

Clerk Jenny A. Kitchings
S.C. Court of Appeals
P.O. Box 11629
Colo. SC 29211

Date: February 21, 2014

Dear Clerk Kitchings

Please find enclosed for filing my
pro-se brief.

Would you be so kind as to return me back
a filed copy -

Thanking you in advance.

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FEB 26 2014
SC Court of Appeals

Sincerely

Charlie Buben # 331210

PROOF OF SERVICE

I Charlie Belser certify that I have
served my pro-se brief upon the below Hon.
Clerk of Ct. By placing the above said into
the Mc Corr. Inst. mail room on this 21st
day of February to be placed in the U.S. mail

with postage prepaid
Clerk, Jeany A. Kitchings
S. C. Court of Appeals

P.O. Box 11629

Colo SC 29211

SWORN to before me

this 21 day of Feb 2014

J. Francis

Notary Public

my Commission Expires 12-16-2019

s/ Charlie Belser

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SC Court of Appeals

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

PRO SE BRIEF
No # 2013-000341

Charlie Belser #331210
McC.I./F.B.B - 214
386 Redemption Way
McCormick SC 29899

Appellate Defender for Appellant
Kathrine A. Hudgins
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SC Court of Appeals

TABLE OF AUTHORITIES

Cases

State v Edwards 379 SE2d 888 _____

In re Winship 397 U.S. at 364 _____

Jackson v Va 443 U.S. 307 _____

Sullivan v Louisiana 508 U.S. 275 _____

Statutes

S.C. Code § 16-3-655 (B) (2) _____

STATEMENT OF ISSUE ON APPEAL

WHETHER THE TRIAL JUDGE ERRED IN
DENYING APPELLANT'S MOTION FOR A
DIRECTED VERDICT WHEN THE STATE FAILED
TO PROVE BEYOND A REASONABLE DOUBT
THAT APPELLANT WAS OLDER THAN
EIGHTEEN (18) YEARS OF AGE

STATEMENT OF THE CASE

For the record of this brief, the Appellant agrees with the/his Appellate Defender's statement upon her Anders brief.

ARGUMENT

THE TRIAL JUDGE ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT WHEN THE STATE FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT APPELLANT WAS OLDER THAN EIGHTEEN (18) YEARS OF AGE

The indictment alleges, that in Clarendon County, South Carolina, between the dates of July 29, 2011, through Aug 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 L. 10-17) The female DNA found in the panties was insufficient for identification (R. p. 202 L 19-25)

The minor's mother admitted having a physical relationship with Appellant (R. p 111 L. 14-16)

The State rested and then almost immediately moved to re-open the case (R. pp. 209-225) Appellant objected (R. p. 212 L. 10-23) and renewed his objection, arguing that the

indictment again based on that the indictment simply says she was 14 less than 16. And the court has the indictment. And, that the defendant, which it does have a date of birth on here, but this is not in evidence, was older than 18 years of age.

And that's all put us on notice to defend for; not this custodial relationship. So I would again move to ~~quash~~ on a different ground and renew my earlier grounds of lack of specificity, and things of that nature (R. p 219 L 11-21). The judge overruled Appellant's objection (R. pp 219 L. 22 - p 220 - L 4)

Appellant then moved for a directed verdict, arguing that the State had failed in its burden of proving, that Appellant was over

the age of 18 years of age. And, although the solicitor, Mr. Durant said in his opening statement the age difference; that the victim said that Charlie knew how old she was, there was never any testimony that he had told her about. There was information in the forensic interviews that she told the forensic interviewer how old she thought he was. But I don't recall any testimony from the victim about Mr. Belser's age. And the mother simply saying we went to school together. I think allows them, it doesn't say when we went to school together. Whether they were students together, whether she was his teacher. Again, I think that's allowing the jury to make

an improper inference. And I will grant you certainly sitting here, he appears that way.

But this is a case, the state has the burden of proving the elements of the crime beyond a reasonable doubt. And, if the element is, he's over the age of 18 or older than the victim, there has to be some proof of his age not of what their belief his age is.

Some proof of what his age actually is. And it's, even if the victim testified that she thought he was some age, that doesn't make it a crime because that may be incorrect. That's no more correct than saying, oh, I thought the victim was 18. It has to be proof beyond a reasonable doubt. And it has to be clearly established. And I don't think it has been (R. pp 220 L. 25 - p 222 - L 9)

Appellant renewed his motion for a directed verdict (R. pp. 261 L12 - p 263 - L22)

The Appellant argues that the trial judge erred in denying his motion for a directed verdict when the state failed to prove beyond a reasonable doubt that he was older than eighteen (18) years of age. 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. Here, the State failed to prove that Appellant was over eighteen years of age, an element of criminal sexual conduct second degree.

In In re Winship, the United States Supreme Court held that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of EVERY fact necessary to constitute the crime with he is charged SEE: Winship 397 U.S. at 364. Which that reasonable

doubt standard applied in both State and Federal proceedings SEE: Also Jackson v Va 443 U.S. 307 and Sullivan v Louisiana 508 U.S. 275. And looking at State v Edwards 379 SE2d 888 a trial judge must submit the case to the jury if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced. Although in the case at bar, the trial judge should not have refused the Appellant's motion for a directed verdict, when the State failed to prove beyond a reasonable doubt that Appellant was older than eighteen (18) years of age.

CONCLUSION

Based on the foregoing arguments, Counsel's motion to be relieved as Appellant's counsel should be denied. And, ordered to fully brief her issue and or Appellant arguments upon his pro-se brief, where Appellant's case should be remanded back to Clarendon County/General Sessions Court with instructions for a directed verdict of acquittal, where the State has failed to prove beyond a reasonable doubt, that Appellant was older than eighteen (18) years of age.

Date: February 21, 2014

Respectfully submitted,

Charl. Belser