

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Clarendon County

Ralph F. Cothran, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

CHARLIE BELSER,

APPELLANT

APPELLATE CASE NO. 2013-000341  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

KATHRINE H. HUDGINS  
Appellate Defender

South Carolina Commission on Indigent Defense  
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ATTORNEY FOR APPELLANT

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SC Court of Appeals

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... 1

TABLE OF AUTHORITIES ..... 2

STATEMENT OF ISSUE ON APPEAL ..... 3

STATEMENT OF THE CASE ..... 4

ARGUMENT ..... 5

CONCLUSION ..... 8

PETITION TO BE RELIEVED AS COUNSEL ..... 9

**TABLE OF AUTHORITIES**

**Cases**

Chapman v. Associated Transport, Inc., 218 S.C. 554, 63 S.E.2d 465 (1951)..... 6

Gantt v. Belk-Simpson Co., 172 S.C. 353, 174 S.E. 1 (1934)..... 6

State v. Hammond, 270 S.C. 347, 242 S.E.2d 411 (1978) ..... 6

State v. Harrison, 236 S.C. 246, 113 S.E.2d 783 (1960) .....7

**Statutes**

S.C. Code §16-3-655(B)(2)..... 6

**STATEMENT OF ISSUE ON APPEAL**

Did the trial judge err in allowing the State to re-open the case and introduce evidence of Appellant's age in a trial for criminal sexual conduct with a minor second degree when one of the elements of the crime is that Appellant is older than eighteen (18) years of age?

## STATEMENT OF THE CASE

In October of 2011, the Clarendon County Grand Jury indicted Belser for criminal sexual conduct with a minor second degree, indictment #2011-GS-14-480. On January 28, 2013, Belser proceeded to jury trial before the Honorable R. Ferrell Cothran. Attorney Scott Robinson represented Belser at trial. Attorney Christopher Durant prosecuted the case on behalf of the State. The jury returned a verdict of guilty and Judge Cothran sentenced Belser to fifteen (15) years. A timely notice of intent to appeal was served on February 7, 2013. This appeal follows.

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## ARGUMENT

The trial judge erred in allowing the State to re-open the case and introduce evidence of Appellant's age in a trial for criminal sexual conduct with a minor second degree when one of the elements of the crime is that Appellant is older than eighteen (18) years of age.

The indictment alleges, "That in Clarendon County, South Carolina, between the dates of July 29, 2011, through August 13, 2011, the defendant, Charlie Lamont Belser, did commit a non-consensual sexual battery upon a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: did have sexual intercourse with the victim numerous times, minor's date of birth: age 14, and the defendant, date of birth: November XX, 1982, was older than 18 years of age, in violation of Section 16-3-655(2), South Carolina code of laws, 1976, as amended." (R. p. 316).

The minor testified at trial. (R. pp. 41-95). Appellant's DNA was found on a pair of panties alleged to have been worn by the minor after intercourse with Appellant. (R. pp. 127-128; p. 197, lines 10-17). The female DNA found in the panties was insufficient for identification. (R. p. 202, lines 19-25). The minor's mother admitted having a physical relationship with Appellant. (R. p. 111, lines 14-16).

The State rested and then almost immediately moved to re-open the case. (R. pp. 209-225). Appellant objected. (R. p. 212, lines 10-23). The State proffered the testimony of Investigator Ricky Richards with the Clarendon County Sheriff's Department. (R. pp. 225-227). Investigator Richards testified that Appellant told him he was twenty nine (29) years of age at the time the allegation was made. (R. p. 227, lines 12-20). Appellant objected arguing that the statement constituted inadmissible hearsay. (R. p. 232, line 20 – p. 233, lines 1-13). The judge overruled the objection and the State was allowed to recall Investigator Richards to testify, before the jury, that Appellant told him

he was twenty nine (29) years of age at the time the allegation was made against him. (R. p. 257, lines 1-8). The trial judge abused his discretion in allowing the State to recall Investigator Richards to establish an element of the crime.

S.C. Code §16-3-655(B)(2) provides that a person is guilty of criminal sexual conduct second degree if:

the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.

In order to prove criminal sexual conduct with a minor second degree the State must prove that the actor is either in a position of familial, custodial or official authority to coerce or is older than eighteen years of age. The indictment alleges that Appellant is older than eighteen years of age. Prior to closing, however, the State offered no evidence that Appellant was over eighteen. If the State had not recalled Investigator Richards and Appellant had moved for a directed verdict because the State failed to prove that Appellant was over eighteen years of age, an element of criminal sexual conduct second degree, the judge would have erred if he had not directed a verdict of acquittal.

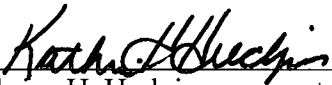
In State v. Hammond, 270 S.C. 347, 355-356, 242 S.E.2d 411, 415, the South Carolina Supreme Court wrote, "We have held that the decision to allow a case to be reopened and additional evidence presented is a matter within the trial judge's discretion. Chapman v. Associated Transport, Inc., 218 S.C. 554, 63 S.E.2d 465 (1951); Gantt v. Belk-Simpson Co., 172 S.C. 353, 174 S.E. 1 (1934). Since the additional testimony was merely corroborative of the previous testimony and presented no new evidence, we fail to see how Hammond could have been

prejudiced thereby.” In the present case the additional testimony was not merely corroborative and presented new evidence, specifically an element of the offense the State failed to prove before closing. The judge’s decision to allow the State to recall Investigator Richards to establish an element of the offense not proven before the State closed constituted an abuse of discretion. But see State v. Harrison, 236 S.C. 246, 113 S.E.2d 783 (1960).

**CONCLUSION**

Based on the above argument, the sentence and conviction should be reversed and the case remanded for a new trial.

Respectfully submitted,

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of January, 2014.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Clarendon County  
Ralph F. Cothran, Circuit Court Judge

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APPELLATE CASE NO. 2013-000341

---

PETITION TO BE RELIEVED AS COUNSEL


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Counsel for Charlie Belser states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Ralph F. Cothran, which was held on January 30, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Charlie Belser.

Respectfully submitted,

  
Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of January, 2014.

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**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

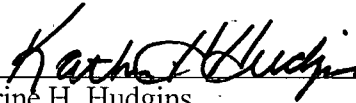
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) Trial transcript.

I certify that this designation contains no matter which is irrelevant to this appeal.

January 15th, 2014



Kathrine H. Hudgins  
Appellate Defender

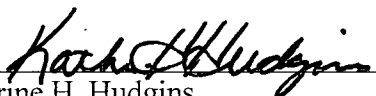
South Carolina Commission on Indigent Defense  
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PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 15, 2014

  
\_\_\_\_\_  
Kathrine H. Hudgins  
Appellate Defender

S.C. Commission on Indigent Defense  
Division of Appellate Defense  
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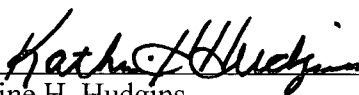
APPELLATE CASE NO. 2013-000341

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CERTIFICATE OF SERVICE

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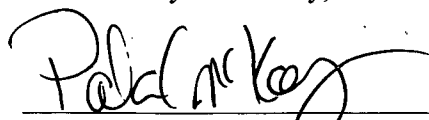
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Charlie Belser, #331210 at McCormick Correctional Institution, this 15th day of January, 2014.



Kathrine H. Hudgins  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 15th day of January, 2014.



(L.S.)

Notary Public for South Carolina  
My Commission Expires: July 24, 2022.