE COURT: You may.

18 (A bench conference was held.)

19 MR. SHADD: Your Honor, I will withdraw that last
20 convoluted question.

21 THE COURT: Thank you, Mr. Shadd. You can rephrase it
22 or ask another question.

23 Q. After April 10th of 2007 did you have any other --
24 other than coming to court or appearing in court, did you
25 have any other involvement in this case?

BRIAN METZ

1 A. Other than preparing for court, no, sir.

2 Q. Okay. No follow-up interview with victim 2 [REDACTED]

3 A. No, sir.

4 MR. SHADD: Thank you. That's all I have.

5 THE COURT: Redirect?

6 MS. CAMPBELL: Just a couple of questions.

7 THE COURT: Yes, ma'am.

8 REDIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q. He asked you about whether or not you knew if Ms. [REDACTED]
11 when she came to headquarters had any contact with any other
12 officers. Was it unusual for someone to come to the
13 sheriff's department to get advice about their rights?

14 A. It is not.

15 Q. And explain that to the jury a little bit.

16 A. I know it still goes on and it went on back when I was
17 on the desk. The officer working the desk, whether it be
18 the sergeant or just an officer, is often both receiving
19 phone calls or people that walk in the front door wanting to
20 know what they do about this. Sometimes it goes to the
21 point of, "We'll make a report now," sometimes it goes to
22 the point of, "Let's call an investigator now," and
23 sometimes it goes to a report of basically advice and this
24 is what you can do.

25 Q. He asked you about the arrest warrant, that you decide

1 if you have probable cause and, in fact, that's not correct,
2 is it? Who decides whether or not the arrest warrant is
3 issued?

4 A. The magistrate decides whether there's probable cause.

5 Q. And the dates that he's referring to as far as the
6 initial report from Ms. Sanders, what date did she actually
7 make the report?

8 A. Ms. Sanders actually made the report on 10-22 of '06.

9 Q. That would be October 22nd?

10 A. That's correct.

11 Q. Of '06?

12 A. That's correct.

13 Q. And then the contact with the SRO officer was how many
14 days later?

15 A. I believe it was four days later, that was on 10-26 of
16 '06.

17 Q. And then the phone call you referred to, the contact
18 you had with Ms. [REDACTED] would have been in that time period?

19 A. In that time period, yes.

20 MS. CAMPBELL: Thank you. Nothing further.

21 MR. SHADD: Very briefly.

22 THE COURT: Yes, sir, you may proceed.

23 RECROSS EXAMINATION

24 BY MR. SHADD:

25 Q. It's true that the magistrate decides whether there's

- 1 probable cause, right?
- 2 A. That's correct.
- 3 Q. But who gives the information to the magistrate?
- 4 A. I do.
- 5 Q. So you made the decision to give the information to the
- 6 magistrate which led to the magistrate deciding probable
- 7 cause, correct?
- 8 A. That's correct.
- 9 Q. You felt it was probable cause, otherwise you wouldn't
- 10 take it to the magistrate, correct?
- 11 A. That's correct.
- 12 Q. You made that decision.
- 13 A. I made the decision that it was presentable to the
- 14 judge, yes, sir.
- 15 Q. That it was presentable to the judge. Now, this
- 16 business of advice about rights from the sheriff's
- 17 department, is that notated anywhere? If a citizen just
- 18 comes up with their child and says, "I want to get advice
- 19 about what to do," is that notated anywhere?
- 20 A. It could be but as far as I know it was not.
- 21 Q. Did you find that in this case at all?
- 22 A. I did not.
- 23 Q. Okay. Do you recall Ms. [REDACTED] saying that she took her
- 24 Hchild and reported what happened then -- not that she was
- 25 seeking any advice, but that she took her child to be

victim 3

1 interviewed about it?

2 A. I don't recall her testimony on that.

3 Q. Okay.

4 MR. SHADD: Thank you.

5 THE COURT: Anything further from the State?

6 MS. CAMPBELL: No, sir.

7 THE COURT: You may step down, thank you, sir. The
8 State may call its next witness.

9 MS. CAMPBELL: The State would call victim 3

10 The witness, victim 3 was first duly
11 sworn and testified as follows:

12 THE COURT: State your name, please.

13 THE WITNESS: victim 3

14 THE COURT: I'll ask that you move closer to the
15 microphone and speak up, you have a soft voice when you took
16 the oath and I want to be sure everybody hears you. Your
17 witness, Ms. Campbell.

18 MS. CAMPBELL: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q. Ms. victim 3, how old are you?

22 A. Fourteen.

23 Q. And where do you school to school?

24 A. Blythewood High School.

25 Q. What grade are you in?

- 1 A. 9th.
- 2 Q. So you're in your first year of high school?
- 3 A. Yes, ma'am.
- 4 Q. Who are your parents?
- 5 A. Cynthia [REDACTED] and Patrick Robinson.
- 6 Q. And is Mr. Robinson actually your stepfather?
- 7 A. Yes, ma'am.
- 8 Q. And your mother's name is what?
- 9 A. Cynthia [REDACTED].
- 10 Q. And do you have any brothers and sisters?
- 11 A. Yes, ma'am.
- 12 Q. You do?
- 13 A. Yes, ma'am.
- 14 Q. And what are their names?
- 15 A. Fredrick, [REDACTED] S [REDACTED] and Jamise [REDACTED] S [REDACTED].
- 16 Q. Are they younger or older than you?
- 17 A. Older.
- 18 Q. How much older are your brothers than you?
- 19 A. My sister is four years from me and my brother is three
- 20 years.
- 21 Q. So it's one sister and one brother?
- 22 A. Yes, ma'am.
- 23 Q. What area of town do y'all live in?
- 24 A. Blythewood.
- 25 Q. How long have you lived in the Blythewood area?

victim 3

- 1 A. Well, we just moved.
- 2 Q. You just moved?
- 3 A. Yes, ma'am.
- 4 Q. Prior to that where did y'all live?
- 5 A. On [REDACTED].
- 6 Q. On [REDACTED] [REDACTED]?
- 7 A. Yes, ma'am.
- 8 Q. Was it actually on [REDACTED] [REDACTED] or a road that ran
- 9 off [REDACTED] [REDACTED]?
- 10 A. On [REDACTED].
- 11 Q. And do you know the defendant in this case, Mr.
- 12 Carmichael?
- 13 A. Yes, ma'am, I do.
- 14 Q. What name did you know Mr. Carmichael by?
- 15 A. Junior.
- 16 Q. And how did you know Mr. Carmichael?
- 17 A. By my stepfather.
- 18 Q. And what relationship did Junior have with your
- 19 stepfather?
- 20 A. I believe were really, really close.
- 21 Q. They were friends?
- 22 A. Yes, ma'am.
- 23 Q. Do y'all go to church?
- 24 A. Yes, ma'am.
- 25 Q. What church are you involved with?

victim 3

- 1 A. Grace Christian Church.
- 2 Q. Grace Christian Church?
- 3 A. Yes, ma'am.
- 4 Q. And have you been going there a long time?
- 5 A. Pretty much so.
- 6 Q. And is your family active in the church?
- 7 A. Yes, ma'am.
- 8 Q. And what kinds of things do you do when you go to
- 9 church?
- 10 A. Well I dance, I sing in the choir.
- 11 Q. You sing in the choir?
- 12 A. Yes, ma'am.
- 13 Q. And is music kind of a big part of y'all's life?
- 14 A. Kind of.
- 15 Q. It's part of church anyway.
- 16 A. Yes, ma'am.
- 17 Q. At school are you involved in any activities?
- 18 A. Yes, ma'am.
- 19 Q. What do you at school?
- 20 A. Leadership.
- 21 Q. As part of the leadership program what do you do?
- 22 A. We helped around the school and help set up for big
- 23 events and stuff.
- 24 Q. I want to turn your attention back to last year, okay?
- 25 A. Yes, ma'am.

victim 3

1 Q. Do you remember taking a trip with your stepdad and
2 Junior?

3 A. Yes, ma'am.

4 Q. Do you remember what day of the week it was?

5 A. On a Saturday.

6 Q. Was it on a Saturday --

7 A. Yes.

8 Q. -- as far as you know?

9 A. Yes, ma'am.

10 Q. And what were y'all doing that day?

11 A. We was taking a trip down to my grandmother's and
12 grandfather's.

13 Q. Slowdown just a little. Are you a little nervous
14 today?

15 A. Yes, ma'am.

16 Q. You all were taking a trip?

17 A. Yes, ma'am.

18 Q. And where did you say you were going?

19 A. (Pause.) I'm sorry.

20 Q. That's okay. Do you want some Kleenex? Are you okay?

21 A. We was taking a trip to my grandfather's and my
22 grandmother's.

23 Q. And who all was going on the trip that day?

24 A. My stepfather and Junior.

25 Q. Your stepfather and Junior? And what car were y'all

victim 3

- 1 going in, do you remember?
- 2 A. My mother's.
- 3 Q. And where do your grandparents live that y'all were
- 4 going to see?
- 5 A. In Denver, North Carolina, I believe.
- 6 Q. In where?
- 7 A. Denver, North Carolina.
- 8 Q. Denver, North Carolina?
- 9 A. Yes, ma'am, I believe so.
- 10 Q. And who was driving that day when you went up there to
- 11 see your grandparents?
- 12 A. Junior.
- 13 Q. And what car were y'all in?
- 14 A. My mother's.
- 15 Q. Your mother's car. And what kind of car is that, do
- 16 you remember?
- 17 A. Impala.
- 18 Q. It's an Impala?
- 19 A. Yes, ma'am.
- 20 Q. So that would be like a sedan like car?
- 21 A. It was a new car.
- 22 Q. It was a new car? What was the purpose of you going up
- 23 to see your grandparents?
- 24 A. We were going to a cookout.
- 25 Q. And was it unusual for Junior to go on family trips

victim 3

- 1 with y'all?
- 2 A. No, ma'am.
- 3 Q. And what time of day was it when you went up?
- 4 A. It was like the afternoon, daylight.
- 5 Q. And when you got up there did y'all have a cookout?
- 6 A. Yes, ma'am.
- 7 Q. Who all was there?
- 8 A. His cousins.
- 9 Q. Your stepdad's cousins?
- 10 A. Yes, ma'am.
- 11 Q. Family people you knew?
- 12 A. Yes.
- 13 Q. And was Junior there?
- 14 A. Yes, ma'am.
- 15 Q. And was everything pretty normal at that point?
- 16 A. Yes, ma'am.
- 17 Q. And did you feel comfortable with Junior up to that
- 18 point?
- 19 A. Yes, ma'am.
- 20 Q. How long did y'all stay up there, do you remember?
- 21 A. It was like for some hours.
- 22 Q. For some hours?
- 23 A. Yes.
- 24 Q. And eventually that same day did y'all leave to come
- 25 back?

victim 3

- 1 A. Yes, ma'am.
- 2 Q. Was it daylight or nighttime when y'all left?
- 3 A. Nighttime.
- 4 Q. So it was already dark when you left?
- 5 A. Yes, ma'am.
- 6 Q. On the way back who was driving?
- 7 A. My stepfather.
- 8 Q. Your stepfather?
- 9 A. Yes, ma'am.
- 10 Q. Where was Junior?
- 11 A. In the passenger seat.
- 12 Q. Passenger seat?
- 13 A. Yes, ma'am.
- 14 Q. In the front or the back?
- 15 A. In the front.
- 16 Q. Where were you?
- 17 A. In the back.
- 18 Q. Do you remember how long it took for y'all to get back?
- 19 A. It was some hours.
- 20 Q. Some hours? And while you were in the car and your dad
- 21 was driving and Junior was in the front, what were you doing
- 22 in the back seat?
- 23 A. Sleeping.
- 24 Q. And how were you positioned sleeping in the back seat
- 25 that day?

victim 3

- 1 A. Like this (indicating.)
- 2 Q. And you were sleeping?
- 3 A. Yes, ma'am.
- 4 Q. And do you know how long you were asleep?
- 5 A. I had been asleep for about an hour and then I woke up.
- 6 Q. What woke you up?
- 7 A. I thought it was my foot on my thigh but it wasn't.
- 8 Q. How was Junior positioned in the seat, in the passenger
- 9 seat at that point? Could you tell when you woke up?
- 10 A. Yes, ma'am. It was like the seat was laid back and his
- 11 hand was on the floor, it's like right there.
- 12 Q. His hand is on the floor. Would that be on the floor
- 13 in the front or the back?
- 14 A. In the back.
- 15 Q. And when you woke up you said you felt something where?
- 16 A. On my thigh and my cheek.
- 17 Q. On your thigh and -- did you say your cheek?
- 18 A. Right.
- 19 Q. Where your thigh meets what?
- 20 A. My butt.
- 21 Q. Okay. You can use that word. You felt something there
- 22 and at first you thought it was what?
- 23 A. My foot.
- 24 Q. But was it your foot?
- 25 A. No, ma'am.

victim 3

- 1 Q. And could you tell what was touching you?
- 2 A. Yes, ma'am.
- 3 Q. What was it?
- 4 A. His hand.
- 5 Q. Whose hand?
- 6 A. Junior's.
- 7 Q. What was his hand doing?
- 8 A. It was rubbing me.
- 9 Q. And where was it rubbing? You've got to say. Okay?
- 10 A. It was like going up and down my leg and he was
- 11 plucking my clothing.
- 12 Q. He was doing what, plucking your clothing?
- 13 A. Yes, ma'am.
- 14 Q. Could you tell what was happening?
- 15 A. Yes, ma'am. It was like he was trying to get in my
- 16 pants.
- 17 Q. In your which pants?
- 18 A. The bottom of my pants.
- 19 Q. The bottom of your pants or your underpants?
- 20 A. Both.
- 21 Q. What were you wearing that day?
- 22 A. It was a short romper.
- 23 Q. So was his hand up under the romper?
- 24 A. No, ma'am.
- 25 Q. Had he pushed it aside?

victim 3

- 1 A. No, ma'am.
- 2 Q. Had it pulled up, though?
- 3 A. Yes, ma'am.
- 4 Q. Then where in your butt was he attempting to get in?
- 5 A. It seemed like he was trying to get right here on my
- 6 cheek.
- 7 Q. And that would be back here towards the back?
- 8 A. Yes, ma'am.
- 9 Q. Did he actually touch your panties?
- 10 A. No.
- 11 Q. You said he was plucking at your clothing, though, so
- 12 was he trying to get under your clothing?
- 13 A. Yes, ma'am.
- 14 Q. Once you realized it's his hands as he was rubbing your
- 15 leg trying to get under your clothing, what did you do?
- 16 A. I was scared, I was just moving around.
- 17 Q. Why were you moving around?
- 18 A. My body trying to move his hand.
- 19 Q. What were you trying to do?
- 20 A. I was trying to get his hand off of me.
- 21 Q. Did he continue to try to touch you?
- 22 A. Yes.
- 23 Q. But there's no doubt that he was rubbing up and down
- 24 your leg plucking at your things trying to get in your
- 25 clothing.

victim 3

- 1 A. Yes.
- 2 Q. What was going through your mind?
- 3 A. I was scared, I didn't know what to do.
- 4 Q. You didn't know what to do? What were you scared of?
- 5 A. I was scared.
- 6 Q. Did you think it was okay for him to do that?
- 7 A. No.
- 8 Q. Did you say anything?
- 9 A. I didn't say anything.
- 10 Q. Where was your dad? Was he still driving?
- 11 A. Yes, ma'am.
- 12 Q. You were scared but you didn't say anything to your dad
- 13 at that point?
- 14 A. No, ma'am.
- 15 Q. Why didn't you say anything to your dad?
- 16 A. Because I was scared something was going to happen.
- 17 Q. Was Junior still in the car?
- 18 A. Yes, ma'am.
- 19 Q. After you had been moving around a little bit, did he
- 20 move his hand?
- 21 A. Yes, ma'am.
- 22 Q. Did he ever say anything to you?
- 23 A. No.
- 24 Q. Do you know how long his hand was there rubbing prior
- 25 to you waking up?

victim 3

- 1 A. I would say ten minutes.
- 2 Q. After that happened, after you moved around and got
3 away from his hand, did he continue to lay on the back of
4 the back seat?
- 5 A. Yes, ma'am.
- 6 Q. Did y'all make a stop shortly thereafter?
- 7 A. Yes, ma'am.
- 8 Q. And when this happened to you do you remember where
9 y'all were on the highway?
- 10 A. When I did look up we were passing the University of
11 Phoenix.
- 12 Q. The University of Phoenix?
- 13 A. Yes, ma'am.
- 14 Q. Y'all were coming down would it be I-77?
- 15 A. Yes, ma'am.
- 16 Q. And the touching and all of that occurred right before
17 what exit, do you remember?
- 18 A. It would have been after the University of Phoenix.
- 19 Q. Did y'all eventually exit off?
- 20 A. Yes, ma'am.
- 21 Q. Where did y'all exit off?
- 22 A. We went to a gas station, I forgot the exit number.
- 23 Q. Did y'all go into the gas station?
- 24 A. Not the first one.
- 25 Q. What is the first station you went do?

victim 3

- 1 A. It was a [REDACTED]
- 2 Q. And y'all didn't get out there?
- 3 A. No, ma'am. My dad was getting some gas.
- 4 Q. He was getting some gas there?
- 5 A. Uh-huh.
- 6 Q. So you stayed in the car?
- 7 A. Yes, ma'am.
- 8 Q. Did Junior stay in the car?
- 9 A. Yes, ma'am.
- 10 Q. Did you feel to scared to say anything?
- 11 A. Yes, ma'am.
- 12 Q. And then where did y'all go?
- 13 A. We went to the next gas station, to the Spinx?
- 14 Q. Why did y'all go there?
- 15 A. To get something for my sister.
- 16 Q. Had your sister made a phone call?
- 17 A. Yes.
- 18 Q. And she needed something?
- 19 A. Yes.
- 20 Q. And that was the Spinx?
- 21 A. Yes, ma'am.
- 22 Q. Did you get out of the car there?
- 23 A. Yes, ma'am.
- 24 Q. Where did you go?
- 25 A. Inside the gas station.

victim 3

- 1 Q. Is that when your father went inside the gas station?
- 2 A. Yes, ma'am, and we got out of the car.
- 3 Q. Did you say anything to your dad once you got out of
- 4 the car?
- 5 A. No, ma'am.
- 6 Q. And why is that?
- 7 A. Because I was scared.
- 8 Q. Did you know what to do?
- 9 A. I knew what to do but I was scared.
- 10 Q. After y'all went in to Spinx, did y'all get some stuff?
- 11 A. Yes, ma'am.
- 12 Q. Then what did y'all do?
- 13 A. We got in the car and dropped Junior off.
- 14 Q. And did you do that?
- 15 A. Yes, ma'am.
- 16 Q. Did you stay in the back seat?
- 17 A. Well, I got in the front seat.
- 18 Q. After he got out?
- 19 A. Yes, ma'am.
- 20 Q. And at that point did you say anything?
- 21 A. No, ma'am.
- 22 Q. Where did y'all go after you dropped Junior off?
- 23 A. We went home.
- 24 Q. And was your home pretty nearby there?
- 25 A. Yes, ma'am.

victim 3

- 1 Q. Do you remember what time of night it was?
- 2 A. Well, we left North Carolina at I believe 10:00.
- 3 Q. Ten something?
- 4 A. Yes.
- 5 Q. And do you know approximately what time it was when you
- 6 got home?
- 7 A. Like around 1:00 or 2:00.
- 8 Q. It was late?
- 9 A. Yes, ma'am.
- 10 Q. Once you got home was your mom still up?
- 11 A. I think she was sleeping.
- 12 Q. And what did you do?
- 13 A. Well, I went straight to my room and my sister asked me
- 14 what was going on, she knows when I am not okay and so she
- 15 asked me and I said, "Nothing, I just want to go to sleep."
- 16 Q. You want to go to sleep?
- 17 A. Yes, ma'am.
- 18 Q. Did you share a room with your sister?
- 19 A. Yes, ma'am.
- 20 Q. And it was late.
- 21 A. Yes, ma'am.
- 22 Q. The next morning when you got up what did y'all do?
- 23 A. We went to church.
- 24 Q. And would that be the Grace Christian Church?
- 25 A. Yes, ma'am.

victim 3

- 1 Q. And at that point when you went to church, did you say
2 anything to anybody?
- 3 A. Not at that point.
- 4 Q. And once you got to church tell the jury what happened.
- 5 A. Well, as soon as I got to church or --
- 6 Q. Describe to me what happened when you got to church.
- 7 A. When I got to church I went inside, saw Junior and I
8 was terrified and didn't want to look at him and I sat down
9 with my best friend.
- 10 Q. You sat down with your best friend?
- 11 A. Yes, ma'am. And he was leading the praise and worship
12 or whatever and my best friend saw me crying and she asked
13 me what was going on.
- 14 Q. And I'm sorry, she asked what? I know this is hard.
- 15 A. And she asked me what was going on and stuff because
16 she could see me crying so she took me to the bathroom and
17 then --
- 18 Q. Is this while church was going on?
- 19 A. Yes, ma'am. And then she took me into the bathroom and
20 she asked me what was going on and I told her I wanted to
21 see my mother.
- 22 Q. And where was your mother?
- 23 A. In the sanctuary.
- 24 Q. And is that where y'all were when you started crying?
- 25 A. Yes, ma'am.

victim 3

- 1 Q. And you weren't sitting with your mother when you
2 started crying.
- 3 A. No.
- 4 Q. Is that unusual, you not sitting with her?
- 5 A. No, the teens, we usually sat together.
- 6 Q. In a certain part of your church?
- 7 A. Yes, ma'am.
- 8 Q. And your mother and stepfather would be in a separate
9 part?
- 10 A. My stepfather plays the bongos.
- 11 Q. So he would have been up with the group playing.
- 12 A. Yes, ma'am.
- 13 Q. And who was leading the praise that day?
- 14 A. Junior.
- 15 Q. And you said you started crying and your friend saw it
16 so then y'all went to the bathroom.
- 17 A. Yes, ma'am.
- 18 Q. And once you got into the bathroom, what did you say to
19 her?
- 20 A. I was wanting her to go get my mother and then
21 Ms. Robin and Ms. Larissa came in.
- 22 Q. Ms. Robin came in.
- 23 A. Yes.
- 24 Q. And was anybody else in the bathroom at that point?
- 25 A. Ms. Alyssa.

victim 3

- 1 Q. When Ms. Robin came in what happened?
- 2 A. She asked me what was going on.
- 3 Q. And why was she asking you what was going on, what were
- 4 you doing?
- 5 A. I was crying.
- 6 Q. And then what happened?
- 7 A. I told her to get my mother so she went and got her and
- 8 I told my mom and she just went crazy.
- 9 Q. She went crazy? Was she upset?
- 10 A. Uh-huh.
- 11 Q. When you said you told your mom what did you tell your
- 12 mom?
- 13 A. That he had touched me.
- 14 Q. Once you told your mom she got upset?
- 15 A. Yes, ma'am.
- 16 Q. And then what happened?
- 17 A. Everybody just started coming out of the church and
- 18 Junior came out and he wanted to know what was happening.
- 19 Q. Wait a minute, let me back up. You were still in the
- 20 bathroom?
- 21 A. Yes, ma'am. I went out and my mama went out there.
- 22 Q. You went out and to the back to the where the church
- 23 was?
- 24 A. No, where the church -- I went around so it wouldn't be
- 25 a big scene in the church.

victim 3

- 1 Q. Because your mama's pretty upset.
- 2 A. Yes.
- 3 Q. Was she getting loud?
- 4 A. She was screaming.
- 5 Q. And then what happened? You said Junior came out?
- 6 A. Yes.
- 7 Q. And were you able to stay away from him?
- 8 A. Yes, ma'am, they took me outside.
- 9 Q. They took you outside. And who took you outside?
- 10 A. I don't remember.
- 11 Q. You don't remember? And then what happened?
- 12 A. Junior came out and my stepfather came out also and
- 13 asked what was happening and someone told him and he just
- 14 started crying.
- 15 Q. He started crying? Did y'all leave the church?
- 16 A. Yes, ma'am.
- 17 Q. And who all left with you?
- 18 A. My sister, my mother and my brother.
- 19 Q. And when y'all left where did you go?
- 20 A. Home.
- 21 Q. And do you know whether later that day they got in
- 22 touch with the police?
- 23 A. Yes, ma'am.
- 24 Q. Later on did they get you to go to The ARC to give an
- 25 interview?

victim 3

- 1 A. Yes, ma'am.
- 2 Q. And did you tell the people there what happened?
- 3 A. Yes, ma'am.
- 4 Q. Just like you are telling these people today?
- 5 A. Yes, ma'am.
- 6 Q. And did they also get you to go through some
- 7 examinations and stuff?
- 8 A. Yes, ma'am.
- 9 Q. Since then have you also been seeing -- since all of
- 10 this happened did you also go see a counselor?
- 11 A. Yes, ma'am.
- 12 Q. And why were you going to see a counselor?
- 13 A. To help me deal with issues.
- 14 Q. Issues? Because of what happened?
- 15 A. Yes, ma'am.
- 16 Q. The person that touched you in the car with your dad
- 17 there while you were asleep and was trying to get in your
- 18 pants, do you see him in the courtroom?
- 19 A. Yes, ma'am.
- 20 Q. Can you point him out for the jury?
- 21 A. (Witness complies.)
- 22 Q. Can you say what he is wearing?
- 23 A. A brown suit.
- 24 MS. CAMPBELL: Your Honor, can the record reflect that
- 25 she's identifying the defendant?

victim 3

1 THE COURT: The record will so reflect.

2 MS. CAMPBELL: Thank you.

3 THE COURT: Your witness, Mr. Shadd.

4 CROSS EXAMINATION

5 BY MR. SHADD:

6 Q. victim 3, how old are you?

7 A. Fourteen.

8 Q. And you live with your mom and your stepfather, Patrick
9 Robinson; is that right?

10 A. Yes, sir.

11 Q. You have two siblings?

12 A. Yes, sir.

13 Q. They're both older than you?

14 A. Yes, sir.

15 Q. Your oldest sister is -- what's her name?

16 A. Jamise.

17 Q. Jamise.

18 A. Yes, sir.

19 Q. With an M?

20 A. Yes.

21 Q. Okay. And Jamise is how old, 18?

22 A. Yes, sir.

23 Q. Now, how long have your mother and Mr. Robinson been
24 married?

25 A. I don't know.

victim 3

- 1 Q. How old were you when they got married?
- 2 A. I don't remember.
- 3 Q. Was it before you took the trip -- obviously it was
- 4 before you took the trip to North Carolina, correct?
- 5 A. Yes, sir.
- 6 Q. Do you know how long they had been married by that
- 7 time?
- 8 A. No.
- 9 Q. Did you ever attend Bible Way Piedmont?
- 10 A. No, sir.
- 11 Q. Just Grace Church?
- 12 A. Yes, sir.
- 13 Q. That's the only church you've attended?
- 14 A. Yes, sir.
- 15 Q. Who is your pastor?
- 16 A. Aaron Bishop.
- 17 Q. Aaron Bishop that was here Monday that was sitting with
- 18 you all?
- 19 A. Yes, sir.
- 20 Q. On Monday?
- 21 A. Yesterday.
- 22 Q. Oh, yesterday. Yes, that's right, yesterday. Thank
- 23 you. And David Carmichael, Jr. last year went to Grace
- 24 Christian Church, correct?
- 25 A. Yes, sir.

victim 3

- 1 Q. In fact, he was the minister of music, right?
- 2 A. Yes, sir.
- 3 Q. He was appointed by -- is Aaron Bishop a Bishop yet?
- 4 Is that his title?
- 5 A. Yes.
- 6 Q. Do you remember when his father was alive?
- 7 A. No.
- 8 Q. You probably wasn't attending church there then.
- 9 A. No, sir.
- 10 Q. And when Mr. Carmichael was the minister of music he
- 11 appointed your father as head of the -- well, let me back
- 12 up. Who was the head of the children's choir?
- 13 A. My father.
- 14 Q. And who decided for your father to be the head of the
- 15 children's choir?
- 16 A. I don't know.
- 17 Q. You don't know?
- 18 A. No, sir.
- 19 Q. Okay. And your father also plays instruments.
- 20 A. Yes, sir.
- 21 Q. Does he sing?
- 22 A. Yes, sir.
- 23 Q. He has known your -- he has known the minister of
- 24 music, David Carmichael, for several years, correct?
- 25 A. I believe so.

victim 3

- 1 Q. And it's also true that Mr. Robinson and Mr. Carmichael
2 attended Bible Way Piedmont, correct?
- 3 A. Yes, sir.
- 4 Q. Your mom obviously knows Mr. Carmichael, too.
- 5 A. Yes, sir.
- 6 Q. And they knew him in 2011, right?
- 7 A. Yes, sir.
- 8 Q. In fact, you have known Mr. Carmichael since you were
9 nine years old, right?
- 10 A. Yes, sir.
- 11 Q. When you were nine he didn't touch you, correct?
- 12 A. No, sir.
- 13 Q. When he was ten -- when you were ten he didn't touch
14 you, correct?
- 15 A. Correct.
- 16 Q. When you were 11 he didn't touch you, correct?
- 17 A. Correct.
- 18 Q. When you were 12 he didn't touch you, correct?
- 19 A. Correct.
- 20 Q. But when you were 13 in November -- I'm sorry, August
21 of 2011 you said that he touched you.
- 22 A. Yes, sir.
- 23 Q. Mr. Carmichael was so close to you all that you all had
24 him to go on family vacations with you, correct?
- 25 A. Yes, sir.

victim 3

1 Q. Was there ever any time during these family vacations
2 that Mr. Carmichael and you were alone?

3 A. No, sir.

4 Q. Was there ever any time since you have known Mr.
5 Carmichael that Mr. Carmichael babysat you or watched over
6 you?

7 A. No. When he just came over and either my mom or
8 someone from my family was there.

9 Q. Okay. But even on those occasions was it that your
10 family had left and went to the grocery store or women's
11 gathering or what have you and you were alone with
12 Mr. Carmichael? Ma'am?

13 A. Can you repeat that, please?

14 Q. I'm trying to find out if when you were -- when he was
15 at your house was there a time -- and I know you said not
16 babysitting, but was there a time where he, you know,
17 watched over you, watched over your brother, watched over
18 your sister and your family was not there, your adult family
19 was not around.

20 A. Yes.

21 Q. There were times?

22 A. Yes, sir.

23 Q. There was?

24 A. Yes.

25 Q. And did he touch you during those occasions?

victim 3

- 1 A. No, sir.
- 2 Q. Now, you all went to a family gathering, actually it
- 3 was Mr. Robinson's family, correct?
- 4 A. Yes, sir.
- 5 Q. What was the name of the city?
- 6 A. Denver.
- 7 Q. Denver?
- 8 A. I believe so.
- 9 Q. Denver, North Carolina.
- 10 A. Yes, I believe so.
- 11 Q. Is that past Charlotte?
- 12 A. Yes.
- 13 Q. In fact, it's about a three hour drive, correct?
- 14 A. Yes.
- 15 Q. Three, maybe four depending on how fast they were
- 16 driving, right?
- 17 A. Yes, sir.
- 18 Q. And I want to make sure I am clear. When you were
- 19 speaking to Ms. Campbell you said when you all took a trip
- 20 back to Columbia you went to sleep for about an hour, right?
- 21 A. Yes, sir.
- 22 Q. So when you went to sleep in about an hour you said you
- 23 were awakened by something on your thigh.
- 24 A. Yes.
- 25 Q. After this hour of sleep?

victim 3

- 1 A. Yes.
- 2 Q. And you knew it was an hour because you looked at the
3 clock, right?
- 4 A. Yes.
- 5 Q. And you knew what time you had left, which was about
6 10:00.
- 7 A. Yes.
- 8 Q. At least between 10:00 and 11:00; is that right?
- 9 A. Yes.
- 10 Q. And so after this hour that you were asleep and you
11 said that you were awakened by something, y'all were still
12 in the car driving, correct?
- 13 A. Yes, sir.
- 14 Q. Now, let me ask you this, victim 3, when you are riding
15 in a car for awhile and your parents or whoever is driving
16 decide to stop and get off the exit and then go to a gas
17 station or restaurant or what have you, do you normally wake
18 up or do you still stay asleep?
- 19 A. I normally wake up.
- 20 Q. Just the fact that you're no longer traveling for a
21 continuous amount of time that usually wakes you up,
22 correct?
- 23 A. Yes.
- 24 Q. Unless they say, "Okay, victim 3, wake up, time to use
25 the bathroom," what have you; is that right?

victim 3

1 A. Yes.

2 Q. But you're saying on this occasion you awoke while you
3 were still on the interstate.

4 A. Yes.

5 Q. And you had to take Interstate 77 out of North Carolina
6 to come back into South Carolina; is that correct?

7 A. Yes, sir.

8 Q. And this was once again an hour after you went to sleep
9 when you all first started taking your trip to Denver, North
10 Carolina, correct?

11 A. Yes.

12 Q. Which is a three or four hour drive, correct?

13 A. Yes, sir.

14 Q. Now, before this trip do you remember going to a
15 cookout that -- you call him Junior --

16 A. Yes, sir.

17 Q. -- that Junior took you to with him, right?

18 A. Sir?

19 Q. Did Junior take you to a cookout with you and Kayla

20 I?

21 A. Yes, sir.

22 Q. Do you remember that?

23 A. Yes, sir.

24 Q. How old is Kayla?

25 A. I believe she's 14 now.

victim 3

- 1 Q. How is Kayla related -- is Kayla related to you?
- 2 A. No, sir.
- 3 Q. Is she related to Junior?
- 4 A. Yes.
- 5 Q. That's his niece or cousin?
- 6 A. Cousin.
- 7 Q. His cousin?
- 8 A. Yes.
- 9 Q. So y'all are roughly the same age.
- 10 A. Yes, sir.
- 11 Q. And this was shortly before y'all took the trip with
- 12 your stepfather to his family in Denver, North Carolina,
- 13 correct?
- 14 A. I believe so.
- 15 Q. Okay. Do you remember that you wore a green outfit on
- 16 that day?
- 17 A. No, sir, I don't remember.
- 18 Q. You don't remember what you were wearing on that day?
- 19 A. No, sir.
- 20 Q. And you all went to -- do you know whose house you went
- 21 to?
- 22 A. I guess his friend's I guess, I don't know.
- 23 Q. And that friend would be -- well, you knew some of the
- 24 people that were there, right?
- 25 A. I knew one person that was there.

victim 3

- 1 Q. Clarence?
- 2 A. Yes, sir.
- 3 Q. Who is Clarence?
- 4 A. A man, I guess.
- 5 Q. Okay. Who is he in relation to Grace Christian Church?
- 6 A. I don't know.
- 7 Q. You don't know if he plays the drums at the church?
- 8 A. I saw him play the drums there.
- 9 Q. Okay. And do you remember a lady whose house you all
- 10 were at, and I don't know if you know this, that he was
- 11 dating her, he is dating her.
- 12 A. Yes, sir. I don't know her name but I know of her.
- 13 Q. Okay. You know of her. And you saw her that day,
- 14 correct?
- 15 A. Yes, sir.
- 16 Q. Do you remember, victim 3, that there were other people
- 17 at this cookout?
- 18 A. No. You mean in the house?
- 19 Q. In and out of the house.
- 20 A. It was me, Junior, Shakala.
- 21 Q. You, Junior, Shakala, these two people Clarence, and
- 22 his fiancée.
- 23 A. Yes.
- 24 Q. Those are the only people you remember?
- 25 A. And the people that I was talking to outside.

victim 3

- 1 Q. Okay. The people that you were talking to outside, do
2 you remember their names?
- 3 A. No, sir.
- 4 Q. Were they male or female or both?
- 5 A. Males.
- 6 Q. Why were you outside talking to the males, victim 3?
- 7 A. Because those are my brothers friends and I -- I was
8 asking -- they asked me if they knew them and I said no and
9 I asked them if they knew my stepbrother and they said yeah
10 and that's when we started the conversation.
- 11 Q. Did they tell you how old they were?
- 12 A. Yes.
- 13 Q. How old?
- 14 A. They were 15 or 16.
- 15 Q. How many boys are we talking about?
- 16 A. There was three.
- 17 Q. None of them were 18 or 19?
- 18 A. No, sir.
- 19 Q. Okay. Do you remember Junior coming outside and being
20 upset about you having conversations with these boys?
- 21 A. Yes, sir.
- 22 Q. Do you remember the boys telling him how old you said
23 you were?
- 24 A. Yes, sir.
- 25 Q. How old did they say you said you were?

victim 3

- 1 A. Thirteen.
- 2 Q. Thirteen years old?
- 3 A. Yes, sir.
- 4 Q. Okay. Not 17?
- 5 A. No, sir.
- 6 Q. Was David upset with those boys for talking to you?
- 7 A. Yes, he was.
- 8 Q. Do you agree that that was appropriate for him to be
- 9 that way since he was in an uncle figure?
- 10 A. No, sir.
- 11 Q. In fact, you called him uncle, didn't you?
- 12 A. Yes, sir.
- 13 Q. Him and Patrick are like brothers, correct?
- 14 A. Yes, sir.
- 15 Q. Did David tell you that he was going to tell your mom
- 16 about you having conversations with these boys?
- 17 A. Yes, sir.
- 18 Q. How did that make you feel?
- 19 A. I wouldn't feel bad about it because I know of them
- 20 because they were my brother's friends.
- 21 Q. But you didn't know them before that day, did you?
- 22 A. No.
- 23 Q. Just because they're friends of your brother's doesn't
- 24 mean they have good intentions for you, correct?
- 25 A. Correct. But I wasn't doing anything wrong.

victim 3

- 1 Q. And you disagreed with him that you weren't doing
2 anything wrong.
- 3 A. I disagreed.
- 4 Q. Did you go and tell your mom that you were talking to
5 boys that you had not met before at a cookout?
- 6 A. No, sir.
- 7 Q. Were you upset with David because he was threatening to
8 tell your mom that you were outside talking to boys while he
9 was inside?
- 10 A. No, sir.
- 11 Q. Were you -- you didn't think you would get in trouble
12 if he told your mom that?
- 13 A. No sir, because I didn't do anything wrong.
- 14 Q. Right. You didn't feel like you did anything wrong,
15 but the fact that he was going to tell because he thought
16 what you did was wrong, you didn't think you were going to
17 get in trouble for that?
- 18 A. Well, I might get yelled at for talking to them but I
19 know I didn't do anything wrong.
- 20 Q. Again, I'm not talking about the kind of punishment you
21 would get, but you would get in trouble.
- 22 A. No, I don't think so.
- 23 Q. You don't get yelled at for not being in trouble, do
24 you?
- 25 A. I do, but I don't see what I did wrong.

victim 3

1 Q. To this day you don't see anything wrong?

2 A. No.

3 Q. Now, I'm curious, at this time were you still getting
4 spankings?

5 A. Pretty much, yes, sir.

6 Q. What do you mean by pretty much?

7 A. Like I don't get in any trouble when I don't do
8 anything wrong.

9 Q. Okay. What about Jamise, was she still getting in
10 trouble with your mom and getting spankings?

11 A. I don't know.

12 Q. You don't know? You weren't present when --

13 MS. CAMPBELL: Objection, Your Honor, relevance to this
14 line of questioning.

15 THE COURT: Relevance to the line of questioning?

16 MR. SHADD: Well --

17 THE COURT: I will sustain the objection, you can move
18 onto some other line of questioning. Or were you --

19 MR. SHADD: Yes, sir, I can explain.

20 THE COURT: Okay. I was waiting.

21 MR. SHADD: Okay. All right. There is a concern, Your
22 Honor, that Ms.

victim 3

 --

23 MS. CAMPBELL: Your Honor, may we approach?

24 THE COURT: You may.

25 (A bench conference was held.)

victim 3

- 1 THE COURT: You may proceed.
- 2 MR. SHADD: Thank you, Your Honor.
- 3 Q. Were you aware of your mom disciplining your sister
- 4 about boys?
- 5 A. Yes, sir.
- 6 Q. And David had threatened to tell your mom about your
- 7 contact with boys, correct?
- 8 A. Yes, sir.
- 9 Q. And so then we get to in August when you go take this
- 10 trip with your stepfather. Okay. Y'all went up for the
- 11 trip. Who drove?
- 12 A. On the way there?
- 13 Q. Yes.
- 14 A. Junior.
- 15 Q. And your father, I'm assuming, sat in the passenger
- 16 side, correct?
- 17 A. Yes, sir.
- 18 Q. Did he go to sleep on the way up there?
- 19 A. He was tired but I don't recall him going to sleep.
- 20 Q. He probably gave Junior directions on how to get up
- 21 there, right? On the way -- well, then you all had a good
- 22 time and enjoyed time with his family, with Mr. Robinson's
- 23 family, correct?
- 24 A. Yes, sir.
- 25 Q. And y'all were wore out, right?

victim 3

- 1 A. Yes, sir.
- 2 Q. And you and Junior fell asleep on Mr. Robinson driving
- 3 back, correct?
- 4 A. Yes, sir.
- 5 Q. Did you go to sleep before or after Junior went to
- 6 sleep?
- 7 A. I went before.
- 8 Q. Okay. So what, he was just talking to your father
- 9 or -- he was?
- 10 A. Yes, sir.
- 11 Q. Okay. And so when you woke up and you saw him
- 12 obviously still on the passenger side he was turned towards
- 13 the window, right?
- 14 A. Yes, sir.
- 15 Q. Now, you said his seat was back or sometimes we say
- 16 reclined.
- 17 A. Yes, sir.
- 18 Q. And he is turned to the right towards the window,
- 19 correct?
- 20 A. Yes, sir.
- 21 Q. You confirm that?
- 22 A. Yes, sir.
- 23 Q. And this Impala, it's a four door car or two?
- 24 A. Four.
- 25 Q. So in order for you to get in the back seat you go

victim 3

- 1 through the back door.
- 2 A. Yes, sir.
- 3 Q. And you sat directly behind your stepfather, correct?
- 4 A. Yes, sir.
- 5 Q. And what you wore on the way home, that was what you
- 6 wore that day, right? You didn't change clothes or
- 7 anything.
- 8 A. Yes.
- 9 Q. And you wore, what is it called again, a rompa who?
- 10 A. A rumper (sic.)
- 11 Q. A rumper, r-u-m-p-e-r.
- 12 A. I believe so, yes.
- 13 Q. And I'm sorry, what is a rumper? Can you describe that
- 14 for us?
- 15 A. It's like a one piece.
- 16 Q. It's a one piece. Okay. And is it like a leotard or
- 17 is it --
- 18 A. It's like strapless and it was like -- my romper was
- 19 short.
- 20 Q. Short at the top or short at the bottom or both?
- 21 A. Bottom.
- 22 Q. How short?
- 23 A. It was like short like -- not short, short, but it was
- 24 short.
- 25 Q. Okay. And this is a one piece, right?

victim 3

1 A. Yes.

2 Q. I just want to make sure, it's not two pieces like a
3 shirt and shorts, this is a one piece. Okay. And your
4 testimony is that he went -- David, that he woke you, he was
5 asleep, he had his hand -- let me back up, I'm sorry.
6 Between the two seats, is there anything between the two
7 seats, the two front seats?

8 A. No, sir.

9 Q. There is no parking brake, there's no console?

10 A. Yeah, it's that too.

11 Q. That's all right. It's that too? What do you mean,
12 the parking brake or the console that you put your change --

13 A. Yes, sir.

14 Q. Both?

15 A. Yes, sir.

16 Q. The parking brake as well as the -- okay. So there
17 is -- is the console about this size?

18 A. No, it was bigger than that.

19 Q. So if -- let's just say for right now if Junior is
20 sitting up straight facing the car he would be able to put
21 his arm on that -- I think you can call it an arm rest,
22 right?

23 A. Yes, sir.

24 Q. Your stepfather could also put his arm on the arm rest
25 or they would probably have their elbows touching on top of

victim 3

- 1 each other, right?
- 2 A. Yes, sir.
- 3 Q. So it's not wide enough to where Junior can have his
- 4 elbow there and Mr. Robinson can have his elbow there,
- 5 correct?
- 6 A. Correct.
- 7 Q. You have ridden with your father before, correct?
- 8 A. Yes, sir.
- 9 Q. When he drives does he put his arm on the arm rest
- 10 sometimes?
- 11 A. Sometimes, not all of the time.
- 12 Q. Right, not all of the time. Okay. Do you know if he
- 13 had put his arm on the arm rest any time during this three
- 14 to four hour drive from Denver?
- 15 A. No, sir.
- 16 Q. Part of it you was asleep, right?
- 17 A. Yes, sir.
- 18 Q. So with the arm rest and the parking brake in between
- 19 Mr. Robinson and Mr. Carmichael and with you directly behind
- 20 Mr. Robinson, your testimony is that Mr. Carmichael put his
- 21 right hand or his left hand behind him?
- 22 A. His left.
- 23 Q. He put his left hand behind him and reached back over
- 24 the console and had his hand on the floor?
- 25 A. First it was on the floor.

victim 3

1 Q. How do you know that first it was on the floor if you
2 went to sleep before he did?

3 A. I woke up -- because there was times I was waking up
4 and I fell back to sleep.

5 Q. And so when you woke up and fell back to sleep on some
6 of those times you saw his hand behind what, his seat?

7 A. No, the driver's seat.

8 Q. So behind -- okay. So the console was there, your dad
9 is in front of you and Mr. Carmichael has his arm not behind
10 your dad like where his head is and his back, not behind the
11 seat, not on the seat which is behind him, but on the floor
12 which is behind the seat.

13 A. Yes.

14 Q. On the floorboard.

15 A. Yes.

16 Q. As you said still facing the window, turned to the
17 window facing the right hand side; is that correct?

18 A. Yes.

19 Q. So you saw it there so you were aware that his hand was
20 there.

21 A. Yes, sir.

22 Q. You're not able to tell us the distance between your
23 seat and your father's seat, right, or are you?

24 A. No, sir. But the car is really small, it's not a big
25 space of feet in there.

- 1 Q. An Impala?
- 2 A. It's like a new one and the feet space is not that big.
- 3 Q. Okay. And so when you woke up one of these times you
- 4 thought that your foot was hitting your thigh.
- 5 A. Yes.
- 6 Q. Not your butt but your thigh.
- 7 A. Yes.
- 8 Q. But didn't you testify earlier that your feet were
- 9 spread out on the back seat, at least I thought you
- 10 demonstrated that. I'm sorry, I didn't get a --
- 11 A. No.
- 12 Q. Okay. Where were your feet?
- 13 A. Up under my thigh.
- 14 Q. Both of them?
- 15 A. Yes, sir.
- 16 Q. Sort of like criss cross applesauce?
- 17 A. It was like up against my thigh. I was hugging my legs
- 18 because I was cold.
- 19 Q. Because you were cold. No blanket or anything, no
- 20 jacket and you were wearing this one piece romper.
- 21 A. Yes.
- 22 Q. Did you tell them to turn the heat up or --
- 23 A. No. Because the window was down, it was hot outside.
- 24 Q. Your window was down or his window was down?
- 25 A. I put my window up and it was like the two front

victim 3

1 windows was down.

2 Q. So your feet were -- when you decided to go to sleep
3 because you were cold and you were hugging your legs your
4 foot was by your bottom, right?

5 A. Yes, and it wasn't touching.

6 Q. You wasn't huddled up and cold and your foot was not
7 touching your bottom or your thigh?

8 A. No, sir.

9 Q. But you said it was Junior's and Junior was trying,
10 according to you, to get inside your shorts.

11 A. Yes.

12 Q. But did not. He didn't say anything, right?

13 A. No, sir.

14 Q. You didn't say anything, right?

15 A. No, sir.

16 Q. And I believe you said this, you continued to play it
17 off as if you were still asleep?

18 A. Yes, sir.

19 Q. But that didn't necessarily encourage you to continue
20 because according to you he stopped.

21 A. Yes, because I was moving around.

22 Q. You was probably moving around the whole trip, weren't
23 you? You was cold.

24 A. I was already moving around but I was moving around
25 because his hand was on my thigh.