

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Clarendon County

Honorable Brooks P. Goldsmith, Circuit Court Judge

CHARLIE BELSER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001705

APPENDIX

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State of South Carolina)
)
County of Clarendon)
)

The State of South Carolina,
Plaintiffs

Transcript of Record
2011-GS-14-00480

vs.

Charlie Belser,
Defendant

January 28th-30th, 2013
Manning, S.C.

Before the Honorable R. Ferrell, Cothran, Judge.

A-P-P-E-A-R-A-N-C-E-S

Mr. Christopher Durant
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Mr. Scott L. Robinson,
Attorney for the Defendant

Margaret T. Sullivan
Court Reporter

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1 THE COURT: Is the state ready?

2 MR. DURANT: Yes, sir.

3 THE COURT: You may call your first case.

4 MR. DURANT: This is the case of Charlie
5 Lamont Belser. Indictment No. 2011-GS-14-480.
6 Charged with criminal sexual conduct with a minor
7 in the second degree.

8 THE COURT: Ladies and gentlemen of the
9 jury panel, give me your attention. We are about
10 to begin the case of the State versus Charles
11 Belser. Is there any member of the jury panel
12 connected by blood or marriage, or close personal
13 friends or social relations with Mr. Belser? If
14 so, please stand.

15 (Whereupon, no response.)

16 THE COURT: Representing the defendant in
17 this case is Scott Robinson. The state is being
18 represented by Chris Durant. Any member of the
19 jury panel connected by blood or marriage, close
20 personal friends, social relations or been
21 represented by either of these two attorneys? If
22 so, please stand. Yes, sir.

23 THE JUROR: I just went to school with
24 Mr. Robinson.

25 THE COURT: Give me your number, please,

1 sir.

2 THE JUROR: No. 5.

3 THE COURT: Okay.

4 THE JUROR: I attended Salem Academy for
5 two years back in the 80's.

6 THE COURT: And the fact that you attended
7 school with Mr. Robinson, would that affect your
8 ability to be fair and impartial?

9 THE JUROR: No.

10 THE COURT: Thank you, sir. What is the
11 first name?

12 MR. DURANT: minor

13 THE COURT: Any member of the jury panel
14 connected by blood or marriage or close personal
15 friends, or social relations with any of these
16 potential witnesses, minor Latonya
17 Billups, Kimberly Marlowe, Rudy Tisdale, Ricky
18 Richards, Debbie Elliott, Dr. John Keith, Barbara
19 Proctor, Amy Stevens, Betty Butler, Doris
20 Yarborough, Patricia Crooks and Adrian, is it
21 Hefney?

22 MR. DURANT: Yes, sir.

23 THE COURT: Any member of the jury panel
24 connected by blood or marriage or close personal
25 friends or social relations with any of those

1 potential witnesses? If so, please stand.

2 (Whereupon, no response.)

3 THE COURT: Any members of the jury panel
4 formed or expressed an opinion about any of the
5 issues or matters involved in this case? This
6 case allegedly occurred on July 29th 2011.
7 Between July 29th 2011 and August 13th 2011.

8 Any member of the jury panel know anything
9 about this case whatsoever? If so, please stand.

10 (Whereupon, no response.)

11 THE COURT: Any member of the jury member
12 aware of any bias or prejudice either toward the
13 State of South Carolina or the defendant? If so,
14 please stand.

15 (Whereupon, no response.)

16 THE COURT: Any member of the jury panel
17 served on the grand jury that heard this case? If
18 so, please stand.

19 (Whereupon, no response.)

20 THE COURT: Any member of the jury panel
21 due to religious or moral reasons unable to sit in
22 judgment of your fellow man? If so, please stand.

23 (Whereupon, no response.)

24 THE COURT: Yes, ma'am. I asked you if
25 there is any member of jury panel due to religious

1 or moral reasons unable to sit in judgment of your
2 fellow man. Does that apply to you?

3 THE JUROR: Yes, sir.

4 THE COURT: Ms. Pendergrass, I am going to
5 pull you from this jury pool. Any member of the
6 jury panel know of any reason whatsoever, they
7 couldn't give both the State of South Carolina and
8 this defendant a fair and impartial trial? If so,
9 please stand.

10 (Whereupon, no response.)

11 THE COURT: Any further questions from the
12 state?

13 MR. DURANT: None from the state.

14 THE COURT: From the defense?

15 MR. ROBINSON: Yes, sir. Can we approach?

16 (Whereupon, the attorneys approach the
17 bench and confer with judge.)

18 THE COURT: Any member of the jury panel
19 or a member of your immediate family ever been a
20 minor of a sexual assault? If so, please stand.

21 (Whereupon, no response.)

22 THE COURT: Any further questions from the
23 defense?

24 MR. ROBINSON: No, sir, Your Honor.

25 THE COURT: Madam Clerk, if you will give

1 us a jury. Five and 10.

2 Ladies and gentlemen, I am going to have
3 to ask you to leave the courtroom. You can go in
4 the hall or you can go downstairs or you can go in
5 the jury room. Just don't leave the building.
6 I'll get you back just as quick as I can.

7 (Whereupon, the following takes place
8 outside the presence of the jury.)

9 THE COURT: Okay. All the jurors appear
10 to be out of the courtroom. Mr. Robinson.

11 MR. ROBINSON: Thank you, Your Honor. I
12 guess the first motion I have is going to be a
13 motion for continuance in this case on, I guess
14 two different prongs.

15 First of all, Mr. Belser advised me this
16 morning, and I think Mr. Durant got a call from
17 Charles Barr of the Williamsburg County bar; that
18 he had been retained or partially retained, and I
19 am not sure what the official status of it is, by
20 Mr. Belser's family to represent him in this
21 matter. And I think that is Mr. Belser's
22 preference is to be represented by Mr. Barr. And
23 therefore, on his behalf, I would ask for a
24 continuance. We don't know where Mr. Barr is. I
25 understand he's in Civil Court in Marion County,

1 is what Mr. Belser may have been told. But the
2 family has retained him. And Mr. Belser has
3 indicated his preference that Mr. Barr try this
4 case for him.

5 In addition to that, Your Honor, because
6 of that, Mr. Belser has not talked with me. I
7 think he spent some time discussing this matter
8 with Mr. Barr, perhaps. But quite frankly, he and
9 I have not set down and properly prepared for this
10 matter, because he told me his family had retained
11 Mr. Barr.

12 He was of the assumption that Mr. Barr
13 would be here to represent him today. So I am
14 familiar with the case. But quite frankly, as far
15 as being given the opportunity to talk with
16 Mr. Belser, that has not occurred. It's not been
17 the solicitor's fault. Simply because Mr. Belser
18 I guess, was preparing with another attorney to go
19 forward today. So he and I have not had a chance
20 to prepare together for his case.

21 So based on that, I would ask for a
22 continuance. And I am not sure quite frankly if
23 Mr. Belser wants me to be relieved as counsel as
24 basically the same grounds, that, you know, he's
25 hired another attorney. And that's who he is

1 prepared to proceed with. And that he and I have
2 not prepared. But that's the kind of situation we
3 find ourselves in.

4 I don't want to try someone else's case.
5 Mr. Belser tells me he did not get with me last
6 week or this weekend to prepare his case, because
7 he had another lawyer that he thought was prepared
8 to come try the case on his behalf.

9 THE COURT: Mr. Solicitor, when did you
10 notify Mr. Belser that his case was up for trial?

11 MR. DURANT: Judge, we actually or I
12 actually notified Mr. Belser last term of court in
13 October, that if he didn't plead guilty the first
14 week, that he would potentially be subject to be
15 called for trial the second week. I actually gave
16 him a deadline to report back that week, and he
17 didn't show back up.

18 And, if Your Honor will recall, we asked
19 for a bench warrant that term of court. And
20 earlier this month. January 2nd, we held a
21 hearing before Your Honor during which
22 Mr. Robinson made a motion to lift that bench
23 warrant. Mr. Belser was present for that hearing.
24 Your Honor, did grant the motion to lift the bench
25 warrant. And additionally Your Honor admonished

1 Mr. Belser that if he didn't appear in court, or
2 he admonished Mr. Belser that his case was subject
3 to be called for trial on today, January 28th of
4 2013.

5 Additionally, I informed Mr. Belser if he
6 didn't appear for trial, his case would be subject
7 to a trial in his absence. So our position is
8 that Mr. Belser has had ample warning that today
9 is his trial date. And he has had plenty of time
10 to hire a private attorney if that was his desire.
11 He was arrested back in August of 2011. So this
12 case is nearly 18 months old.

13 The state's position is -- would be that
14 Mr. Belser has had plenty of chances to hire a
15 private attorney if that was his desire, and he
16 did not do so.

17 THE COURT: Were you contacted by
18 Mr. Barr?

19 MR. DURANT: Judge, I got a call this
20 morning at about 9 o'clock from Mr. Barr. During
21 which he did inform me that Mr. Belser had made a
22 partial payment either Thursday or Friday of last
23 week. He told me he hadn't yet spoken with
24 Mr. Belser and met with him, so he wouldn't be
25 prepared to try his case this week. Your Honor,

1 however Wednesday of last week, I believe, Tuesday
2 or Wednesday, Mr. Barr was up here on a separate
3 matter. And anticipating this issue, I asked
4 Mr. Barr personally whether or not he represented
5 Charlie Belser, to which he responded that he had
6 never heard of Mr. Belser.

7 So as of Wednesday of last week,
8 Mr. Belser had not contacted Mr. Barr and had made
9 no efforts to hire him as his attorney.

10 THE COURT: I find that Mr. Belser was put
11 on adequate notice that his case was up for trial.
12 He was arrested in August of 2011. He was
13 indicted October 2011. He was put on notice by
14 the solicitor's office that his case was up for
15 trial. And there has been no order relieving
16 Mr. Robinson as his attorney, replacing him with
17 Mr. Barr. The fact that he goes out Thursday or
18 Friday before his case is up for Friday, and tries
19 to hire a private counsel, will not get him a
20 continuance, in this case. And so I deny your
21 motion for a continuance and we will proceed with
22 the trial. Anything else before I bring the jury
23 back in?

24 MR. ROBINSON: The court's indulgence, I
25 am sorry.

1 THE COURT: Okay.

2 MR. ROBINSON: And I know the court is
3 already aware, but I am certainly not trying to
4 beat a dead horse. Just Mr. Belser wanted me to
5 add to the record for the court's consideration.
6 And I am not sure what his awareness is, but
7 probably did not know what the term of court was.
8 He said on January 2nd, which is when he lifted
9 the bench warrant is when we found out that this
10 week was the second week of court or the week of
11 court where he was -- would be here. He said his
12 understanding was, that if he didn't come this
13 week, he would be tried in his absence, not that
14 there would be a trial this week.

15 And I am not sure quite frankly the
16 distinction there. But I think from Mr. Belser's
17 understanding that it was kind of a roll call that
18 if he came, you know, he would be given additional
19 time to retain an attorney and prepare a case.
20 And if he didn't come, his case would be TIA'd;
21 that he didn't have sufficient time from the 2nd
22 through this morning to get Mr. Barr on board any
23 sooner than he did. It's not that he's trying to
24 avoid it or anything of that nature. He just
25 misunderstood the ramifications of his presence,

1 because he has been present for several non-court
2 setting appearances where there was no judge and
3 things of that nature. And where he was told each
4 time, you know, if you don't come, you can have a
5 bench warrant issued or your case is subject to
6 being tried in your absence.

7 And he's telling me that he did not
8 understand that today was an actual trial date.

9 THE COURT: And I understand that and I
10 appreciate that. But he's been indicted for
11 almost a year and a half now. And the solicitor
12 has informed him and he was picked up on a bench
13 warrant, and that his case was coming, and it's
14 here.

15 So we are going to proceed with the trial.
16 Anything before I bring the jury back in?

17 MR. DURANT: Judge, I would make a motion,
18 back in chambers to ensure compliance with the
19 rape shield statute. And I've told the defense
20 counsel that there is some reference in the
21 minor 's forensic interview of a prior
22 relationship with a boyfriend. Judge, our
23 proposition would be that the evidence is not
24 admissible under the rape shield statute,
25 16-3-659.1 or the rules of evidence; specifically,

1 Rule 412.

2 THE COURT: What about that?

3 MR. ROBINSON: Your Honor, I understand
4 the law, and I certainly unless the door is
5 opened, I don't intend to just bring that up for
6 any purpose. There is potentially some medical
7 testimony. But I am not sure whether it will or
8 will not come out. But certainly at that time, I
9 think it would be evidence. But otherwise, yes,
10 sir, I understand that being the law.

11 THE COURT: We'll deal with that if the
12 door gets open. Anything else?

13 MR. ROBINSON: Your Honor, there is one
14 additional ground. Mr. Belser would like for me
15 to make a motion for you to recuse yourself. He
16 has a charge I think from 2005 here, that I think
17 you were still employed by the -- or 2006, I can't
18 remember the exact date. We checked the dates and
19 times. You were employed at the solicitor's
20 office at that. I think Amy Land was actually the
21 solicitor that was assigned to that case. But
22 being that it was a two solicitor office, my
23 client is concerned that there may have certainly
24 been conversations or discussions about facts,
25 case loads and trials whatever, between the two of

1 you all. And there wouldn't be necessarily any
2 insulated factors. It would be in some larger
3 circuit. And based on that, he would ask you to
4 recuse yourself.

5 THE COURT: Okay. And I don't remember
6 anything about Mr. Belser. But, Mr. Solicitor,
7 does your record reflect? Do you have a prior
8 file on him? When is the date? And is there
9 anything to do with the case?

10 MR. DURANT: My records reflect that Mr.
11 Belser did have a forgery charge that was handled.
12 I believe he was arrested in March of 2006. And
13 pled guilty of October of that year, I believe,
14 Judge. I understand that you went on the bench in
15 September.

16 THE COURT: Well October. First of
17 October.

18 MR. DURANT: Our record, our computer
19 system indicates that Amy Land handled that case.
20 Judge, I would offer for your consideration State
21 v. Jackson. And I will pass up a copy if Your
22 Honor would like a copy.

23 THE COURT: Okay.

24 MR. DURANT: Judge, our position would be
25 that this case -- and our holding in this case was

1 that the deputy solicitor would have been judge,
2 was not required to recuse himself despite the
3 fact that he was the deputy solicitor at the time
4 that the defendant allegedly committed offenses.

5 So our proposition would be if Your Honor
6 has no recollection of Mr. Belser then he would
7 suffer no prejudice by going to trial before Your
8 Honor.

9 THE COURT: Mr. Robinson, have you looked
10 at this case?

11 MR. ROBINSON: Yes, sir, Your Honor.

12 THE COURT: I have no recollection of
13 Mr. Belser or ever talking with anybody about the
14 case or dealing with it in anyway. You know,
15 unless some evidence to the contrary, I don't feel
16 like I should recuse myself. I have no knowledge
17 of him whatsoever. And I think I can be fair and
18 impartial.

19 MR. ROBINSON: And, Your Honor, I
20 certainly appreciate it and understand that. And
21 I don't have any specific proof or evidence of
22 prejudice or bias, only Mr. Belser's concern.
23 This is not a large solicitor's office with 50
24 attorneys where it would not be uncommon for one
25 attorney not to know what the other one was doing,

1 based on the fact that at that time it was just
2 you and now Judge Land working together. We feel
3 there is a substantial likelihood that you may
4 have discussed this case or other things that may
5 cause some prejudice, you know, some disposition
6 in your mind about his character. But specific
7 instances; no, sir, I don't have any.

8 THE COURT: And I did work with Ms. Land.
9 But she rarely discussed any of her cases with me,
10 or talked about them at all. I usually handled my
11 cases, and she handled her cases. And, you know,
12 we didn't have conversations on many cases at all.
13 She basically decided on her cases and I was
14 supposed to keep my nose out of it.

15 So that's normally the practice. And I
16 had no recollection of him at all, or ever
17 remember discussing anything about it. And
18 probably would not have on a forgery case. If it
19 had been a very serious case dealing with
20 complicated legal issues then that may have
21 occurred, and I would have probably remembered
22 that. But I have no recollection at all in this
23 case. You know, unless there is some evidence or
24 something in the file, and I had any participation
25 in it, I am going to deny your motion. Anything

1 else?

2 MR. ROBINSON: Court's indulgence just a
3 second. Nothing further from the defense, Your
4 Honor.

5 THE COURT: Anything from the state?

6 MR. DURANT: Nothing from the state,
7 Judge.

8 THE COURT: Okay. And I will bring the
9 jury back in and Ms. Beulah can do her magic with
10 her computer. Strikes are 10 and 5. 5 and 10.
11 Depending on which side you are looking at. Five
12 for the state, 10 for the defense. Bring the jury
13 back in.

14 (Whereupon, the following takes place
15 within the presence of the jury.)

16 MR. DURANT: Judge, can we approach real
17 quick?

18 (Whereupon, the attorneys confer with
19 judge.)

20 THE CLERK: Ladies and gentlemen, remember
21 I told you it would come a time where I would call
22 your names and you would come to the aisle here
23 and come up to the mic. It is now that time. If
24 I call your name, please come up to the aisle
25 where Mr. Huell is standing. Come up to the mic

1 and turn around and face the tables until I tell
2 you what to do.

3 No. 11 Diana Epps Bethea (f-b) defense
4 struck. No. 28 James Conyers (m-b) defense
5 struck. No. 25 Jody K. Cleto (f-w) accepted.
6 No. 116 Tracy A. Strickland (f-w) accepted. No.
7 12 Rhunett Billups (f-b) accepted. No. 117 Joseph
8 W. Stukes (m-w) defense struck. No. 103 Michael
9 A. Rivers (m-b) state struck. No. 40 Leroy
10 Ellerbee (m-b).

11 THE COURT: Mr. Ellerbee, what time did
12 you have be there Wednesday.

13 THE JUROR: She said it starts tomorrow.

14 THE COURT: Starts tomorrow?

15 THE JUROR: Yes, sir.

16 THE COURT: Then you go -- I'll excuse you
17 to go do that then.

18 THE CLERK: No. 38 Adrian Dupree (m-w)
19 accepted. No. 5 Brent D. Barrineau (m-w)
20 accepted. No. 60 Scherrie Hill (f-b) defense
21 struck. No. 115 Gary Stewart (m-b) accepted.
22 No. 62 Charles D. Hinds (m-b) accepted. No. 34
23 Evelyn Dennis (f-w) defense struck. No. 29
24 Marilyn Conyers (f-b) accepted. No. 55 Ed P.
25 Harrington (m-w) accepted. No. 10 Ruth M. Bench

1 (f-w) accepted. No. 81 Kimberly McClam (f-w)
2 defense struck. No. 84 Samantha L. McFadden (f-b)
3 defense struck. No. 21 Janeen J. Byerly (f-w)
4 accepted. No. 106 Monisha N. Sabb (f-b) state
5 excused. No. 59 Doyle H. Hill (m-w) accepted.
6 No. 43 Kristen Feagin (f-w) defense struck. No.
7 131 Simone P. Wilson (f-b) accepted. No. 19 Isiah
8 Brown, Jr. (m-b) accepted.

9 THE COURT: Any matters of law with regard
10 to jury selection by the state?

11 MR. DURANT: None by the state.

12 THE COURT: Any by the defense?

13 MR. ROBINSON: None by the defense.

14 THE COURT: Any reason I can't swear the
15 jury?

16 MR. ROBINSON: Your Honor, I do have a
17 motion to be made. I don't care if we do it after
18 you swear the jury, but I need to make a motion
19 outside their presence.

20 THE COURT: Ladies and gentlemen, if you
21 will go to the jury room, I will get you back out
22 as quick as I can. Please do not discuss this
23 case. You don't know anything about it. And
24 don't speculate about it. When you come back, I
25 will give you further instructions as to what your

1 roles are. But if you will go to the jury room, I
2 will get you back out just as quick as I can.
3 Please do not discuss this case. You don't know
4 anything about it. Don't speculate about it.
5 When you come back, I will give you further
6 instructions as to what your roles are in this
7 case. But if you will go to the jury room, I will
8 get you back just as quick as I can.

9 (Whereupon, the following takes place
10 outside the presence of the jury.)

11 THE COURT: Okay.

12 MR. ROBINSON: And, thank you, Your Honor.
13 I apologize for not doing this earlier. This was
14 some of the stuff Mr. Belser said he had discussed
15 with Mr. Barr. And just requested that I make a
16 motion to quash the state's indictment. I am
17 trying give you the date on October 6th, 2011.
18 Your Honor, this particular indictment alleges
19 that between the dates of 7/29/2011 and between
20 August 13th; that Mr. Belser had sexual
21 intercourse with the minor numerous times.

22 The problem with that is, and I understand
23 that it puts him on notice of the charge itself.
24 But as far as the specific dates and instances, we
25 basically have to account for his whereabouts

1 every minute of every day for a 15-day period,
2 which makes the defense considerably harder. If
3 this was given some more specificity or that it
4 happened on a certain day, I certainly may be able
5 to present an alibi defense or things of that
6 nature. The indictment is simply not specific
7 enough to give him notice of exactly when he
8 allegedly committed these crimes and prepare a
9 defense on that basis. But based on that, Your
10 Honor, we would ask the court to quash the
11 indictment as insufficient.

12 THE COURT: Okay, what says the state?

13 MR. DURANT: Your Honor, first, I
14 apologize. I don't have the case law, because I
15 didn't anticipate the motion. But my
16 understanding of the law is that an indictment is
17 sufficient to allege a time frame as long as the
18 indictment gives the defendant's notice of the
19 nature of the crimes charged. Gives the defense
20 notice of the nature of the alleged offenses. And
21 I believe that the indictment does say that he
22 committed a sexual battery upon the minor during
23 this date. And several times, Your Honor.

24 THE COURT: Okay.

25 MR. ROBINSON: And, Your Honor, just to

1 somewhat differentiate that. I understand that
2 quite often in CSC cases especially with a minor,
3 there is an allegation that you had a year and a
4 half, or 2 years where this is happening, and
5 it's very difficult. We're talking about a very
6 narrow two-week period of time that was disclosed
7 I think on the 13th or the 14th, the very next day
8 after it happened. So this is not a case where
9 there was kind of delayed disclosure or memory
10 issues here.

11 I think when you are talking about
12 something that close in time, that short of a time
13 period, it's like saying that Mr. Belser robbed
14 the bank sometime between Friday afternoon and
15 Monday morning. It needs to be a little more
16 specificity as far as his ability to prepare a
17 defense, because we don't really know what he is
18 on trial for, other than alleging having sex
19 numerous times between those dates.

20 Again, this is not the case where, you
21 know, it's a year and a half, two years, three
22 years delayed disclosure or something. This is
23 something that my reading of the incident report
24 was disclosed on either on the 13th or the 14th,
25 the very next day after the date set out in the

1 indictment. And the beginning date was set 15
2 days prior to that. So we've got a two-week
3 period of time that says basically we have to be
4 prepared to account for his whereabouts every
5 minute of every day, for two weeks.

6 I think based on the date of disclosure,
7 the very short window of time we're talking about,
8 that the indictment does need to be more specific,
9 that way Mr. Belser will have a better idea of
10 what days and times he is going to have to defend
11 himself. And charges, you know, when it happened,
12 where it happened and things of that nature. But
13 certainly, Your Honor, the time is crucial here.
14 Because, you know, if it says that on July 30th,
15 Mr. Belser did this, that or the other. Then
16 Mr. Belser has notice of okay, if I have got an
17 alibi, July the 30th, that is easy for me to
18 prove. For him to recount every day of two weeks,
19 I think is almost burden shifting on his part.

20 And I don't think the indictment is
21 sufficient. And, you know, just state that as an
22 additional grounds for quashing the indictment.

23 THE COURT: Okay. Is the state in a
24 position to make this indictment more time
25 specific? Meaning that if he was arrested the day

1 after, that the state has proved? Is it more time
2 specific? I know many times on very small
3 children, their concept of time is one of the last
4 things that develop. They can't necessarily
5 develop time. It's very specific, you know, when
6 they relate it to other things. But an older
7 child usually has that ability.

8 MR. DURANT: Judge, I believe the state is
9 in a position to narrow the time frame in terms of
10 the last offense, judge, or the last time it
11 happened. But not in terms of exactly when each
12 sexual battery occurred.

13 THE COURT: Okay. And so the state's
14 proof on the last offense, what does the state
15 allege that the last offense occurred?

16 MR. DURANT: August 13th, Your Honor.

17 THE COURT: And when was this allegedly
18 reported to law enforcement? The following day of
19 the 14th?

20 THE COURT: I am going to stand down a
21 minute and go look at these cases a minute and I
22 will be back.

23 (Whereupon, the Court Breaks.)

24 THE COURT: Okay. Looking at, I think the
25 leading case in this is State v. Templeton. It

1 was quoted -- that's a 2007 case. It's quoted
2 again in 2010, with State v. Baker. But basically
3 Templeton set up a two-prong test. First prong is
4 a timely material element of the offense. In this
5 case, the time is not a material element of the
6 offense. Is what Baker found. And was a more
7 time period, first is the fact, did it occur prior
8 to the grand jury returning the indictment. In
9 this case it clearly did.

10 In the indictment you will notice the
11 document. And I find that this indictment put the
12 defendant on adequate notice of the charges he was
13 facing. And the time is not an element of the
14 crime. And I respectfully deny your motion.
15 Anything else before I bring the jury in?

16 MR. DURANT: Not from the state.

17 MR. ROBINSON: Your Honor, I do have a
18 motion to sequester the state's witnesses.

19 THE COURT: What says the state?

20 MR. DURANT: Judge, we don't have any
21 objection.

22 THE COURT: The minor can stay, as well
23 as the lead investigator, the officer. Okay.
24 Anything else before I bring the jury in?

25 MR. DURANT: Judge, If I can just get my

1 witnesses.

2 THE COURT: Sure that will be fine. And I
3 am going to get Ms. Beulah when the jury comes in
4 and swear the witnesses.

5 (Whereupon, the following takes place
6 within the presence of the jury.

7 (Whereupon, the Jury is sworn.)

8 THE COURT: Ladies and gentlemen, we are
9 about to begin the testimony in this case, and the
10 name of the case is the State versus Charlie
11 Lamont Belser. And he is the defendant here.
12 When you will hear me refer to the defendant
13 throughout this trial, that's who I am talking
14 about is Mr. Belser.

15 Now this indictment is not -- is simply a
16 formal charging paper. It is not evidence in this
17 case. And in this indictment, he is charged with
18 the crime of criminal sexual conduct with a minor,
19 who is at least 14 years of age, but less than 16
20 years of age. And I am going to explain to you
21 later in the trial the elements of criminal sexual
22 conduct with a minor and what they mean. But to
23 this indictment, he has entered a plea of not
24 guilty. Therefore, it puts the state -- the
25 burden on the State of South Carolina to prove

1 each and every element of this indictment to you
2 beyond a reasonable doubt.

3 Your job is to listen to the evidence in
4 this case and determine what the true facts are
5 and determine the guilt or innocence of
6 Mr. Belser. My job is to rule upon the
7 admissibility of that evidence and to charge you
8 on the law which I will at the end of the case. I
9 am not allowed to have an opinion about the facts,
10 that is solely up to you. I can only tell you
11 what the law is, and you must accept that law as I
12 give it to you. And whether you agree with it or
13 not and apply it to the facts that you determine
14 to be true to reach a verdict in this case that
15 speaks the truth.

16 Now the evidence in this case is going to
17 be basically in three forms. First of all,
18 through sworn testimony from this witness stand.
19 Witnesses will come before you under oath and
20 testify. The other way that we may receive
21 evidence in this case is through exhibits that are
22 introduced under our rules. That is also
23 evidence. Or any stipulations by the parties.

24 Now in a few minutes, we are going to get
25 started. We usually start off by opening

1 statements of the attorneys. Now the attorneys
2 are going to get up and tell you what they think
3 about this case. That will give you a road map of
4 where they think the evidence is going to take
5 you. Now the opening statements is not evidence
6 in this case. After you hear the open statements
7 of the attorneys, then you are going to hear the
8 evidence. You are going to hear the testimony of
9 the witnesses as well as the exhibits. At the
10 end of the trial, you are going to hear the
11 closing arguments of the attorneys. And they are
12 going to get up and argue to you as to what they
13 think the evidence showed or did not show in this
14 trial. And then I am going to charge you on the
15 law, and give you this case to decide.

16 Now and so what I need you to do is pay
17 close attention throughout this trial. If at
18 anytime you are uncomfortable and you need a
19 break, I will try to stop every hour or so. And I
20 usually try to stop between witnesses while we are
21 covering a witness after testimony. But
22 sometimes we can't help it. And if at anytime
23 during this trial you are uncomfortable and you
24 need a break, raise your hand and we will stop and
25 take one. Because I do need each of you to

1 listen. And if you're uncomfortable, you can't
2 pay attention. So it's important that you do
3 that. And it's important that you hear the
4 evidence in this case in determining what the true
5 facts are, and determine the truth in this case.
6 That's your job. Now, I am going to tell you, you
7 know, this case is going to take a day or two. We
8 will not finish it today. Whether we finish it
9 tomorrow or the next day, I don't know. I don't
10 know anymore about this case than you do.

11 But throughout this trial, we may have to
12 take breaks. I may have to rule on certain
13 evidence outside of your presence or when we go to
14 lunch or home for the evening. I am going to tell
15 you, you can't talk about this case. And when you
16 get home tonight, you can't talk about this case.
17 And your family is going to want to know what you
18 are doing all day. And you're not going to know a
19 whole lot about the trial, but you can't tell
20 them. Because if they are anything like my
21 family, they are going to have an opinion as to
22 what you ought to do. And they aren't here.
23 You've got to decide this case based on what you
24 hear in this courtroom.

25 And I'm also going to tell you when you go

1 back in the jury room, you can't talk about the
2 case either amongst yourselves. And I know you
3 may say well why can't we at least talk about what
4 that witness said or that witness said. And the
5 reason you can't, because if you do that early on
6 in the case, then at the end of the case, you want
7 to defend the opinions you had in the beginning.
8 And I don't want you to start forming opinions
9 until you have heard all the case, you have heard
10 all the evidence as well as the law. And then and
11 only then would be proper for you to talk about it
12 and form an opinion. Because the least piece of
13 evidence you hear in this case, may be what helps
14 you decide the truth is.

15 So what I am looking for, is an open
16 minded jury that's going to listen to the facts,
17 and do what is right. And it's that simple. And
18 I will instruct throughout this case as to what
19 you can and can't hear sometimes. And at the end
20 of the case, I will charge you the law. In the
21 meantime, you will pay attention, and do what I
22 ask and not discuss this case. When you get home
23 tonight, I don't know if there is anything going
24 to be anything in the newspaper or on TV or on the
25 radio. If it is, you can't listen to you. And

1 you can't go home and get on your computer and
2 google anybody or look up or do any research.
3 It's not right for you to do independent research.
4 You have got to decide this case based on what you
5 hear in this courtroom. Once you do that, our
6 system works as it's supposed to. And I sincerely
7 appreciate it.

8 Now you are going to hear from the
9 attorneys. The state goes first because they have
10 the burden of proof. The defendant does not have
11 the burden. They don't have to prove themselves
12 innocent. The state has to prove the defendant
13 guilty beyond a reasonable doubt. But in most
14 times the defense attorney does get up and make an
15 opening statement to you. And usually in closing
16 argument. But they don't have to, the state has
17 the burden. Mr. Solicitor.

18 MR. DURANT: Thank you, Your Honor.
19 Mr. Robinson, Madam Clerk, Ladies and gentlemen of
20 the jury, boys don't like virgins. Those are some
21 of the words used by a 29-year-old man to
22 manipulate, to coerce, and to take advantage of
23 the trust in a 14-year-old girl. Those are the
24 words used to manipulate and coerce that
25 14-year-old into having sex with that man.

1 My name is Chris Durant. I'm the
2 assistant solicitor here in Clarendon County. I'm
3 originally from Gable in Clarendon County. Just
4 kind of the northern end of it. I work for your
5 elected solicitor Mr. Chip Finney. And my job as
6 a solicitor, is to represent the interest of the
7 State of South Carolina. And the Supreme Court
8 has said that my job is not to seek convictions,
9 but to ensure that justice is done.

10 My burden in doing so is to prove the
11 elements of the crimes charged beyond a reasonable
12 doubt. And that's a phase you will probably here
13 several times throughout the trial. So I will do
14 my best to define it for you now. But first, let
15 me say that if at any point I say something that
16 contradicts what Judge Cothran says, by all means,
17 disregard what I say and apply the law as the
18 judge gives it to you. But I submit to you that
19 proof beyond a reasonable doubt is that proof that
20 will leave you firmly convinced of the
21 defendant's guilt.

22 The defendant in this case is Charlie
23 Belser. He is sitting there at counsel's table.
24 He is charged with criminal sexual conduct with a
25 minor in the second degree. And what means is

1 that he committed a sexual battery upon a girl
2 between the ages of 14 and 16. A sexual battery,
3 the judge will tell you later, is sexual
4 intercourse. And it's one form of a sexual
5 battery.

6 The minor in this case was 14 years old.
7 You will hear that. She turned 14 that spring.
8 This happened in the summer. The defendant in
9 this case, I submit and the evidence you will hear
10 in this case; is that, the defendant was friends
11 with the family. Had been staying over --
12 spending significant time at the family's house.
13 And that while he was there, he manipulated, he
14 coerced this minor in to having sex with him
15 numerous times.

16 And I want you to keep in mind, this is
17 isn't rape like you might think of. This isn't,
18 you know, like you might see on TV. This wasn't a
19 physical assault or bondage. This is statutory
20 rape like you heard about.

21 And this is a man that gained the trust of
22 a young girl, and used that trust to convince her
23 to have sex with him. Again, like the judge told
24 you earlier, the witness will -- the evidence will
25 be presented to you from this witness stand. I

1 will ask you to pay close attention to that
2 evidence and apply it to the law.

3 I told you my job is to seek justice. And
4 make no mistake about it, that's your job. Your
5 job is find justice. That's your door. Justice
6 is your door. Do not fall short. Thank you.

7 THE COURT: Mr. Robinson.

8 MR. ROBINSON: Thank you, Your Honor. Mr.
9 Durant, Madam Clerk. Good afternoon, Ladies and
10 gentlemen, my name is Scott Robinson, and I
11 represent Mr. Belser, who as Mr. Durant told you,
12 is the accused in this case. He's told you what
13 he's been accused of.

14 And I know what's been alleged. I don't
15 know exactly what's going to come from the witness
16 stand. Because as the judge told you, that's
17 where the proof in this case is going to come
18 from. Not out of my mouth. Not out of
19 Mr. Durant's mouth, but presumably from the
20 witness stand and from any exhibits that may be
21 put into evidence.

22 And what I am going to ask you to do is
23 basically what Judge Cothran and Ms. Beulah
24 Roberts asked you do, which is be openminded. Now
25 I know, because I have been doing this for a long

1 time. And these charges are some of the hardest
2 charges to deal with, because they are offensive
3 quite frankly. The allegation itself offends
4 good, normal, decent people like yourselves. And
5 you want to kind of gasp and shake your head and
6 say that's disgusting, and it is. But the problem
7 is, when you do that, you have already assumed and
8 presumed that Mr. Belser did something, which is
9 in violation of the oath that you took. You have
10 to come in here with an open mind. And as the
11 judge told you, there is no burden of proof on
12 Mr. Belser. And as he will tell you later, he is
13 presumed innocent until and unless the state can
14 prove him guilty.

15 So as he sits there right now, he is the
16 same as me or you. He's just simply been charged
17 with something. And as the judge told you what is
18 written on the piece of paper that alleges he did,
19 is in no way, shape or form, any evidence of what
20 happened. Because if that was the case, we
21 wouldn't need you. What we have is a factual
22 dispute. She said it happened. He said it didn't
23 happen. They can't settle the difference. So
24 it's up to the 12 of you all to decide that. But
25 if we come in here, because that is nasty, because

1 that is disgusting, because that is offensive and
2 you decide in your mind, you have violated your
3 oath. You have done an injustice to everybody
4 involved.

5 What I want you to try to do is put that
6 out of your mind. You are starting with a clean
7 sheet of paper, where the state has to put on that
8 paper enough evidence to decide whether or not
9 Mr. Belser is guilty of those charges. And you
10 should not come with any preconceived notions,
11 opinions, beliefs or anything of that. Only your
12 common sense and your ability to remain open
13 minded. Because if all someone had to do to ruin
14 a reputation was to level a charge, our society
15 wouldn't work very well. Because if you got mad
16 at me, or I got mad at you, it would run rampant.
17 That's why we have a jury system in place, because
18 this is how civilized people settle differences.
19 Decide guilt or innocence.

20 And it's very important that regardless of
21 the charge whether it's murder or spitting on the
22 sidewalk that you approach it with the same level
23 of seriousness; that you remain open minded; that
24 you not let certain things get in the back of your
25 mind so that he must be guilty or nobody would

1 make this up. Because the truth is, we don't know
2 that yet. And I don't know what you are going to
3 decide at the end of this trial. I have no idea.
4 That's beyond my, if I could predict that, I
5 promise you I probably wouldn't be standing here
6 today. I'd be retired somewhere doing something
7 much more enjoyable. But this is important. Make
8 no mistake about it.

9 And what I want you to listen to, is
10 things that you will hear the judge tell you later
11 probably toward the end of the case about what
12 your specific role is; that he is the judge of the
13 law, and you are the judge of the facts. What
14 that means is, fortunately you all didn't have to
15 go to law school and training and of this stuff
16 that has been incredibly boring quite frankly, to
17 get us to the point we can do this. Where we
18 understand the intricacies of the law, the
19 technicalities. You don't have to worry about
20 that. He's going to tell you exactly what law to
21 apply. The question is that you have to answer
22 is, what do you believe are the facts. Not the
23 allegations, the facts. What has the state proven
24 to us beyond a reasonable doubt.

25 Now the fact that somebody gets up there

1 and puts their hand on the bible and swears to
2 tell the truth, I think we all are adult enough to
3 know that there is no guarantee of truthfulness.
4 Because oftentimes in cases there are two
5 different stories. A lot of people say there's
6 three sides to every story, yours, mine and the
7 truth. Again, that's for you to decide. But what
8 I want you to do is listen very carefully to what
9 everybody has to say. And perhaps what they don't
10 say. Because in addition to evidence coming from
11 this witness stand, evidence can be things that
12 you don't hear. Reasonable doubt. Questions that
13 are not answered. Well why did this happen.
14 Where is that. Use your common sense.

15 Now you notice, you all were selected
16 originally randomly. But both the state and
17 Mr. Belser and I had a say in who got seated.
18 Some people got struck, and some people got
19 selected. Now you all may not be particularly
20 honored to have been selected within the next
21 several days with us, but we did that for a
22 reason. It wasn't because we didn't like you and
23 wanted to punish you, it was we felt like you
24 could be fair and impartial and render a verdict
25 that speaks the truth. Because that's what we're

minor

-direct by Durant

1 all about. That's what Mr. Belser wants, is
2 somebody to listen to this case objectively,
3 without prejudging him and decide the truth.
4 That's all we're asking that you do, and I
5 appreciate your time.

6 THE COURT: You may call your first
7 witness.

8 MR. DURANT: Thank you, Your Honor. The
9 state would call minor

10 minor being first duly
11 sworn, testified as follows:

12 Direction Examination by Mr. Durant:

13 Q minor , how are you doing?

14 A I am good.

15 Q minor , is that what you go by?

16 A minor .

17 Q minor ? Is it okay if I call you minor ?

18 A Yes.

19 Q minor , how long are you?

20 A How old am I?

21 Q Uh-huh.

22 A 15.

23 Q What is your birthday?

24 A [REDACTED] 1997.

25 Q What grade are you in?

minor

-direct by Durant

- 1 A 10th.
- 2 Q Where do you go to school?
- 3 A Southwest Guilford High.
- 4 Q Where is that?
- 5 A North Carolina, Greensboro.
- 6 Q How long have you lived in North Carolina?
- 7 A About 8 months.
- 8 Q So you moved there last summer?
- 9 A Yes.
- 10 Q Did you start this school year out in
- 11 North Carolina?
- 12 A Yes.
- 13 Q Before moving to North Carolina, where did
- 14 you live?
- 15 A Summerton, South Carolina.
- 16 Q And who do you live with now?
- 17 A My parents, James Billups and Latonya
- 18 Billups.
- 19 Q Do you have any brothers and sisters?
- 20 A Yes.
- 21 Q How many?
- 22 A 4.
- 23 Q Are they younger or older?
- 24 A They are younger.
- 25 Q All of them are younger?

minor

direct by Durant

- 1 A Yes.
- 2 Q minor do you know why we are
- 3 here?
- 4 A Yes.
- 5 Q What is it about?
- 6 A It is about rape.
- 7 Q About rape?
- 8 A Yes.
- 9 Q Who was raped?
- 10 A Me.
- 11 Q When was that?
- 12 A The summer. Over the summer in 2010,
- 13 before going back to school.
- 14 Q Okay. Before going back -- so was it this
- 15 summer or not this summer?
- 16 A No, 2010.
- 17 Q Okay. So that was two summers ago, or the
- 18 summer before last?
- 19 A Yes.
- 20 Q What grade were you about to go into?
- 21 A 9th.
- 22 Q Okay. So if you were about to go in
- 23 9th grade, did you stay in 9th for one year?
- 24 A Yes.
- 25 Q Okay. So it's the summer before your

minor

-direct by Durant

1 9th grade?

2 A Uh-huh. (Affirmative.)

3 Q And you say you were raped. Tell me who
4 raped you.

5 A Charlie Belser.

6 Q Do you know his last name?

7 A Last name?

8 Q minor , is Charlie in the courtroom?

9 A Yes.

10 Q Would you mind pointing him out for me?

11 A He's right there.

12 Q How do you know Charlie?

13 A He is a friend of the family.

14 Q How long have you known him?

15 A Just for a little while.

16 Q For like more than a -- how long did you
17 know him before the summer that this happened?

18 A I never knew him before that.

19 Q Did you just meet him that day, or had you
20 known for a few weeks?

21 A A few weeks.

22 Q Did you like him?

23 A Yes.

24 Q Was he nice to you?

25 A Yes.

minor

-direct by Durant

1 Q Did you trust him?

2 A Yes.

3 MR. ROBINSON: Your Honor, I am going to
4 object to the leading in this. When she gives
5 three yeses in a row besides biographical
6 information, I think that's a bit leading.

7 THE COURT: Mr. Durant,---

8 MR. DURANT: I'll move on.

9 THE COURT: Don't lead her.

10 Q Okay. minor , I want to get back to what
11 happened that summer. Do you remember
12 specifically when Charlie raped you?

13 A Yeah, right before school. Like school
14 started in July. At the end of July.

15 Q Was it more than one time?

16 A Yes.

17 Q How many times?

18 A 6 or 7.

19 Q Where did this happen?

20 A At my home.

21 Q Who was there?

22 A Who was there with me?

23 Q Uh-huh. (affirmative.)

24 A My brother and sister.

25 Q Where was your mom?

minor

-direct by Durant

1 A At work.

2 Q Was she at work every time it happened?

3 A Yes.

4 Q Tell me how did it start? The first time
5 it happened. When was that?

6 A One night when my mom went to work, he
7 sent my sister and my brother to my auntie's
8 house.

9 Q Who sent your sister and brother?

10 A Charlie.

11 Q So he sent your sister and brother to your
12 aunt's house?

13 A Yes.

14 Q Where is that?

15 A Down the road.

16 Q Tell me what he did.

17 A We was talking, and he was telling me to
18 do well just like Devon.

19 Q Who? I'm sorry, who is Devon?

20 A My friend.

21 Q How old is Devon?

22 A 16.

23 Q So Devon came up in conversation with you
24 and Charlie?

25 A No.

minor

-direct by Durant

1 Q Okay. Tell me what happened.

2 A Oh, he come up in conversation. Because
3 Charlie was like, people are like Devon. So he
4 told me that they don't like virgins. And he told
5 he was going to get me right for Devon.

6 Q He was going to get you right for Devon?

7 A Yeah.

8 Q Did you know what that meant?

9 A No.

10 Q Well is that all that happened that night?

11 A No.

12 Q What happened?

13 A Well he told me to give him a massage, and
14 I did. And he told me I was doing it wrong. So
15 he gave me a massage. And then he kissed me and
16 then he sent me to my room. And my menstruation
17 was on, so I tell him he couldn't do this. And he
18 said he was going to do this. So he told me he
19 knew what he was doing. Then after that, it kept
20 happening.

21 Q Okay. minor, I want to back up for a
22 minute. It sounded like you said, it started out
23 you gave him a massage first; is that right?

24 A Yes.

25 Q Where were you all in the house when this

minor

-direct by Durant

1 happened?

2 A The living room.

3 Q And where did you massage him on his body?

4 A His shoulders.

5 Q And he massaged you; is that right?

6 A Yes.

7 Q Where did he massage you?

8 A Shoulders.

9 Q Only on your shoulders?

10 A Yes.

11 Q Tell me what happened next after this

12 message?

13 A He sent me to my room.

14 Q Did he say anything to you?

15 A No.

16 Q Did he -- well how did you know to go to
17 the room?

18 A He told me to go.

19 Q Did you know -- well first, tell me what
20 happened when you got to the room.

21 A I waited until he got there.

22 Q Tell me what -- were you wearing clothes
23 then?

24 A Yeah, I had on clothes.

25 Q What kind of clothes? Do you remember

minor

-direct by Durant

1 what kind of clothes you had on?

2 A I had on some shorts. And I don't what
3 which shirt I had on during the time.

4 Q After you went and laid on the bed, what
5 happened?

6 A Then we had sex. Then after that it was
7 over.

8 Q So he came in the room with you?

9 A Yes.

10 Q Did you take your clothes off?

11 A Yes.

12 Q Who took them off?

13 A I did.

14 Q Did Charlie have clothes on?

15 A Yes.

16 Q Did he keep his clothes on?

17 A No.

18 Q Who took those off?

19 A He did.

20 Q minor , why did you take your clothes off?

21 A Why did I take my clothes off?

22 Q Uh-huh. (affirmative.)

23 A Because he told me to.

24 Q Did you know what was going to happen when
25 you took them off?

minor

-direct by Durant

1 A Yes.

2 Q Did you want it to happen?

3 A No.

4 Q You said that he came in the room and you
5 all had sex. I know it's not fun to talk about,
6 but can you tell me what does that mean? What did
7 he do to you?

8 A Put his privacy part in mine.

9 Q He put his privacy part in your vagina?

10 A Yes.

11 Q minor , was he wearing a condom at the
12 time?

13 A No.

14 Q Let me ask you this, minor . After -- was
15 that the first incident you were telling me about?

16 A Yes.

17 Q Okay. After that, did it ever happen
18 again?

19 A Yes.

20 Q How many times?

21 A Like 5 or 6.

22 Q And, minor , did -- do you think that
23 Charlie knew how old you were?

24 A Yes.

25 Q Why do you think that?

minor

-direct by Durant

1 A Because he was around long enough to know.
2 And like sometimes like the whole time we was just
3 playing around. And my mom used to talk.

4 Q After the first, do you remember the last
5 time that it happened?

6 A Yeah, one day before school.

7 Q One day before school?

8 A It was that Saturday. And I told that
9 Sunday.

10 Q So the Saturday before you told?

11 A Uh-huh. (Affirmative.)

12 Q I want you to tell me what happened that
13 Saturday.

14 A That Saturday my mom and my auntie went
15 out to a party for awhile. And he tell my sister
16 to go to bed. And I told her she didn't have to
17 go to bed. And I begged her to stay up with me.
18 So she went to bed. She was crying.

19 Q Did you, you say your sister went to bed.
20 Were your other brothers and sisters, were they
21 there then?

22 A No, my brother was at my auntie's house.

23 Q What happened after -- did your sister go
24 to bed?

25 A Yes.

minor

-direct by Durant

1 Q What happened after that?

2 A Then we had sex again. And he make me
3 suck his privacy part. And after that, my mom, we
4 heard the car pull up. Then the music was loud.
5 Then he ran into my mom's room. And I ran to my
6 room.

7 Q So you say you ran to your room. So where
8 were you before then?

9 A In the living room.

10 Q Is that where you all had sex?

11 A Yes.

12 Q Do you remember where in living room? Was
13 it on the couch?

14 A Floor.

15 Q I think you said that he made you suck his
16 privacy?

17 A Yes.

18 Q Was that before or after you had sex?

19 A After.

20 Q And do you remember what you wearing that
21 night, minor ?

22 A No.

23 Q Did you have underwear on?

24 A Yes.

25 Q And did you take those off to have sex?

minor

-direct by Durant

1 A Yes.

2 Q Do you remember how that incident started?
3 Did he say anything to you? Did you say something
4 to him?

5 A I don't know.

6 Q Did you know what was going to happen?

7 A Yes.

8 Q How did you know?

9 A He sent my sister to bed.

10 Q Well how did you know what that meant?

11 A And he told my mom that he didn't want to
12 go out with them.

13 Q Tell me when you had sex that night, did
14 he wear a condom?

15 A No.

16 Q And I know this isn't fun. And I don't
17 mean to be crass, but did anything come out of his
18 private part?

19 A No.

20 Q So you didn't see anything come out of it?

21 A No.

22 Q How about when you had, when he asked you
23 to perform oral sex on him, did you see anything
24 come out?

25 A No.

minor

-direct by Durant

1 Q What were you all doing when, okay, you
2 said that your mom pulled up and you all ran into
3 the rooms?

4 A Yes.

5 Q What were you doing at the time your
6 mother pulled up?

7 A Well we was on the floor. And then we
8 heard the car pull up. And that's when we went
9 running.

10 Q You all were by the door?

11 A Yeah.

12 Q Did you have clothes on at the time?

13 A No.

14 Q Where did he run to?

15 A My mama's room.

16 Q Where did you run?

17 A My room.

18 Q Did you get your clothes? Did you put
19 your clothes on?

20 A Yes, I got my clothes.

21 Q Where were they?

22 A Under the chair on the floor.

23 Q Did you put your underwear back on?

24 A Yes.

25 Q After that, what did you do?

minor

-direct by Durant

1 A Well I wait for my mom. Then my mom she
2 came in. And then my aunt said she is going to
3 sleep there that night. And I told her I got to
4 tell her something when I get 18. And we went to
5 bed.

6 Q And you said you told your aunt that you
7 had something to tell her when you turned 18?

8 A Yes.

9 Q So did you tell her that night?

10 A I told her the next morning.

11 Q You told your aunt. Now what's her name?

12 A Jerrica Sweat.

13 Q Did you tell your aunt at the house?

14 A I called her.

15 Q Okay. So she left at some point?

16 A Yes.

17 Q What happened after you told your aunt?

18 A She told my mama.

19 Q Did your mom call the police?

20 A Yes.

21 Q Did your mom come and talk to you about
22 it?

23 A Yes.

24 Q After your mom called the police, did you
25 talk to the police?

minor

-direct by Durant

1 A I don't remember.

2 Q Did anybody from the sheriff's office come
3 to your house; do you remember?

4 A Yes.

5 Q And do you ever go to the sheriff's
6 office?

7 A Yes.

8 Q Who went with you when you went?

9 A My mom and my dad.

10 Q minor , do you remember what happened to
11 the panties that you were wearing that night?

12 A I give them to the police officer.

13 Q Why did you do that?

14 A Then somebody asked for them.

15 Q Before you gave them to the police
16 officer; where were they?

17 A I had them on.

18 Q So you still had them on?

19 A Uh-huh. (Affirmative.)

20 Q When somebody asked for them?

21 A Yes.

22 Q Tell me, before and I know this kind of
23 sounds silly. But before you put your underwear
24 on, were they, and where did you get them from?

25 A Out of my drawer.

minor

-direct by Durant

1 Q Were they clean?

2 A Yes.

3 Q minor , did you -- did you have to go and
4 talk to somebody else about this after the
5 sheriff's office?

6 A Yes.

7 Q Do you remember where you went for that?

8 A Florence.

9 Q Who went with you?

10 A My mama.

11 Q minor , when this was going on, did Charlie
12 ever threaten you or tell you not to tell?

13 A Yeah, he told me not to tell my mom,
14 because she would hurt me and she would kill me.

15 Q And what didn't you tell your mamma?

16 A I was scared.

17 Q And scared about what?

18 A Scared my mom was going to hurt me or do
19 something bad at me.

20 Q Because she would be mad at you?

21 A Yes.

22 Q Did Charlie ever -- did he ever put his
23 privacy---

24 MR. ROBINSON: Your Honor, and I am going
25 to object. I have been sitting patiently. But

minor

-direct by Durant

1 basically Mr. Durant is testifying. The witness
2 is saying yes or no. If she's got something to
3 tell the jury, I would love for them to hear it in
4 her words, instead of saying yes to Mr. Durant's
5 words.

6 THE COURT: Mr. Durant, try not to lead
7 her.

8 Q minor , did Charlie ever do anything to
9 another part of your body?

10 A Yes.

11 Q What did he do?

12 A He stick his privacy part in my butt.

13 Q When did he do that?

14 A All the time.

15 Q And again, minor , all this happened when
16 you were -- where were you living at the time?

17 A With my mom.

18 Q This was in Summerton?

19 A Yes.

20 MR. DURANT: minor , I don't have any
21 further questions for you right now. Please
22 answer any that Mr. Robinson might have. Okay.

23 MR. ROBINSON: Can we approach, Your
24 Honor?

25 (Whereupon, the attorneys approach and

minor

-direct by Durant

1 confer with the judge.)

2 THE COURT: Ladies and gentlemen, I need
3 you to go to the jury room. I will get you back
4 out just as quick as I can. Please don't discuss
5 the case.

6 (Whereupon, the following takes place
7 outside the presence of the jury.)

8 THE COURT: Okay, Mr. Robinson.

9 MR. ROBINSON: Your Honor, I guess for the
10 first incident, whatever in regard to the rape
11 shield statute, Mr. Durant stated in his opening
12 argument and again the minor stated on direct,
13 that something to do with related to her
14 virginity; that Mr. Belser told her that boys
15 don't like virgins or Devon doesn't like virgins
16 and he was going to get her ready, was actually a
17 statement that she made to the forensic
18 interviewer during the forensic interview; that
19 she actually had some level of intercourse with
20 Devon prior to these episodes occurring with Mr.
21 Belser.

22 The reason, Your Honor, that that is
23 important, I think it, you know, part of what the
24 state's position here is clearly that Mr. Belser
25 used this Devon and her virginity and the fact

1 that boys don't like virgins, to entice, persuade,
2 coerce, whatever word you want to use, the minor
3 into having sex with him. When in fact the
4 minor had already by her own admission in the
5 forensic interview, and I say attempted. I think
6 her words were, couldn't get it to go all the way
7 in. Or tried to have sex a couple of times and
8 couldn't get it all the way in and then gave up.
9 But certainly that she had been in that
10 environment before.

11 I think it gives the jury an improper
12 picture that she was totally innocent and naive
13 and pure and didn't have any idea about all this.
14 When they specifically say that Charlie told her
15 that boys didn't like virgins. Or Devon didn't
16 like virgins. And he was going to get her ready
17 for Devon. I think that goes to her credibility.
18 I think it's an issue for the jury's emotional
19 side quite frankly; that it portrays her quite
20 frankly as something that she is not. And I think
21 to let the jury sit there with that in their mind
22 when it's quite frankly not a true statement. Not
23 that perhaps Mr. Belser didn't say it, but the
24 fact which we deny obviously. But the fact she
25 was not in fact a virgin. And I think it is

1 important.

2 And I think by putting out that as those
3 were the grounds for the coercion, or the grounds
4 that he used without allowing us to address that
5 it is, you know, it's simply not true. So I think
6 he has opened the door, not only by his statement,
7 but by her testimony to that effect.

8 THE COURT: Okay, do you want to respond
9 to that?

10 MR. DURANT: Yes, sir, Judge. Judge, I
11 think Mr. Robinson's argument for its
12 admissibility, exactly why the evidence is not
13 admissible. I mean, basically he told the court
14 he intends to use the evidence to appeal to the
15 jury's emotions; to let the jury know or try to
16 paint her, the picture of the minor as not shy
17 and innocent and naive but as someone with sexual
18 experience.

19 Judge, these are specifically the types
20 of, the basis that the law does allow; that
21 certainly any probative value that that evidence
22 might have is extremely low compared to the
23 prejudicial impact to the state's case, Judge.
24 The defense counsel has told you that he wants to
25 offer to appeal to the jury's emotions. And to

1 paint the minor as her -- to take away any chance
2 the jury could view her as shy and innocent and
3 naive.

4 MR. ROBINSON: And, Your Honor, that's not
5 exactly what I said. I just don't want them to
6 have the impression that she is. When the fact is
7 by her own admission she is not.

8 THE COURT: Yeah, but my recollection of
9 her testimony is she never ever testified that she
10 was a virgin. Her testimony was based on what the
11 defendant told her; that the defendant's
12 allegation was that boys don't like virgins, and
13 he was going to get her ready for Devon, which is
14 a friend of hers. But she, at no point did she
15 claim she was a virgin.

16 MR. ROBINSON: Well doesn't that allow the
17 jury to draw an improper inference, boys don't
18 like virgins, I'm going to get you ready. The
19 truth is she is not by her own admission, Your
20 Honor.

21 THE COURT: I understand that. But that's
22 exactly why the rape shield is in place. The fact
23 that she may have had a prior sexual contact does
24 not have any impact on whether it happened on this
25 occasion with this defendant. But that's what the

1 whole rape shield is about. Because many times
2 bringing up any women's prior sexual act simply
3 has nothing to do to prove the guilt or innocence
4 of the defendant. It puts her on trial, and that
5 door just hasn't been opened. She didn't claim
6 she was virgin. She's just repeating what she
7 said your client told her. And you certainly can
8 cross examine on what your client told her. But
9 she didn't say anything to the jury; that she was
10 a virgin. She said that your client said that
11 boys don't like virgins. And he was going to get
12 her ready for Devon.

13 MR. ROBINSON: Well, Your Honor, my
14 understanding and the problem with that is, this
15 is criminal sexual conduct with a minor second
16 degree. This -- my understanding is the coercion
17 that was used to accomplish that act was: Boys
18 don't like virgins.

19 THE COURT: I understand that.

20 MR. ROBINSON: Which is an element of the
21 crime, but I'm not now being allowed to defend
22 with the truth that she's not a virgin.

23 THE COURT: But that, I mean, that is
24 coercion. Assuming there was no coercion. This,
25 if she was 18 years old, coercion would be huge if

1 it was a nonconsensual rape. But it doesn't
2 matter whether he coerced her or not coerced her.
3 But whether she's the one that was the aggressor.
4 She's under age. He's over age. He can't have
5 sex with her. But I don't think in this
6 situation she's opened the door under the rape
7 shield statute, because she hasn't claimed to be a
8 virgin.

9 The solicitor did not ask her that. There
10 has been no testimony that I have heard at this
11 point from any medical person that's claiming any
12 type of trauma to her. You know, whether her
13 hymen is in tact or whether not in tact; that if
14 she claimed to be a virgin. And the doctor's
15 testified her hymen was not in tact. And then you
16 have evidence to the fact that she wasn't, that's
17 a whole different ballgame. But that door hasn't
18 been opened yet.

19 And she simply was saying what your client
20 allegedly said, boys don't like virgins. But she
21 didn't claim to be a virgin. But I just don't
22 think that door is open. So you can cross examine
23 her on anything that your client allegedly told
24 her or did not tell her. But the fact that she
25 has a boyfriend or a friend and called his name,

1 doesn't necessarily open that door. Okay,
2 anything else?

3 MR. ROBINSON: Well, Your Honor, I do
4 intend and I don't know whether I need to -- I
5 just want to address this outside the presence of
6 the jury since this case is somewhat sensitive. I
7 do plan to cross examine her on statements that
8 she made or inconsistent statements that she made
9 to the forensic examiner.

10 THE COURT: Well, I don't, you know,
11 you've got to set the proper background. I don't
12 know what those statements were. But just
13 because, you know, if she told the forensic
14 examiner that she was not a virgin and had sex
15 with somebody else, that's not admissible.

16 MR. ROBINSON: I think it's totally
17 unrelated to that. It's a factual scenario
18 related to other questions. I'm not going to try
19 to back door you on the rape shield. Even though
20 we disagree, I understand your ruling. This is
21 related to other instances that she testified to
22 that are in.

23 THE COURT: As long as you comply with the
24 rules of evidence, you certainly can go in with
25 it. But you've just got to put her on actual

1 notice of giving statements or whatever. And I
2 assume that whatever statements you are talking
3 about, is it transcribed?

4 MR. ROBINSON: Yes, sir. That's what I am
5 going by. That's what I am giving rule 5.

6 THE COURT: I don't want to cut your cross
7 examination short. I don't know how much in 15 minutes
8 or 45 minutes. And I usually try to stop around 5
9 or 5:30.

10 MR. ROBINSON: And, Your Honor, what I
11 would prefer and given the totality of the
12 circumstances in this case with the fact that
13 Mr. Belser and I have not been able to prepare,
14 then obviously this is a key witness. And he and
15 I have no chance to cumulatively review her
16 report, talk about his defense, et cetera, I would
17 certainly appreciate that we would break at this
18 point until tomorrow so I don't have to try to
19 cross examine her on the fly, off the cuff. And
20 get some meaningful input from my client, and so I
21 don't bore the jury and leave them tired at the
22 end of the day. That kind of stuff.

23 THE COURT: Any objection from the state?

24 MR. DURANT: Judge, I would object only,
25 and I certainly understand Mr. Robinson's

1 position. I would object only to protect the
2 minor here. Because, Judge, I would prefer for
3 her not to have to go to bed tonight knowing that
4 she's got to get up tomorrow and do this again.

5 THE COURT: So I understand that. But it
6 is 12 minutes to 5. Of course she is I am sure
7 probably one of the state's key witnesses. He
8 certainly has the right to cross examine her in
9 whatever depth necessary. And I don't have any
10 idea how long it's going to take.

11 Once we start, I'm really not inclined to
12 stop in the middle. So if we are going to stop,
13 it probably makes more sense not to ever start
14 it. You know.

15 MR. ROBINSON: Your Honor, I will be
16 candid, I don't know what her response is going to
17 be. But I don't want to try to limit myself.
18 Because you have already told the jury we will go
19 until to about 5 or 5:30. So they have got an
20 expectation---

21 THE COURT: I'll agree. It's probably the
22 safest thing to do is just stop here and start
23 back in the morning at 9:30.

24 MR. ROBINSON: Thank you, Your Honor.

25 THE COURT: And well let me ask you this.

1 Assuming that you have rested; is that correct on
2 her?

3 MR. DURANT: Yes, sir.

4 THE COURT: Okay. She needs to
5 understand. I will explain it to her. You
6 cannot, once I get you down, you are still on this
7 witness stand, so you can't discuss your
8 testimony with Mr. Durant or anybody else. Okay.

9 A Okay.

10 MR. ROBINSON: And, Your Honor, just to
11 make sure she understands, her, mom, the minor 's
12 advocate, nobody.

13 THE COURT: You can't talk about what you
14 said. And tomorrow they are going to ask you some
15 more questions, okay. But just for tonight when
16 you finish testifying, you can talk to anybody you
17 want to. But as long as you are on the stand,
18 under our rules, you can't talk to anybody about
19 what you said. And you can't ask them whether
20 they think you said something right or wrong and
21 correct any of that. Do you understand?

22 A Uh-huh. (Affirmative.)

23 THE COURT: Okay. You can step down. And
24 we will be recess until 9:30, and I bring the jury
25 back out with some instruction. Anything before I

1 bring the jury in?

2 MR. ROBINSON: No, sir.

3 MR. DURANT: Not from the state.

4 (Whereupon, the following takes place
5 within the presence of the jury.)

6 THE COURT: Ladies and gentlemen, I
7 normally try to stop between 5 and 5:30. And we
8 are kind of half way through this testimony. And
9 so I decided to stop right now for the evening and
10 start back at 9:30 in the morning.

11 So keeping that in mind, I remind you,
12 please don't discuss this case or allow anyone to
13 discuss it with you. Don't read anything in the
14 newspaper. And be back at 9:30 and come straight
15 to the jury room. If you have an emergency
16 tonight and you can't be here, and it needs to be
17 an emergency. You just can't decide you don't
18 want to come, you've got to call the clerk's
19 office. Because if I don't hear from you, it
20 takes all 13 of you before we can do anything, so
21 I can't unless all of you are here.

22 So if somebody is missing and I haven't
23 heard from you, when I say that, you haven't
24 called the clerk's office, then I am going to send
25 the deputies looking for you. With the

1 instructions that when they find you, to bring you
2 in. So if you can't come, please call and let us
3 know because we can't do anything without all of
4 you. Have a nice evening. See you in the
5 morning.

6 (Whereupon, At 4:53 jury is dismissed.)

7 THE COURT: Anything else before we break?

8 MR. DURANT: Not from the state.

9 MR. ROBINSON: Not from the defense, Your
10 Honor.

11 THE COURT: Okay. We will start back at
12 9:30 in the morning.

13 (Whereupon, the trial commences on Tuesday
14 January 29th 2013 at 9:30 a.m.)

15 (Whereupon, the following takes place outside
16 the presence of the jury.)

17 MR. ROBINSON: Your Honor, before we bring
18 in the jury, I do have a motion. And I guess,
19 it's to suppress or limit testimony. It's my
20 understanding that the state intends to call the
21 law enforcement officer to the stand; that the sum
22 and substance of their testimony may be that they
23 took him to the sheriff's department and he
24 refused to talk. I would ask the court to exclude
25 and suppress that. Because A, that has no

1 probative value. And B, I think that's almost
2 some sort of statement or implication of guilt
3 that he refused to talk.

4 I think it perhaps improperly shifts the
5 burden and it casts some shadow or reason to
6 explain. Obviously Mr. Belser does not have any
7 burden of proof. And he has a constitutional
8 right to remain silent and not give any
9 incriminating statements against himself. And I
10 think if they get up there and say he refused to
11 talk, again it gives the appearance of guilt and
12 perhaps burden shifting. So I would ask that any
13 testimony to that effect be excluded. Because It
14 obviously has no probative value. And the
15 prejudicial effect I think would be pretty high in
16 this case.

17 THE COURT: What says the state?

18 MR. DURANT: Judge, I would stipulate to
19 that. With the exception that I would like to
20 elicit testimony from the officer that they took a
21 buccal swab from Mr. Belser, to the extent that it
22 was voluntarily given.

23 MR. ROBINSON: And I have no objection to
24 that. And I will stipulate to that. He
25 voluntarily consented to give his DNA.

1 THE COURT: Okay. Anything else?

2 MR. DURANT: No, sir, Your Honor.

3 THE COURT: Are we ready for the jury
4 then?

5 MR. ROBINSON: Yes, sir.

6 THE COURT: If you will bring the jury,
7 please.

8 (Whereupon, the following takes place
9 within the presence of the jury.)

10 THE COURT: Good morning. Mr. Solicitor,
11 if you will put your witness back on the stand.

12 minor , being
13 previously sworn, retakes the witness stand.

14 THE COURT: And I remind you, you are
15 still under oath. Okay.

16 MR. DURANT: minor please answer any
17 questions Mr. Robinson might have for you.

18 Cross Examination by Mr. Robinson:

19 Q Good morning, Ms. Keels, how are you this
20 morning.

21 A Good.

22 Q I wanted to ask you some questions about
23 some of things that you talked about yesterday and
24 told Mr. Durant. Now this event, these events
25 that you have alleged happened, do you recall when

minor

-cross by Robinson

1 they took place?

2 A Yes.

3 Q And was that?

4 A Right before school in 2011.

5 Q Okay. Right before school in 2011. Do
6 you remember them well, or it's been about a year
7 and a half. Do you remember things pretty well,
8 or is your memory a little bit hazy?

9 A I remember them.

10 Q Do you think you remember things better
11 today, or a few days after you talked with your
12 aunt and some of the law enforcement?

13 A A few days after I talked with my aunt.

14 Q So do you think that maybe you have
15 forgotten some things and you're a little bit
16 nervous about being here, or do you think your
17 testimony is pretty complete?

18 A I think it's pretty complete.

19 Q Now I want to take you back. You said
20 that I believe it was the Sunday after this
21 supposedly happened, you talked with your aunt?

22 A Yes.

23 Q And what is your aunt's name?

24 A Jerrica Sweat.

25 Q Jerrica Sweat?

minor

-cross by Robinson

1 A Yes.

2 Q And after you talked with Ms. Sweat, did
3 you talk with anybody else?

4 A My mom.

5 Q And that was on that same day?

6 A Yes.

7 Q Did you talk to anybody else from law
8 enforcement later that day or the next day?

9 A No, I don't remember.

10 Q Do you remember talking to a lady by the
11 name of Debbie Elliott?

12 A No.

13 Q Do you remember going to Florence to talk
14 to somebody?

15 A Yes.

16 Q You just don't remember what her name was?

17 A Yes.

18 Q And did you answer questions for her and
19 tell her things that happened much like you are
20 doing here today?

21 A Yes.

22 Q Let me ask you this. I think when you
23 started off yesterday, Mr. Durant asked you what
24 happened. And you said that Charlie raped you.
25 Do you remember that?

minor

-cross by Robinson

- 1 A Uh-huh. (Affirmative.)
- 2 Q When did you start using the term rape?
- 3 A After everything like. Like yesterday
- 4 like.
- 5 Q I am sorry, I didn't understand.
- 6 A After two days.
- 7 Q When you said yesterday that he raped you,
- 8 when you started telling people that term, that
- 9 you were, "raped," using the word raped.
- 10 A When everybody found out everything.
- 11 Q You don't remember telling Ms. Elliott in
- 12 Florence that you were raped; do you?
- 13 A No, I don't remember.
- 14 Q Okay. Do you remember your interview with
- 15 her?
- 16 A Yes.
- 17 Q Do you remember using that word during
- 18 your interview with her? Telling her that Mr.
- 19 Belser raped you?
- 20 A I don't remember.
- 21 Q You don't remember that? Okay. Did
- 22 somebody else tell you that Mr. Belser had raped
- 23 you?
- 24 A I don't remember.
- 25 Q Okay. And what did you call him

minor

-cross by Robinson

1 yesterday? Mr. Belser? That fellow sitting right
2 there. What did you say?

3 A His name?

4 Q Uh-huh. (Affirmative.)

5 A Charlie.

6 Q Okay. And when did you start calling him
7 Charlie?

8 A Uh, I didn't really call him Charlie,
9 because he had a nickname.

10 Q Okay. But I mean you referred to him
11 yesterday as Charlie; right?

12 A Yes.

13 Q You don't remember saying his nickname
14 yesterday; do you?

15 A No.

16 Q What's -- but you never called him
17 Charlie before yesterday; did you?

18 A Yeah, sometimes.

19 Q Sometimes. What do you typically call
20 him?

21 A PI.

22 Q Do you remember telling Ms. Elliott that
23 you called him PI?

24 A I don't remember.

25 Q And I think yesterday you said Mr. Belser

minor

-cross by Robinson

- 1 was a friend of the family?
- 2 A Yes.
- 3 Q Okay. What kind of friend was he?
- 4 A Like a friend I could trust.
- 5 Q Okay. And how did he become a friend?
- 6 A My uncle is his best friend.
- 7 Q Now did he stay at your house?
- 8 A Yes, sometimes.
- 9 Q And was he staying over there because he
- 10 was homeless? Or why was staying at your house?
- 11 A A friend of the family, hanging out.
- 12 Q Where did he stay when he stayed at your
- 13 house.
- 14 A In my mamma's room.
- 15 Q In your mom's room?
- 16 A Yes.
- 17 Q So he was kind of like a boyfriend to your
- 18 mom?
- 19 A Not really, but you could say that.
- 20 Q Okay. They stayed in the same room at
- 21 night?
- 22 A Sometimes.
- 23 Q And how long did that go on?
- 24 A I don't know. About two weeks.
- 25 Q And do you remember when that two weeks

minor

-cross by Robinson

1 was? I mean is that the same time that you're
2 talking about all this happened?

3 A Some of it.

4 Q Okay. And so he just came over during the
5 day sometimes to watch you all?

6 A Yes.

7 Q And why would he do that?

8 A Because like all of us wanted to hang out.
9 He was a friend of the family.

10 Q When your mom was there?

11 A Yes.

12 Q So when these things that you say
13 happened, happened, your mom was at home?

14 A No, she was at work.

15 Q And you were 14 at the time; is that
16 correct?

17 A Yes.

18 Q And you said you had some brothers and
19 sisters, but they're all younger than you?

20 A Yes.

21 Q Were you babysitting your brothers and
22 sisters? Or was Mr. Belser babysitting you all?

23 A He was like babysitting us.

24 Q Okay. You say he stayed over there at
25 night sometimes?

minor

-cross by Robinson

1 A Yes.

2 Q How many nights did he stay over there?

3 A I don't remember, but -- yeah, I don't
4 remember.

5 Q And these events that you talked about
6 yesterday happening, did they happen during the
7 daytime? Did they happen at nighttime?

8 A At night.

9 Q At night?

10 A Yes.

11 Q So he would spend the night over there?

12 A Yes.

13 Q And did your mom work at night?

14 A Yes.

15 Q And where did she work at night?

16 A Disabilities Board.

17 Q And what did she do at night? Do you
18 know?

19 A I think go to work.

20 Q I mean, do you know what she did at work?

21 A No.

22 Q Did she work on weekends?

23 A I don't remember.

24 Q You talked to Mr. Durant about the last
25 time that you said it happened, which I think you

minor

-cross by Robinson

1 said was a Saturday night before school started?

2 A Yes.

3 Q Was your mom working that night?

4 A Yes.

5 Q She was working?

6 A No, she went to a party that night.

7 Q What time did she leave?

8 A I don't remember.

9 Q Early evening? Late at night?

10 A It was nighttime.

11 Q Do you remember the forensic interviewer?

12 It was around midnight. Ms. Elliott; do you
13 remember telling her that?

14 A I don't remember.

15 Q Well do you remember that you told Ms.
16 Elliott, the forensic interviewer?

17 A The same thing I am telling now.

18 Q Well you said some things yesterday. And
19 that's why I am asking you that. You told
20 Mr. Durant when he asked you if you told your mom
21 about this, and you said you were scared to tell
22 her. Do you remember that?

23 A Yes.

24 Q And you said you were scared to tell her,
25 because Charlie told you that your mom would hurt

minor

-cross by Robinson

1 you or kill you.

2 A Yes.

3 Q Do you telling the forensic interviewer
4 that?

5 A Yes.

6 Q You do?

7 A Uh-huh. (affirmative.)

8 Q So if you told her that, that would have
9 been written down in her notes?

10 A Yes.

11 Q And you told Mr. Durant yesterday that the
12 last time it happened that Mr. Belser did some
13 things to you, but your mama came home before you
14 all finished. And he ran in one room and you ran
15 in the other.

16 A Yes.

17 Q And you had your panties on?

18 A No.

19 Q No? Where? I thought that's what you
20 told Mr. Durant.

21 A No, I had to get them.

22 Q And where were they?

23 A On the floor.

24 Q Did you have any trouble finding them?

25 A Yes.

minor -cross by Robinson

1 Q What kind of trouble did you have finding
2 them?

3 A I had to look for them. I didn't know
4 where they was at. I had to look for them on the
5 chair.

6 Q And your mom and your aunt were at home?

7 A They was outside.

8 Q They were outside. Do you remember your
9 aunt sitting in the chair, and you had to get some
10 clothes from behind the chair she was sitting in?

11 A I don't remember.

12 Q Where did you find your panties?

13 A On the floor.

14 Q Were they under a bag of school supplies
15 or a book bag or something?

16 A Yes.

17 Q Do you remember telling the forensic
18 interviewer that?

19 A I think so.

20 Q And you told Mr. Durant yesterday. And I
21 know these are uncomfortable questions. And I am
22 not trying to make you uncomfortable or
23 embarrassed, and I apologize if I am doing that.
24 But you told him the last time that it happened on
25 that night when your mom and those came home from

minor

-cross by Robinson

1 the club or the party wherever they were, that
2 nothing happened. Nothing came out of Mr. Belser.

3 Do you remember that?

4 A Uh-huh. (Affirmative.)

5 Q Is that right?

6 A Yes.

7 Q And the reason that you say that happened
8 is because your mom and them came home and
9 surprised him or came home early and he didn't
10 finish; is that right?

11 A Uh-huh. (affirmative.)

12 Q And when you found your panties, did you
13 put them back on?

14 A Yes.

15 Q Okay. And then you went to bed obviously,
16 and went to sleep.

17 A Yes.

18 Q And when you woke up the next morning, did
19 you take a shower or bath or anything?

20 A No.

21 Q What time that next day did you tell your
22 aunt about all of this?

23 A She left at like 6 something, because her
24 brother was in a car accident and I called her.

25 Q She left at 6 o'clock in morning?

minor

-cross by Robinson

1 A Yeah, it was about 6 or 7.

2 Q Okay. And then what time did you call
3 her, do you remember?

4 A No.

5 Q I mean, was it early that morning? Was it
6 around lunchtime?

7 A I think it was around lunchtime.

8 Q Okay. And then when did you go to the
9 police station or to the sheriff's department or
10 wherever you went after you told your mom about
11 this?

12 A It was Sunday like at 12.

13 Q Around lunch time right after you told
14 your aunt?

15 A No, like midnight.

16 Q At midnight?

17 A Yes.

18 Q Do you know when your aunt told your mom?

19 A That night when she got there. Sunday
20 night.

21 Q So you told your aunt around lunchtime.
22 But she didn't say anything to your mom until she
23 got back to your house that night?

24 A Yes.

25 Q And so when she told your mom that night

minor

-cross by Robinson

1 then you went to the sheriff's department?

2 A Yes.

3 Q And had you taken a bath or changed
4 clothes or done anything at that point?

5 A No.

6 Q And when you went to the sheriff's
7 department, did you take a change of clothes?

8 A No.

9 Q Did they take your clothes from you that
10 at the sheriff's department?

11 A No.

12 Q Okay. Did you go to the hospital that
13 night?

14 A I don't remember.

15 Q Okay. Did you go to the doctor or the
16 hospital the next day?

17 A Yes.

18 Q Okay. Did you have on the same clothes
19 still?

20 A No.

21 Q Okay. Did you take somebody your
22 underwear that you had on the day before?

23 A That night they got them.

24 Q Okay. Monday night or Sunday night?

25 A Sunday night.

minor

-cross by Robinson

1 Q Okay. Did they come to your house and get
2 them?

3 A Yes.

4 Q So that was after you went to the
5 sheriff's department then they came to your house
6 and got your underwear?

7 A Before.

8 Q Before you went to the sheriff's
9 department.

10 A Yes.

11 Q So they came and you had to change clothes
12 and give them your underwear?

13 A Yes.

14 Q Did you give them all your clothes or
15 just your underwear?

16 A Just my underwear.

17 Q Now when this time frame was going on,
18 where were you living?

19 A With my mom.

20 Q But I mean, do you know the address?

21 A [REDACTED]

22 Q What drive?

23 A [REDACTED]

24 Q [REDACTED] Do you all live, is that in
25 town or out of town, or where is that?

minor

-cross by Robinson

- 1 A In town.
- 2 Q That's in town? Does anybody live close
- 3 around you?
- 4 A My grandmom and my auntie.
- 5 Q Your grandmom and your auntie?
- 6 A Uh-huh. (Affirmative.)
- 7 Q And what kind of house were you living in?
- 8 A It was a trailer.
- 9 Q Was it a single wide or a double wide?
- 10 A I think it was double wide.
- 11 Q And how far does your aunt and your
- 12 grandmama live from you?
- 13 A My grandmother lives next door. And my
- 14 aunt she lives -- well it's like we all live down
- 15 the same dirt road.
- 16 Q So kind of side by side by side down the
- 17 dirt road?
- 18 A Yes.
- 19 Q And it's mostly your family that lives
- 20 down the dirt road?
- 21 A Yes.
- 22 Q And do you all visit each other a lot
- 23 since you live that close?
- 24 A Yes.
- 25 Q In and out of each other's house all the

minor

-cross by Robinson

1 time?

2 A Uh-huh. (Affirmative.)

3 Q Do you have -- was there anything wrong
4 with the door on your house? The front door?

5 A It was kind of messed up.

6 Q It wouldn't shut good sometimes?

7 A Yes.

8 Q And was the window in the living room
9 busted out?

10 A I think so.

11 Q And what kind of curtains? Did you all
12 have any curtains or anything in the house?

13 A Yes, but I don't remember what color it
14 was.

15 Q Did you keep the curtains closed or they
16 usually stayed open?

17 A I don't remember.

18 Q And your -- you had your own bedroom?

19 A Yes.

20 Q And you said you had a, I think at that
21 time, just a little brother and a little sister?

22 A Yes.

23 Q And where was their bedroom?

24 A All the way on one side of the house.

25 When you walk from the door, and you go down the

minor

-cross by Robinson

1 hall to my room, the bathroom and then the room.

2 Q So there was a bathroom between your
3 rooms?

4 A Uh-huh. (Affirmative.)

5 Q Did they have a door on their room, or was
6 the door gone or broken?

7 A No, the door was gone.

8 Q The door was gone. So they didn't have a
9 door on their room?

10 A Yes.

11 Q Now do you remember when you talked
12 yesterday about the first time that you said this
13 happened?

14 A Yes.

15 Q You were talking about, you started giving
16 him a massage and then he gave you a massage and
17 that kind of stuff?

18 A Yes.

19 Q Okay. And then you said you all went, I
20 think, to your bathroom?

21 A Yes.

22 Q Did anybody walk into your bedroom or come
23 into your bedroom that day?

24 A No.

25 Q You don't remember that your little sister

minor

-cross by Robinson

1 came in, and you told your forensic interviewer
2 that you had in the bathroom and PI jumped in the
3 closet?

4 A No, I don't remember.

5 Q Do you remember telling the lady in
6 Florence that; right?

7 A Yes.

8 Q But you forgot that yesterday?

9 A Yes.

10 Q And when these things happened, you said
11 they were at night, and your mom was at work or
12 out at a party or something. Were your brothers
13 or sisters home?

14 A My brother wasn't there.

15 Q Okay. But your sister was home?

16 A I think she went out to find my brother,
17 and went down my auntie's house.

18 Q On the first time?

19 A Yes.

20 Q Your sister went down to your auntie's
21 house?

22 A Uh-huh. (affirmative.)

23 Q Well when was it that she came back,
24 because you said she walked in on you all.

25 A I think it happened at another time.

minor

-cross by Robinson

1 Q That happened another time?

2 A Yes.

3 Q And what were you all doing when she
4 walked in?

5 A We was in my room having sex.

6 Q And were you all under the covers, were
7 the lights out?

8 A The lights were out, and we was under the
9 covers.

10 Q And she walked in the room?

11 A Uh-huh. (Affirmative.)

12 Q Did she see what you all were doing?

13 A I don't think so.

14 Q Okay. And how did she not see, because
15 the lights were out?

16 A Yes.

17 Q And you jumped up and ran in the bathroom?

18 A Uh-huh. (Affirmative.)

19 Q Mr. Belser hid in the closet?

20 A Yes.

21 Q Did she see you all go in the bathroom and
22 the closet?

23 A I think she saw me.

24 Q Okay. And she didn't see Mr. Belser go in
25 the closet?

minor

-cross by Robinson

1 A I don't think so.

2 Q And the night that you say the last time
3 that this happened on that Saturday night, was
4 your sister and brother home that night?

5 A My sister was.

6 Q Your sister was?

7 A Yes.

8 Q And you said you all were in the living
9 room?

10 A Uh-huh. (Affirmative.)

11 Q With a busted out widow?

12 A Uh-huh. (Affirmative.)

13 Q And you could see when your mom came back
14 up?

15 A No, we heard.

16 Q You heard her?

17 A Uh-huh. (affirmative.)

18 Q And was the front door working that night?
19 Kind of sort of?

20 A I don't remember.

21 Q You don't remember. Did you have the
22 door locked?

23 A Yeah, I think the door -- I don't know. I
24 don't know whether the door was locked or not.

25 Q Okay. Do you remember when you went to

minor

-cross by Robinson

1 Florence and you talked, gave the interview with
2 that lady? Did you go see a doctor after that?

3 A Yes.

4 Q Okay. And so you got a check up and that
5 kind of thing? The doctor---

6 A Uh-huh. (Affirmative.)

7 Q ---checked you out good. Is that right?

8 A Yes.

9 Q Do remember his name? Was it a man or a
10 woman?

11 A It was a man.

12 Q Okay. Does Dr. Keith sound right?

13 A I don't know.

14 Q Okay. You don't remember his name. But
15 you do remember going to the doctor?

16 A Uh-huh. (Affirmative.)

17 MR. ROBINSON: Court's indulgence for just
18 one moment, Your Honor.

19 THE COURT: Okay.

20 Q And were your clothes of your knowledge,
21 were they taken to the sheriff's department?

22 A Yes.

23 Q The next day is when you went to Florence?

24 A Yes.

25 Q Okay. And you saw some lady.

minor

-cross by Robinson

1 A Uh-huh. (Affirmative.)

2 Q But you don't necessarily remember her
3 name. And then you saw a doctor as well?

4 A Yes.

5 Q Have you talked to anybody else about this
6 case since then? Since you talked with the lady
7 in Florence?

8 A I went to counseling.

9 Q Okay.

10 A In Summerton.

11 Q In Sumter?

12 A In Summerton.

13 Q Summerton.

14 A Uh-huh. (affirmative.)

15 Q Have you talked with anybody else about
16 it?

17 A No.

18 Q Did you talk with your mom about it?

19 A I don't remember.

20 Q You don't remember. Did somebody tell
21 you, you were coming to court yesterday or they
22 just put you in the car and surprised you with a
23 trip down here?

24 A No, my mom told me.

25 Q She told you. Did she tell you what all

minor

-cross by Robinson

1 was going on?

2 A Yes.

3 Q Okay. When was that? Was that right
4 before you came or a few days or a few weeks?

5 A I think it was Tuesday.

6 Q Okay. Did you talk to anybody about what
7 you were going to say today?

8 A No.

9 Q No. You didn't talk with Mr. Durant or
10 your mom or anybody else?

11 A She just said don't say -- don't say no
12 lie.

13 MR. ROBINSON: Thank you. I don't have
14 any further questions.

15 THE COURT: Anything further from the
16 state?

17 MR. DURANT: No, Your Honor.

18 THE COURT: You can step down.

19 MR. DURANT: Your Honor, the state would
20 call Latonya Billups.

21 THE COURT: Okay.

22 LATONYA BILLUPS, after being duly
23 sworn, testified as follows:

24 Direct Examination by Mr. Durant:

25 Q Ms. Billups, will you please state your

Latonya Billups-direct by Robinson

1 full name for the record?

2 A Latonya S. Billups.

3 Q And where do you live?

4 A In Greensboro, North Carolina.

5 Q And do you work?

6 A Yes.

7 Q Where do you work?

8 A I work for a company called Murray HA.

9 And I also work for a company called Caterpillar
10 Center.

11 Q And how long you lived up in Greensboro?

12 A Going on 8 and a half months.

13 Q And who do you live with up there?

14 A Me and my husband and my kids.

15 Q How many children do you have?

16 A Five.

17 Q What are their names?

18 A minor , Atajanel, Jamie, Hayden, and
19 Nicee.

20 Q How old are they?

21 A 15, 11, 9, 11 months and five months.

22 Q Okay. Before moving to North Carolina,
23 where did you live?

24 A Summerton, South Carolina. Davis
25 Crossroads.

Latonya Billups-direct by Robinson

1 Q And did you work when you lived in
2 Summerton?

3 A Yes.

4 Q Where did you work then?

5 A For Disabilities and Special Needs Board.

6 Q Here in Manning?

7 A Yes.

8 Q Ms. Billups, do you know what we were are
9 here for today?

10 A Yes.

11 Q And what is that?

12 A My daughter was sexually assaulted.

13 Q How did you first find out about that?

14 A My best friend called me.

15 Q And what's her name?

16 A Jerrica Sweat.

17 Q Jerrica. Do your children consider her
18 their aunt?

19 A Yes.

20 Q Did you later talk to your daughter about
21 that?

22 A Yes. The night that Jerrica came to my
23 house to tell me, I talked to her that night.

24 Q And did -- and this is minor we're talking
25 about?

Latonya Billups-direct by Robinson

1 A Yeah, minor .

2 Q Did minor , did she tell you that she was
3 sexually assaulted?

4 A Yes. After Jerrica told me, yes.

5 Q Who did she say did that?

6 A Charlie Belser. We call him PI.

7 Q Who is Charlie Belser? How do you know
8 him?

9 A He was my brother's best friend. And I
10 know him to be my brother's friend.

11 Q Did your children know him well?

12 A They knew after he started coming back
13 around. You know, after he started coming around
14 with me and my brother. And that's how they, you
15 know.

16 Q When did he start coming around?

17 A When?

18 Q Uh-huh. (Affirmative.)

19 A During the summer of 2008.

20 Q Did minor tell you when this sexual
21 assault took place?

22 A She told me on -- she told me it was after
23 I was going to work. During the times I went to
24 work.

25 Q Did she say that it happened once, or more

Latonya Billups-direct by Robinson

1 than once?

2 A No, she said it happened over a period of
3 like 7 times.

4 Q And did she tell when that period was?

5 A I don't exactly remember the dates, but it
6 was the end of July. Like sometime in August.

7 Q What year was this?

8 A 2011.

9 Q Where did she say that happened?

10 A At my house.

11 Q In Summerton?

12 A Yes.

13 Q Where were you when this was going on?

14 A At work. On the last incident it happened
15 at my house, I was at -- I went to a party.

16 Q So you would allow Mr. Belser to stay at
17 the home with your children without you there?

18 A Well on that night I did. And other
19 occasions I did.

20 Q And why would you do that?

21 A Because I trusted him. Because he was
22 well known in my family, so I trusted him.

23 Q Did you have any family that lived close
24 by?

25 A Yes.

Latonya Billups-direct by Robinson

1 Q Do you think that Mr. Belser knew how old
2 she was?

3 A Yes.

4 Q Why do you think that?

5 A Because on a number of occasions, we had
6 discussed, you know, like different stuff about,
7 you know, other situations we had discussed her
8 being a child and stuff wasn't appropriate for
9 her, like with the computer and stuff. So he knew
10 her age.

11 Q After you found out about this, what did
12 you do?

13 A I reacted harshly. I was on the outside
14 with my best friend because she called me on the
15 outside. I ran into the house and I picked up a
16 broom. And I hit him with the broom. I had
17 another friend that and I grabbed a knife, and he
18 grabbed it out of my hand. And he jumped up
19 saying what did he do. And I kicked over the
20 coffee table and he ran out of the house.

21 Q So you kind of lost your cool?

22 A Yes.

23 Q Do you remember what day of the week this
24 was on?

25 A This was on a Sunday.

Latonya Billups-direct by Robinson

1 Q After he -- Mr. Belser ran out of the
2 house, what did you do?

3 A I called the police and I went after him.

4 Q Did the police come to your house?

5 A Yes.

6 Q Tell me what did the police do when they
7 came to your house?

8 A She started -- she pulled me aside, and I
9 told her---

10 Q That was female.

11 A Female.

12 Q Officer?

13 A It was a female officer. A female.

14 Q Okay. And what did she do?

15 A She pulled me aside. And she tried
16 toget -- she was questioning me with her age. And
17 just getting, you know, the information on what
18 happened.

19 Q Tell me after the police came to your
20 house, did you met with anybody else?

21 A Yes.

22 Q Who did you met with?

23 A I want to say the sheriff's department
24 that night. And I met with Mr. Garrett.

25 Q Did the police collect any evidence from

Latonya Billups-direct by Robinson

1 you?

2 A Yes. Before I left home, they asked for
3 the clothes that she had on it. And I gave them
4 to one of the officers.

5 Q And do you remember which officer you give
6 them to?

7 A No, I don't.

8 Q Where did you get the clothes that you
9 gave to the officers?

10 A I sent minor to get them for me. She gave
11 them to me.

12 Q How did you know that minor gave you the
13 right ones?

14 A Because they were clothes that she said
15 she had on.

16 Q After meeting with the sheriff's office,
17 did you, did you and minor meet with anybody else?

18 A Yes. We went to Florence to the doctor.
19 And I met with her, and that was it.

20 Q Did minor have any counseling after this?

21 A minor did have like three sessions. Two
22 or three sessions. But we was in the process of
23 moving, so she never continued because we moved.

24 Q Let me back up a minute. When minor told
25 you what happened that Sunday, could you describe

Latonya Billups-direct by Robinson

1 her emotional state?

2 A She was scared. She was---

3 Q Scared of what?

4 A ---very scared.

5 Q And do you know what she was scared of?

6 A She, because she just said she was scared
7 that I was -- me and my brother was going to hurt
8 her because that's what she said he told her.

9 Q She thought you would be mad at her.

10 A She thought I was going to be mad at her.

11 Q And since this has happened, have you
12 noticed any changes in her behavior?

13 A Yes. I noticed a tremendous change in
14 her.

15 Q How so?

16 A She -- before she's just like an ordinary
17 child. She likes---

18 MR. ROBINSON: Your Honor, I am going to
19 object to the relevance of this testimony.

20 MR. DURANT: Judge, if we can have a side
21 bar.

22 (Whereupon, attorneys approach the bench
23 and confer with judge.)

24 THE COURT: I will allow the question.

25 Q Would you describe the changes in

Latonya Billups-direct by Robinson

1 behavior?

2 A Yes. Before she very girly. And now
3 she's tomboyish. And she don't like to do
4 different things now. She just wants to be cooped
5 up in her room. And she was a joyful child at
6 once, but now she's not.

7 MR. DURANT: I beg the court's indulgence.

8 THE COURT: Okay.

9 MR. DURANT: Ms. Belser, that's all the
10 questions I have. Please answer any that
11 Mr. Robinson may have.

12 Cross Examination by Mr. Robinson:

13 Q Ms. Billups, you said that your belief or
14 your understanding is that these things happened
15 while you were working at night?

16 A No, during -- a lot of them happened
17 during the day.

18 Q During the day.

19 A Uh-huh. (Affirmative.)

20 Q With all three children there?

21 A No, she said that he sent the kids to my
22 sister's house and my grandmother's house.

23 Q Okay.

24 A All the houses were right real close. You
25 could walk out of one into the other.

Latonya Billups-cross by Robinson

1 Q Did you work at night?

2 A I work some. I have.

3 Q Okay. Were you working at night during
4 this period of time?

5 A I worked on one night. One night I did.

6 Q One night. Okay. And said you went to a
7 party one night?

8 A Yup. I went to a birthday bash.

9 Q Do you remember what time you went? I
10 mean, was it early?

11 A It was early, because I got back home
12 early. It was like around 10 something. And I
13 think I got back home it was maybe 12:30 or one.

14 Q Do you have a close relationship with your
15 daughter? Are you all pretty close?

16 A Yes.

17 Q Did you notice anything during this two
18 week period? Anything weird or unusual that made
19 you suspicious?

20 A No, I didn't.

21 Q Until that Sunday when you said she was
22 upset and scared---

23 A Uh-huh. (Affirmative.)

24 Q ---that was the first time you noticed
25 anything?

Latonya Billups-cross by Robinson

1 A Yes.

2 Q You said that Mr. Belser knew how old she
3 was because some conversation you had about the
4 computer?

5 A Yes.

6 Q Was she on the computer, or were you
7 telling him not to look at stuff on the computer?

8 A I told her not to be on the computer.
9 Because what happened was, my computer had popped
10 up some sites that I didn't know how they got on
11 there. And he said the kids was on there. And I
12 was, they, you know, all before they never been,
13 you know they never popped up until he came there.
14 So, you know, we had talk. And I told him about,
15 you know, minor not being on the computer.
16 Because they're under age and they shouldn't be on
17 it.

18 Q So you told him not to let them get on the
19 computer.

20 A Yes, I told him not to---

21 Q Because she was too young to be looking
22 at---

23 A Yes, because he said the kids was on the
24 computer.

25 Q Okay. And the websites that popped up,---

Latonya Billups-cross by Robinson

1 A Yes.

2 Q ---was it pornographic websites?

3 A Yeah, it was pornographic and they never
4 popped up before.

5 Q Okay. But you told him not to let her
6 look at that.

7 A Yes.

8 Q Okay. Now on that particular Sunday, you
9 called the police and they came out. And you
10 talked to somebody. And then you went and talked
11 to Sheriff Garrett.

12 A Uh-huh. (Affirmative.)

13 Q Right. And then you said, did Sheriff
14 Garrett come to your house, or you went to the
15 sheriff's office?

16 Q Okay. And then you came back to the
17 house, and that's when you got minor to go get her
18 clothes?

19 A No, no, no. We took the clothes along
20 with us to go to the sheriff. I don't remember if
21 I took the clothes, or I remember the officers
22 took the clothes.

23 Q But you had minor go get them for you.

24 A Yeah, minor got the clothes, yes.

25 Q Well where did she get them from?

Latonya Billups-cross by Robinson

1 A She got them before the officer left.

2 Q And they were in her room somewhere? In
3 the dirty clothes hamper?

4 A I don't quite remember.

5 Q Well she didn't strip naked. She wasn't
6 wearing them; was she? When the officer got
7 there?

8 A When I told minor to get her clothes, she
9 went in her room. So I don't quite remember if
10 she took the clothes off immediately and gave them
11 to them. Because I was talking to two officers.
12 It was a woman and a guy during the time when they
13 told me to get the clothes; that they needed the
14 clothes.

15 Q Well did she have on the same clothes when
16 she came out of her room that she did when she
17 went in?

18 A She had -- I don't remember.

19 Q Okay. But you just told her to go get
20 those clothes.

21 A I told her to get them.

22 Q And she went in there by herself and came
23 back with some clothes.

24 A Yes.

25 Q And you said that since all this happened

Latonya Billups-cross by Robinson

1 that she's kind of different.

2 A She is not kind of, a lot different.

3 Q A lot different.

4 A A big difference.

5 Q You said she started some counseling, but
6 you all moved.

7 A Yes.

8 Q And she didn't finish it.

9 A Yes.

10 Q Have you put her in counseling anywhere
11 else since you all have moved?

12 A I haven't yet.

13 Q And how long have you all been moved?

14 A Eight months.

15 Q Eight months.

16 A Eight and a half months.

17 Q So the last 8 and a half months she hasn't
18 really had any counseling.

19 A No.

20 Q You all haven't had a chance to get that
21 set up?

22 A No, not yet.

23 Q And tell me about, you said Mr. Belser was
24 a family friend.

25 A He was actually my brother's best friend.

Latonya Billups-cross by Robinson

1 Q And did he have occasion to spend the
2 night at your house?

3 A Not -- yes, sometimes during the summer,
4 yes.

5 Q Okay. And what was he doing, just hanging
6 out spending the night?

7 A No, me and him got acquainted. We started
8 seeing each other for awhile.

9 Q And did that turn sour at some point?

10 A Yeah, it did.

11 Q So were there occasions when he came over
12 there and wanted to spend the night, and you made
13 him sleep on the couch or sleep on the chair and
14 wouldn't let him sleep in the bedroom?

15 A No, just, it really wasn't that long.

16 Q Okay. Did you have trouble, I guess,
17 breaking up with him or whatever when you got
18 tired of him?

19 A No.

20 Q You didn't? What happened?

21 A We got into little arguments. And he was
22 very, you know, jealous type. We got into little
23 arguments, but we always, you know, got through
24 them or whatever.

25 Q When he arrested that night that all this

Latonya Billups-cross by Robinson

1 happened, he got arrested, were you all dating
2 then or were you all broken up then? What was
3 y'all's relationship status?

4 A We were supposed to be dating, but we
5 never got to the dating part. It never got that
6 far.

7 Q I mean and tell me what you mean by
8 dating. I've learned, I've got children. I don't
9 have a clue what that term means anymore.

10 A We talked about it. He was still having
11 problems with his baby's mama or whatever. So we
12 never got into a serious relationship because
13 everything came about.

14 Q But you all did have a physical
15 relationship.

16 A Yes.

17 Q But you just didn't go to like steady
18 boyfriend/girlfriend.

19 A It never got that far.

20 Q And that's what you all were working on
21 at the time all this came out?

22 A Yes.

23 MR. ROBINSON: Court's indulgence for just
24 one moment, Your Honor.

25 Q Do you remember when you all went to

Latonya Billups-cross by Robinson

1 Florence, Ms. Billups, did you talk to the
2 forensic interviewer, Ms. Elliott?

3 A I don't remember the names.

4 Q The lady that was in Florence, did you
5 talk to her?

6 A I talked to so many people that was in
7 Florence. During the times we went to Florence,
8 they was moving in and out of different buildings,
9 so I talked to more than one person.

10 Q And how long did you say you and
11 Mr. Billups were seeing each other?

12 A Over the summer, it wasn't even a whole 2
13 months.

14 Q And is that -- and you said he was a long
15 time friend of your brother's?

16 A Uh-huh. (affirmative.)

17 Q Did your children know him before that?

18 A I don't think so.

19 Q Do you remember telling the forensic
20 interviewer that you didn't like charlie anymore,
21 and that you wanted him to go?

22 A No, I don't remember that.

23 Q You don't remember that? He started
24 sleeping in the room, but a couple of weeks after
25 that he started sleeping in the living room and

Latonya Billups-cross by Robinson

1 you wanted him to go.

2 A Well he was on he chair, you know, but
3 that was his choice to get on there.

4 Q Was that during the period when you all
5 weren't getting along?

6 A It wasn't a period that we, you know, we
7 didn't get just not like each other or anything
8 like that. We just go through it just like any
9 other ordinary people. Just disagreements.

10 Q And do you remember how often he spent the
11 night at your house during this two-month period
12 that you dated or that you all---

13 A No, I don't. No, I can't give you a
14 consistency.

15 Q Every night? Rarely?

16 A It was, I think there was a week that he
17 stayed a straight 7 days.

18 MR. ROBINSON: No further questions, Your
19 Honor.

20 MR. DURANT: Just briefly.

21 Redirect Examination by Mr. Durant:

22 Q Ms. Billups, you said that you had some
23 family that lived nearby.

24 A Uh-huh. (affirmative.)

25 Q Who was that?

Latonya Billups-redirect by Durant

1 A My grandmother stayed, I'm going to start
2 from the beginning. My sister's trailer, my mom's
3 trailer, my grandmother and my house.

4 Q Okay. So were they willing to babysit
5 your children?

6 A Yes.

7 Q Tell me, Ms. Billups, if you were angry at
8 Mr. Belser, would you have allowed him to stay at
9 home with your children?

10 A No. No. I wouldn't have allowed him.

11 Q I mean if you were having a serious
12 disagreement and you didn't like him---

13 A I didn't hear you, I'm sorry.

14 Q If you were having a serious disagreement
15 with him and you didn't like him, would you have
16 allowed him to stay at home alone with your
17 children?

18 A No.

19 MR. DURANT: I don't have any further
20 questions.

21 THE COURT: You can step down. How long
22 is your next witness going to take?

23 MR. DURANT: Judge, I would ask for a few
24 minutes to check and see if she is here.

25 THE COURT: Do you all need a break?

Latonya Billups-redirect by Durant

1 We've been going about an hour.

2 MR. DURANT: The next witness is probably
3 pretty short.

4 THE COURT: All right.

5 DEBBIE ELLIOTT, after being duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION by Mr. Durant:

8 Q State your name for the record.

9 A Debbie Elliott.

10 Q Where do you work Ms. Elliott?

11 A Florence County Department of Social
12 Services.

13 Q And how long have you been there?

14 A Since September.

15 Q Before going to Florence County DSS, where
16 did you work?

17 A I worked at the Care House of the Pee Dee
18 in Florence.

19 Q What is the Care House of the Pee Dee?

20 A It's a nonprofit child advocacy center.

21 Q Kind of, would you tell me what your job
22 description was there?

23 A I was a forensic interviewer.

24 Q And what did that mean?

25 A We took referrals from law enforcement and

Debbie Elliott-direct by Durant

1 DSS and physicians throughout the Pee Dee area
2 when there were allegations made against people
3 concerning sexual abuse or physical abuse or
4 witnessed a domestic violence or witnessed a
5 homicide. And I did the forensic interviews. And
6 Dr. Kathy Saunders conducted the medical
7 examinations on the children. And we would
8 provide those services and we make recommendations
9 to the referring agency.

10 Q Is there any kind of particular training
11 or education that you needed to do that?

12 A You have to complete the 40-hour finding
13 words course.

14 Q And did you do that?

15 A I did.

16 Q Before the Care House, going to the Care
17 House, what was your background?

18 A I graduated from Clemson in 1978, and I
19 majored in sociology. Worked 10 years at the
20 Florence County Department of Social Services as a
21 social worker in the treatment unit. And
22 specifically sexual abuse and severe physical
23 abuse. And worked at Durant Children's Center as
24 a forensic interviewer there. And the Care House
25 for 6 years.

Debbie Elliott-direct by Durant

1 Q Ms. Elliott, were you working with the
2 Care House back in the summer of 2011?

3 A Yes, sir.

4 Q Did you have chance to meet with minor
5 ?

6 A I did.

7 Q Can you tell me when that meeting took
8 place?

9 A It was on August 15th 2011.

10 Q Who was there with minor ?

11 A Her mother, Ronda Rainey, the victim
12 advocate with the Clarendon County Sheriff's
13 Department.

14 Q Did you talk to minor ? Was everybody in
15 the room together when you spoke to her?

16 A No there was intake information was
17 provided prior to the interview. But when --
18 during the interview, it was just me and minor in
19 the interview room. And Ronda Rainey sat in an
20 observation and was able to see in the interview
21 room. But no one else was in the room at the
22 time.

23 Q Tell me is there a particular structure
24 that is used in these interviews?

25 A Yes. We used a national recognized

Debbie Elliott-direct by Durant

1 protocol called a RATAC. Or finding words with a
2 RATAC interview.

3 Q What does that mean?

4 A It's just a form of interview with
5 children that's geared towards children in child
6 training. So that children have tools to
7 disclose, if there anything to disclose. It's
8 just a RATAC is just an acronym. The R stands for
9 rapport just where you get to know the child and
10 ask general questions about school and family.
11 That's the first part of the interview.

12 And it's not really cookie cutter,
13 because you don't have to go through each
14 sequence. Depending on the child and the
15 development of the child. The second part of
16 RATAC the A is the anatomy. Identification for
17 very small children and younger children in which
18 they do diagrams of a female and male. Depending
19 on what the child is. If it's a female, you do
20 the female gender diagram first. Just to get
21 names for what children call their private parts,
22 basically and parts of their body. And then the T
23 is touched me. When you talk about touches that
24 are okay, touches that are not okay. And that
25 brings it to the abuse scenario. And that's when

Debbie Elliott-direct by Durant

1 children if they're ready to disclose, tell what
2 happened in detail. And then C in RATAAC stands
3 for disclosure, where you just interview and thank
4 the child for talking to you in a close respectful
5 manner. And educate the child on what to do if it
6 ever happens again. Like I said, you don't have
7 to go through each one of those steps. Especially
8 if it's an adolescent. You can kind of -- you
9 don't have to go through all of those steps.

10 Q Right. During your interview, did minor ,
11 did she make a disclosure of sexual assault to
12 you?

13 A She did.

14 Q When did she say that took place?

15 A She said started on July 29th 2011, and
16 went through the Saturday or early morning on
17 Sunday on August 13th, August 14th. And she came
18 to see us on the 15th.

19 Q And where did she say this happened?

20 A In her home.

21 Q Did she tell you who?

22 A She did.

23 Q Who was that?

24 A She called him PI. Charles Belser.

25 B-E-L-S-E-R.

Debbie Elliott-direct by Durant

1 Q Ms. Elliott, could you just tell us or
2 describe for us minor , her appearance or her
3 emotional state that day?

4 A She was -- she wasn't tarry. She was very
5 firm. And she was ready to disclose. You know,
6 some children are very hesitant to talk. And
7 anytime, and they disclose when they are ready.
8 But she was ready to tell when it happened. And I
9 kept focusing her back to details, because
10 children have a tendency to just say -- they'll
11 just blurt out what happened, and then you have
12 kind of rein them back in to get more details.
13 But she was focused, and I was able to keep her
14 focused and she provided details.

15 MR. DURANT: Ms. Elliott, I don't have any
16 further questions for you at this time. Please
17 answer any Mr. Robinson may have.

18 Cross Examination by Mr. Robinson:

19 MR. ROBINSON: Thank you.

20 Q Ms. Elliott, do you recall, well first of
21 all, you said that when Mr. Durant had asked if
22 she had disclosed who had done this and you said
23 PI. And then Charlie Belser. Do you remember
24 that?

25 A Yes, sir.

Debbie Elliott-cross by Robinson

1 Q She referred to him throughout the
2 interview as PI?

3 A Yes, she did.

4 Q How many times did you meet with her? Was
5 it just that one occasion on August the 15th?

6 A Just that one time.

7 Q Okay. As part of the C portion of your
8 interview, did you recommend to, and I am sure you
9 probably didn't do it directly to the child; to
10 the mother or to the agency, some sort of
11 counseling, something of nature?

12 A It was recommended to the mother after the
13 interview and in the written report.

14 Q And when you make that recommendation or
15 discuss that, do you just make a referral and say
16 you need to go see somebody or is it more
17 specific, as far as how many times they need to go
18 or is that up to the counselor?

19 A That would be for the counselor.

20 Q And is it often your experience that these
21 children need some counseling after they talk
22 about things like this?

23 A Yes.

24 Q And you recommended counseling in this
25 particular instance?

Debbie Elliott-cross by Robinson

1 A I did.

2 Q Did you refer the mother to a specific
3 entity or you just said you need to follow up with
4 a counselor?

5 A I did not. Because in the past, Ronda
6 Rainey has helped to facilitate that.

7 Q And she's the victim's advocate for
8 Clarendon County?

9 A That's correct.

10 Q And she is familiar -- she has handled
11 these types of situations before and been involved
12 with you?

13 A Yes, sir.

14 Q And they being the county through Ronda,
15 facilitate setting up counseling and even
16 arranging transportation if the child needs to go
17 to counseling; is that right?

18 A That's my understanding.

19 Q Okay.

20 MR. ROBINSON: Court's indulgence for just
21 a minute, Your Honor.

22 Q Ms. Elliott, just a few questions. I
23 think you talked earlier with Mr. Durant about the
24 typical protocol that you do the forensic
25 interview. And I think you said Dr. Kathy

Debbie Elliott-cross by Robinson

1 Saunders typically does the forensic examination?

2 A Typically.

3 Q Okay. Does Dr. John Keith mean anything
4 on you?

5 A Yes, sir.

6 Q Is he somebody that could have done the
7 forensic examination in this particular case?

8 A He did, yes.

9 Q He did. Okay. I just, I have that name
10 somewhere in my file, and I just wanted to make
11 sure I wasn't crossing up. Did he do the forensic
12 examination that same day?

13 A He did. Directly after the interview.

14 Q Okay. And does he work for the Care
15 House, or is he employed by the hospital or does
16 he have his own practice, or do you know who he
17 works for? Or is he somebody that sometimes does
18 these types of examinations?

19 A He does some backup work for Dr. Saunders.
20 And I believe he works for McLeod's, but I am not
21 sure.

22 Q And that's in Florence?

23 A Yes, sir.

24 MR. ROBINSON: Okay. Thank you. No
25 further questions.

Debbie Elliott-cross by Robinson

1 MR. DURANT: Just are briefly.

2 THE COURT: Okay.

3 Redirect examination by Mr. Durant:

4 Q Ms. Elliott, can you tell me when children
5 come to be interviewed at the Care House, do you
6 know who pays for that?

7 A If law enforcement is involved, it's
8 billed through the state's office of Victim's
9 Assistance.

10 Q Is that a South Carolina agency?

11 A Yes, sir.

12 Q So a victim who lived in North Carolina,
13 do you know whether South Carolina would pay for
14 that counseling?

15 A I don't believe they would. I am not
16 sure.

17 Q Let me ask you this. Do you -- Mr.
18 Robinson asked you about referring the minor to
19 counseling. Why did you do that?

20 A Well anytime that a child has been
21 traumatized the way that I believe she was, she
22 needs help in getting -- processing what happened.
23 And helping to educate her and to learn it wasn't
24 her fault. And not feel bad about herself the
25 rest of her life. And help process it, and

Debbie Elliott-redirect by Durant

1 hopefully not overcome it, because I don't think
2 that children ever overcome it. But to help her
3 to get better and help her family get help.

4 MR. DURANT: Thank you. No further
5 questions.

6 The COURT: Anything further?

7 MR. ROBINSON: No, sir, Your Honor.

8 MR. DURANT: Continue, Judge?

9 THE COURT: Does anybody need a break?
10 Everybody okay? All right.

11 MR. DURANT: The state calls Ricky
12 Richards.

13 Ricky Richards, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION by Mr. Durant:

16 Q Investigator Richards, would you please
17 state your full name for the record?

18 A It's Ricky Neal Richards.

19 Q Where do you work?

20 A Clarendon County Sheriff's Office.

21 Q And how long have you worked there?

22 A I've worked there a little over 6 years.

23 And prior to that, I worked for Sumter County for
24 right at 5 years.

25 Q What is your job title at the sheriff's

Investigator Richards-direct by Durant

1 office now?

2 A I'm a lieutenant with the narcotic's task
3 force now.

4 Q Before going over to narcotics, what was
5 your job title?

6 A I was a criminal investigator.

7 Q And how long had you worked as an
8 investigator?

9 A Three years.

10 Q Were you working as an investigator back
11 in the summer of 2011?

12 A Yes, sir.

13 Q Were you assigned to the case we are here
14 for today?

15 A Yes, sir. I was on call that night. And
16 I received a call and responded.

17 Q Kind of tell us how those assignments came
18 to be. Does it depend on whose on call?

19 A With stuff like this, yes. If you're on
20 call, normally the officer responds if they think
21 it -- they need an investigator to respond,
22 they'll call. Whosever on call would come out on
23 those cases.

24 Q So when the report came to you, or when
25 did the report come to you?

Investigator Richards-direct by Durant

1 A It was sometime in the night on that
2 Sunday night. I am not positive on the time. It
3 was sometime after 8. I do know that.

4 Q Do you remember who you notified?

5 A Kimberly Marlowe who was a deputy who
6 responded to the residence on [REDACTED]

7 Q Did you know the nature of the report at
8 that time?

9 A Yes. She told me what had been told to
10 her, and what had been reported to her; that it
11 was a CSC is what we call a criminal sexual
12 conduct with a 14-year-old at the time.

13 Q And what was the first thing you did?

14 A Just normally in that situation, I would
15 tell them to make sure they don't get rid of the
16 clothing they had on or at least underwear. And
17 that's with any alleged sexual assault that I deal
18 with. And I tell them I am going to need those
19 so they can be packaged and sent to sled for
20 analysis. In the case that we have a suspect, we
21 normally get a sample from them if they are
22 willing to give one and send that as well.

23 Q Did you actually collect any evidence in
24 this case?

25 A Yeah. It was later around 10 or so that

Investigator Richards-direct by Durant

1 night at the sheriff's office.

2 Q The same night that you did the report?

3 A The same night. It was just an hour or
4 two later. They brought or had Ms. Keels and
5 Ms. Billups come to the sheriff's office. And the
6 reason for that is so I can somewhat explain to
7 them what the process was going to be as far as
8 going to the Care House; what to expect so it
9 wasn't much of a shock. And at that time I
10 received some underwear in a bag.

11 Q Who handed you the underwear?

12 A I am thinking that the mother did.

13 Q How were they packaged, do you remember?

14 A They were just in a Ziploc bag. I don't
15 remember if it was an evidence bag. I do know,
16 because our evidence bags look like regular Ziploc
17 bags. I know there's a fancy name for them. But
18 it was in a Ziploc type bag at the time.

19 Q What did you do with it?

20 A After advising them what was going on in
21 the process, they left. I went into our lab area
22 and repackaged them in a vacuum sealed bag; where
23 we write the minor 's name, the case number, so
24 they can put it into evidence and transport it to
25 sled for analysis.

Investigator Richards-direct by Durant

1 MR. DURANT: I beg the courts's
2 indulgence.

3 (Ziploc bag with underwear marked State's
4 Exhibit No. 1 for ID.)

5 Q Investigator, may I approach, Your Honor?

6 THE COURT: Yes, sir.

7 Q I am going to show you what has been
8 marked as State's Exhibit 1, and ask you if you
9 recognize that.

10 A It's our type of bag that we use. It's a
11 regular food saver bag. And my actual writing on
12 the top. It's got the minor 's underwear and the
13 case number. And that's normally what I write.
14 What's written out here is the lab number. That
15 would have been written later when it was received
16 at sled.

17 Q So the only markings on it when you
18 handled it, were up top where it identified the
19 minor 's underwear.

20 A And the case number; yes, sir.

21 Q Is that the actual package that you sent
22 to sled?

23 A Yeah, the only difference is the white
24 paper around what's inside. That's how sled
25 packages it after they analyze. And when they

Investigator Richards-direct by Durant

1 send -- we receive all our evidence back from
2 sled. And they done that at sled.

3 Q Did you seal this package after you put
4 the underwear in it?

5 A Yes, we use a vacuum sealer that seals it.
6 And heat sealed the end of it.

7 MR. DURANT: I beg the court's indulgence.

8 THE COURT: Okay.

9 (Consent to buccal swab marked State's
10 Exhibit No. 2 into evidence.)

11 Q Investigator Richards, I want to show you
12 the contents of this white paper, and ask you if
13 you can recognize that. And if you will mark the
14 extra underwear is in evidence; isn't it? State's
15 Exhibit No. 2.

16 THE COURT: Well you've already got it
17 marked as State's Exhibit No. 1. We won't mark
18 it. When you finish with it, we will put it back
19 in that bag.

20 Q Investigator Richards, do you recognize
21 the contents of this white paper?

22 A To the best of what I remember, yes, sir.
23 That's the ones I took from Ms. Billups, I think.

24 Q Were they in tact when you took them from
25 them?

Investigator Richards-direct by Durant

1 A Yes, sir.

2 Q Were they a complete pair of underwear?

3 A Yes, sir.

4 Q And had any cuttings been made on them?

5 A Not that I remember, no.

6 Q And you would have taken these underwear.

7 And did you put them directly in this sealed bag?

8 A Yes, sir. I took them after they left, I
9 went straight to our lab. I took them out of the
10 plastic bag they were in. Put them in that bag.

11 And used the air sealer that takes the air out,
12 and sealed the bag up. And put them in the
13 evidence locker.

14 Q Where is the evidence locker?

15 A It's 30 feet down the hall from my lab
16 door, if that.

17 Q Who has access to that locker?

18 A At the time, Ms. Barbara Proctor who is
19 evidence technician. We lock them and put them in
20 a box, which is a locker. It has a key. Once
21 you lock it and pull the key out, and put it in
22 a -- it's a little hole that the evidence tech. is
23 the only one that can get the key to get the
24 evidence out.

25 Q And that was Barbara Proctor?

Investigator Richards-direct by Durant

1 A Yes, sir.

2 Q Who has actually handed you the underwear?

3 A Ms. Billups.

4 Q Was minor there with her?

5 A Yeah, she was sitting -- we were sitting
6 in our investigation's office at the table we have
7 there.

8 Q Did they tell you where the underwear came
9 from?

10 A She said that's the underwear she had on.

11 MR. ROBINSON: Your Honor, I object to
12 hearsay.

13 THE COURT: I will allow it.

14 Q Did they tell you where the underwear came
15 from?

16 A Yes, sir. She said it was the underwear
17 her daughter had on.

18 Q And when you originally sent word that you
19 wanted the underwear, did you specific which ones?

20 A Yeah. And that's just normally what I've
21 done in the past. If you can get the underwear
22 that was on during or the ones they put on after
23 something like that had taken place, that's the
24 best ones to get.

25 Q After did you -- after meeting with the

Investigator Richards-direct by Durant

1 minor in this case, did you collect any evidence
2 from the defendant?

3 A It was actually a few days later. And the
4 reason being, I was the only investigator.
5 Normally we have two people. Around when we get a
6 or attempt to get a buccal swab from someone,
7 that's basically a sample we get the person's DNA
8 from them.

9 Q How do you take a buccal swab?

10 A It's fairly simple. It's a cotton swab
11 with a long stick on here. And you just rub it
12 inside the mouth, inside the cheek. And you let
13 it dry. Place it in a little box. It's a little
14 kit. Place it in a box in an envelope and another
15 envelope. Where it's witnessed by myself, the
16 person, in that case, Mr. Belser would have signed
17 a consent. He would have signed on the seal on
18 the envelope. And that's just to protect both
19 parties that I didn't put anything else in there.
20 It's all done right here in the presence of the
21 person.

22 Q So Mr. Belser consented to give you a
23 buccal swab?

24 A Yes, sir.

25 Q Who makes this kit that you take the

Investigator Richards-direct by Durant

1 buccal swab?

2 A It's from, once we get learning from sled.

3 Q Have you had any training on how to get
4 take one?

5 A Yes, sir. We just basically take a class.
6 I have taken crime scene, numerous classes and
7 experience through work.

8 Q After taking the buccal swab, what did you
9 do with it?

10 A It also gets put into evidence and it is
11 sent to sled.

12 Q The same method that you use to put the
13 underwear in?

14 A Yeah. I go and put in and use a chain of
15 custody form. Fill it out what you are putting in
16 there. Who you obtained it from. When you put it
17 in at the time, and put it in the evidence locker.

18 Q And do you recall when Mr. Belser or you
19 took the buccal swab from Mr. Belser?

20 A It was a week later or so. I don't
21 remember the exact day.

22 Q Do your notes reflect?

23 A The chain of custody would reflect in the
24 consent form how to -- on there as far as the
25 date. And it was a week or so.

Investigator Richards-direct by Durant

1 Q Investigator Richards, I am going to show
2 you what is marked as State's Exhibit No. 2. Do
3 you recognize that?

4 A Yeah. That's a consent form that has the
5 Clarendon County Sheriff's Office. It has the
6 person's name. And it tells them what they are
7 going to do. If they agree to it. And they sign
8 and I sign. The date is actually 8/24/11. Which
9 I think is about 9 days later. And the time was
10 in the morning, at 9:40 in the morning.

11 Q And so you would have 8/24/11 is when you
12 took the buccal swab?

13 A Yeah, that's when this was. And it's also
14 got a notary and the bond, which I believe that is
15 Tommy Burgess who notarized it.

16 Q Let me back up. I just have a couple of
17 more questions. When you met with the minor , did
18 you and her mother, did you actually ask the
19 minor about what happened?

20 A Not really. I got somewhat of just an
21 understanding of what happened. And the reason
22 being; is that, I'm not really trained in dealing
23 with juveniles in that situation as far as
24 interview. And that's why we refer them to Ronda
25 Rainey who gets them in touch with the Care House.

Investigator Richards-direct by Durant

1 And they do it, because, you know, that's what
2 they are trained to do.

3 Q Did you take a report of where the alleged
4 events happened?

5 A As far as the sheriff's office report,
6 which is normally done by the officer that
7 responds first, who gets just, you know, normally
8 it's just the basic information. And in this
9 case, no, I didn't really get a report. And just
10 viewed the age and the alleged crime is mostly
11 done by the Care House as far reporting and
12 interviewing and stuff like that.

13 Q Did you find out during the course of your
14 investigation where this took place?

15 A Yes.

16 Q Where is that?

17 MR. ROBINSON: Your Honor, I think a
18 little bit more foundation about how he found out.
19 I think we are again kind of getting into hearsay.
20 He said he didn't take the report from the minor ..
21 I would at least like him to identify where and
22 how he discovered it.

23 THE COURT: Okay. Lay a little
24 foundation.

25

Investigator Richards-direct by Durant

1 Q How did you discover where the events took
2 place?

3 A One, is the report, and Ms. Billups told
4 me their address.

5 Q Where is that?

6 A It's on [REDACTED] I don't remember the
7 exact number or what the address is.

8 Q In Clarendon County?

9 A Yes, sir.

10 MR. DURANT: I don't have any further
11 questions.

12 THE COURT: Okay. Mr. Robinson.

13 Cross Examination Mr. Robinson:

14 Q Investigator Richards, I just have a
15 couple of questions. The reason you all do this
16 Chain of Custody and sealing it up and all that
17 stuff, is to make sure that you preserve the
18 integrity of the evidence; is that right?

19 A Yes.

20 Q Because if you don't who has handled it,
21 where it has been, it can be contaminated. It
22 affects its usefulness; right? It's worth.

23 A Yes.

24 Q Because what you are trying to do in these
25 situations is guarantee accuracy and truthfulness.

Investigator Richards-cross by Robinson

1 A Yes. To the best that I can; yes, sir.

2 Q So what you did was you got the panties,
3 sealed them up and put them in the evidence
4 locker.

5 A That's it.

6 Q And you weren't present at the house when
7 they were obtained.

8 A No.

9 Q You have no idea where they came from
10 other than you got them Ms. Billups and she said
11 those were the panties.

12 A True.

13 Q No way to verify that. Verify the
14 accuracy of that. Determine where they came from
15 or anything else, other prior to them being handed
16 to you by Mr. Belser.

17 A Other than being there, would have been
18 the only way to 100 percent say where they came
19 from.

20 Q Okay. And -- I think that's all the
21 questions. Thank you.

22 MR. DURANT: Just briefly.

23 Redirect Examination by Mr. Durant:

24 Q Investigator Richards, have you worked
25 many criminal sexual conduct cases before this

Investigator Richards-cross by Robinson

1 one?

2 A Yes, sir.

3 Q Have you ever worked a case where in which
4 clothes were collected from the minor ?

5 A Yes.

6 Q Have you ever personally seen the clothes
7 come from the female minor ?

8 A No, I wouldn't do that.

9 MR. DURANT: I don't have any further
10 questions.

11 THE COURT: You can step down. We are
12 going to take a 15 minute break. Don't discuss
13 the case yet. We will get you back out.

14 (Whereupon, the Court breaks.)

15 MR. ROBINSON: Can Mr. Belser go to the
16 bathroom?

17 THE COURT: That will be fine. We will
18 be back in 15 minutes. After you all take a
19 break, come in here and tell me about scheduling.
20 How much longer you think -- how we are processing
21 as far as witnesses.

22 (Whereupon, the court takes a short
23 recess.)

24 THE COURT: Is the state ready?

25 MR. DURANT: Yes, sir.

Investigator Richards-redirect by Durant

1 THE COURT: Is the defense ready?

2 MR. ROBINSON: Yes, sir.

3 THE COURT: You may bring the jury.

4 (Whereupon, the following takes place
5 within the presence of the jury.)

6 THE COURT: You may call your next
7 witness.

8 MR. DURANT: The state calls Barbara
9 Proctor.

10 BARBARA PROCTOR, after being duly sworn,
11 testified as follows:

12 Direct Examination by Mr. Durant:

13 Q Ms. Proctor, would you state your full
14 name for the record?

15 A Barbara Proctor.

16 Q Where do you work?

17 A Clarendon County Sheriff's Office.

18 Q How long have you worked at the sheriff's
19 office?

20 A March will be 16 years.

21 Q Have you worked as the evidence custodian
22 there?

23 A Yes, I have.

24 Q And were you working as the evidence
25 custodian there in the summer of 2011?

Barbara Proctor-direct by Durant

1 A Yes.

2 Q Tell me is there an evidence room that
3 items are stored in, or is there more than one
4 room?

5 A There is a log in area which is where the
6 desk is, with chairs. Where people can come in,
7 bring evidence. There's also lockers they can
8 place the evidence in. Then there is two separate
9 rooms with two separate doors, with separate keys,
10 that the evidence is stored in.

11 Q And who has access to the rooms that the
12 evidence is stored in?

13 A Just the evidence coordinator.

14 Q And so when investigators bring evidence,
15 where do they put it?

16 A They can either give it directly to the
17 evidence person or they can place it in a locker.

18 Q Can anybody get it back out of the locker?

19 A Just the evidence coordinator.

20 Q And how is that? Did they lock the locker
21 back?

22 A There's a, they put it in the locker.
23 Turn the key and lock it. Pull it out and drop it
24 in a separate locker, which is where the keys are
25 dropped. And then the back side of it is almost

Barbara Proctor-direct by Durant

1 like a garage door, which comes up. And then you
2 open the lockers from the back side, and you bring
3 it into the evidence room.

4 Q So you're the only person that had access
5 to the back side?

6 A That's correct.

7 Q Did you -- were you working as the
8 evidence custodian in the summer of 2011?

9 A Yes.

10 Q Did you handle the evidence in the case we
11 are here for today?

12 A Yes, I did.

13 Q I am going to show you what has been
14 marked as State's Exhibit No. 1, and ask if you
15 recognize that.

16 A Yes. It would some of my paperwork.

17 Q Did you say, paperwork? I am sorry.

18 A It should have been on top of that box.

19 Q And what kind of paperwork is that?

20 A Chain of Custody.

21 MR. DURANT: I beg the Court's indulgence,
22 Your Honor.

23 THE COURT: Okay.

24 Q May I approach the witness? Tell us what
25 you are looking at there.

Barbara Proctor-direct by Durant

1 A This is the chain of custody pertaining to
2 this case that Investigator Ricky Richards turned
3 in to me personally in the evidence room.

4 Q Okay. Now if you would, I am going to
5 show you State's Exhibit 1, and ask if you
6 recognize what that is.

7 A Yes.

8 Q Can you tell us what that is?

9 A That should be or it was sealed package
10 containing underwear.

11 Q The actual package? The clear package?

12 A Right.

13 Q How did it come to you in the evidence
14 room?

15 A Just that clear sealed package with
16 underwear. The white paper that's in there wasn't
17 on it. But the package itself was sealed.

18 Q Was it sealed when it came to you?

19 A Yeah.

20 Q Tell me, what did you do with the
21 underwear when you retrieved it from the evidence
22 locker?

23 A And actually according to this, he just
24 gave it directly to me. And I stored it in the
25 evidence room until I made my trip to sled.

Barbara Proctor-direct by Durant

1 Q You said you made a trip to sled. Did you
2 take---

3 A I carried the underwear. I also turned in
4 buccal swabs and a kit. A rape kit.

5 Q So State's Exhibit No. 1, you took that
6 directly to sled?

7 A Yes, I did.

8 Q Was it sealed in this package still when
9 you got to sled with it?

10 A That's correct.

11 Q Had it been tampered with in any way?

12 A No.

13 Q You said you also took a buccal swab?

14 A That's right.

15 Q How did the buccal swab come to you?

16 A Just a minute, let me see. It was in an
17 envelope.

18 Q And did you -- had that envelope been
19 opened?

20 A No. And I carried that directly to sled.
21 It was still sealed.

22 Q What day did you take these items to sled?

23 A September 1st 2011.

24 Q Did anybody accompany you to sled?

25 A No.

Barbara Proctor-direct by Durant

1 Q Do you remember who at sled you left the
2 items with?

3 A Amy Stephens.

4 Q What did sled do with them when you got
5 them there? Did you see them do anything with
6 them?

7 A The underwear, I remember they put that
8 inside, and then they heat sealed that; which I
9 have to sign off on and initial and date it.

10 Q They put this bag into another?

11 A Another clear envelope with writing on the
12 front side.

13 (Envelope marked State's Exhibit No. 3 for
14 ID only.

15 May I approach, Your Honor?

16 THE COURT: Yes, sir.

17 Q And I show you what has been marked as
18 State's Exhibit No. 3, and ask you if you
19 recognize that.

20 A Yes.

21 Q What is that?

22 A When I arrived at sled with the clear
23 sealed package over there, they placed it inside
24 this package, where I had to initial and date and
25 sign off each seal that they made at the time.

Barbara Proctor-direct by Durant

1 Q And you stated that you also took, I
2 think you said a kit to sled. What was that?

3 A It's a CSC kit, a criminal sexual conduct
4 kit. And it's in a box and it's sealed also.

5 Q Do you know what the contents of it were?

6 A It comes with a basic kit. But no, it's
7 already sealed.

8 Q It was sealed when you got it?

9 A Yes.

10 Q And you took it to sled as well?

11 A That's correct.

12 Q Tell me, did you receive any of these
13 items back from sled at any point?

14 A That package that you just held up, which
15 contains the underwear.

16 Q The underwear?

17 A Uh-huh. (Affirmative.)

18 Q How did it come back to you?

19 A It was sealed in the other package.

20 Q In the package that you saw sled put it in
21 that day?

22 A Right.

23 Q Was it sealed when it came back to you?

24 A That's correct.

25 Q How about, did sled give to you any other

Barbara Proctor-direct by Durant

1 evidence to you to take back?

2 A I'm not positive. I don't have the paper
3 that tells what was picked up.

4 Q But that's, you remember them sending back
5 with you.

6 A Right.

7 MR. DURANT: I don't have any further
8 questions of Ms. Proctor at this time.

9 Cross Examination by Mr. Robinson:

10 Q Do you have, Ms. Proctor, the chain of
11 custody information that you requested to look at
12 it? Can you just for my edification and
13 clarification down here at the bottom, does that
14 indicate the most recent chain of custody since it
15 was returned---

16 A That's correct.

17 Q ---from sled? Who brought the items back
18 from sled? Did sled bring them back to you all,
19 or somebody had to go pick them up from sled?

20 A I picked up what we have. I picked that
21 up. There's a receipt. It's just not attached to
22 this.

23 Q And when was that? When did you pick that
24 up from sled?

25 A Yeah, I'm not positive about that

Barbara Proctor-cross by Robinson

1 paperwork.

2 Q And when you picked it up from sled, what
3 did you do with it?

4 A I brought it back to the evidence room and
5 stored it until it was time for court.

6 Q And did you take it out of the evidence
7 room to bring to court today?

8 A I did not. Maria Roseboom gave it to
9 Holmes Smith.

10 Q And was it also checked out yesterday out
11 of the evidence room?

12 A Yes.

13 Q Okay. Who did that?

14 A It's got evidence room to Maria Roseboom.

15 Q And who is Maria Roseboom?

16 A She is now the evidence coordinator.

17 Q And when did that -- are you no longer the
18 evidence coordinator?

19 A That's correct.

20 Q Okay. When did that change or transition
21 take place?

22 A In November.

23 Q Okay. And when that transition took
24 place, did you and Ms. Roseboom go through and
25 kind of inject her into the chain of custody, all

Barbara Proctor-cross by Robinson

1 of these items so that she could verify what was
2 there, and what wasn't there when the changing of
3 the guard, so to speak?

4 A Sled actually came and did an audit.

5 Q Okay.

6 A And then the keys were handed over.

7 Q Okay. And when they did, do you know who
8 did this audit for sled?

9 A I met them, but I can't remember names.
10 Her's is Christina, but I am not sure of her last
11 name.

12 Q And is there, did sled do some sort of
13 audit report verifying that Item, A, B, C, D, E, G
14 is in here and?

15 A I didn't receive a report.

16 Q Okay. So in reality, you know sled came
17 and did an audit. You don't know what the results
18 were, and you don't know what's been going on with
19 these items since November; is that correct?

20 A That's correct.

21 Q And you didn't personally take them out of
22 the evidence locker where you left them, and bring
23 them here today. They were here when you arrived.

24 A That's correct.

25 Q Sent by somebody else; is that right?

Barbara Proctor-cross by Robinson

1 A That's right.

2 Q Now what two items, I think that describes
3 two items, that paperwork right there. What was
4 sent to sled in this particular case?

5 A Buccal swab for Charlie Belser. Underwear
6 from the minor .. Also a CSC kit was carried too.

7 Q Do you remember sending any kind of blood
8 standard or blood sample from the minor ? Is that
9 indicated on that paperwork?

10 A I don't have anything showing that.

11 Q Okay. Do you have anything that indicates
12 that anything containing some smears were sent to
13 sled?

14 A I didn't carry it.

15 Q How about any vaginal swabs that may have
16 been sent?

17 A That may have been included in the rape
18 kit.

19 Q Okay. Oral swabs same thing. Rectal swab
20 same.

21 A Right. All of that.

22 Q Fingernail scrapings. All of this is
23 probably from the CSC kit.

24 A That's correct.

25 Q Now are you familiar with collection of

Barbara Proctor-cross by Robinson

1 CSC kits?

2 A Somewhat. By the time it gets to me, it's
3 usually already sealed.

4 Q So anything that sled would have analyzed,
5 head hairs, pubic hairs, anything of that nature,
6 would to the best of your understanding, probably
7 would have been included in the CSC kit?

8 A That's correct.

9 Q And that is collected by whom? Is that
10 typically done by the doctor that does the
11 forensic examination in your experience?

12 A As far as I know.

13 Q Okay. And that is -- those would be items
14 of physical evidence to determine if there is in
15 fact evidence of what happened; is that right?

16 A That's correct.

17 Q But the three things that you know for
18 sure were sent, were the CSC kit, which you
19 believe based on your experience and understanding
20 would have contained the rectal swabs, vaginal
21 swabs, oral swabs, et cetera?

22 A That's correct.

23 Q Blood standard perhaps as well. The
24 panties that we have already talked about. And a
25 buccal swab that Mr. Belser voluntarily gave to be

Barbara Proctor-cross by Robinson

1 compared to the DNA; is that correct?

2 A That's correct.

3 Q As you said earlier, your guarantee of
4 accuracy ended in November?

5 A That's correct.

6 Q Okay. You can't really account for
7 anything that's happened to this from November
8 until today.

9 A That's correct.

10 MR. ROBINSON: Thank you. No further
11 questions?

12 MR. DURANT: Just briefly, Your Honor.

13 Redirect Examination by Mr. Durant:

14 Q Ms. Proctor, I showed you before State's
15 Exhibit No. 3, I believe, did you say this is the
16 bag that sled put the underwear in when you took
17 them to sled?

18 A Yes, it is.

19 Q Is this also the bag that sled returned
20 this underwear in?

21 A It is.

22 Q Can you tell me whether or not you can
23 tell that bag has been opened?

24 A It has.

25 Q And it's open now. Do you know who opened

Barbara Proctor-redirect by Durant

1 it?

2 A I do.

3 Q Who?

4 A You.

5 Q When did I open it?

6 A Just a little while ago before we came in
7 the courtroom.

8 Q Did you see me do that?

9 A I did.

10 Q Was the bag sealed before I opened it?

11 A Yes, it was.

12 Q Can you tell whether or not the bag had
13 been opened before I opened it?

14 A Yeah. Anybody who has contact with it,
15 always initials on the seal, which has the date so
16 it stays in tact. So it was sealed until he
17 opened it earlier.

18 Q Are there any initials on the bag that
19 indicate that it may have been opened before me?

20 A Not before you. Now the initials BWB is
21 someone at sled who would have opened it and
22 resealed in order to get to the evidence to
23 perform the testing.

24 Q So
25 outside of the BWB initials on it, there were no

Barbara Proctor-redirect by Durant

1 openings with initials before?

2 A There was not.

3 Q And was the bag still sealed this morning
4 when you saw it?

5 A Yes, it was.

6 MR. DURANT: I don't have any further
7 questions, Judge.

8 MR. ROBINSON: I would like to follow up
9 to that.

10 THE COURT: Okay.

11 MR. ROBINSON: Just briefly.

12 Recross Examination by Mr. Robinson:

13 Q Ms. Proctor, you said that when you
14 received the bag this morning, it was sealed?

15 A It was.

16 Q And that you don't see any initials on
17 there that indicated that anybody opened it
18 prior.

19 A That's correct.

20 Q You don't have to initial the bag to get
21 it open; do you?

22 A No, you don't.

23 Q That's proper protocol.

24 A Correct.

25 Q And I think that Investigator Richards

Barbara Proctor-recross by Robinson

1 testified earlier that you all have a vacuum
2 sealer in your office at the sheriff's office for
3 sealing evidence.

4 A We do.

5 Q So if between November and today someone
6 had not followed proper protocol and opened it
7 without initialing it and then resealed it, would
8 you have any way to know that?

9 A I would not.

10 Q Is that within the realm of possibility?
11 The equipment is there at the sheriff's office to
12 do that; isn't it?

13 A The equipment is there.

14 Q Okay. And Mr. Durant didn't put his
15 initials on it when he opened it today; did he?

16 A Yes, he did.

17 Q He did?

18 A He did. And they did.

19 Q And you watched him do that?

20 A I did.

21 Q But November through today, no clue what
22 happened to it?

23 A That's correct.

24 MR. ROBINSON: Thank you.

25 THE COURT: You can step down.

Barbara Proctor-recross by Robinson

1 MR. DURANT: The state would call Kimberly
2 Graham.

3 THE COURT: Okay.

4 Officer Kimberly Graham, being
5 first duly sworn, testified as follows:

6 Direct Examination by Mr. Durant:

7 Q I called you Ms. Marlowe, I believe you
8 are recently married; is that right?

9 A Yes, sir.

10 Q Would you please state your full name for
11 the record?

12 A Kimberly Graham.

13 Q Ms. Graham, where do you work?

14 A For the Clarendon County sheriff's office.

15 Q How long did you work there?

16 A Three years.

17 Q Were you working back in the summer of
18 2011?

19 A Yes, sir.

20 Q And do you recall responding to a call
21 involving the minor in this case, minor ?

22 A Yes, sir.

23 Q And do you recall when that was?

24 A No, sir. I don't remember. I know if I
25 am not mistaken, it was in August of that year. I

Officer Graham-direct by Durant

1 don't have my report. If I had my report, I could
2 tell you.

3 (Incident Report marked State's Exhibit
4 No. 4 for Id.)

5 Q Ms. Graham, I show you State's Exhibit No.
6 4, and ask you if you recognize that.

7 A Yes, sir.

8 Q What is this?

9 A This is my incident report.

10 Q Did you fill that out?

11 A Yes.

12 Q Okay. After reading, did you get a chance
13 to look at it? After looking at the incident
14 report, can you tell me when that call came in?

15 A July. I am sorry, August 14th of 2011.

16 Q And where did the -- did you respond to
17 that call?

18 A Yes, sir, I did.

19 Q And where did you go?

20 A [REDACTED]

21 Q And when you got to that residence, who
22 did you met with?

23 A I met with the minor , her mother and her
24 father.

25 Q Did you speak with the minor ?

Officer Graham-direct by Durant

- 1 A Yes, I did.
- 2 Q Did she tell you what had happened?
- 3 A Yes, sir, she did.
- 4 Q Did she tell you where it happened?
- 5 A Yes, sir, she did.
- 6 Q Where did she say it happened?
- 7 A She said it happened at the house.
- 8 Q At---
- 9 A At [REDACTED]
- 10 Q Is that in Clarendon County?
- 11 A Yes, sir, it is.
- 12 Q Did she tell you she was sexually
- 13 assaulted?
- 14 A Yes, sir, she did.
- 15 Q Did she say when that happened?
- 16 A She said that it was in between July 26th
- 17 2011, and August 13th 2011. And it happened
- 18 several times between those periods. Five or 6
- 19 times.
- 20 Q Did you collect any evidence at the scene?
- 21 A No, sir.
- 22 Q Did you report, or tell me what you did
- 23 at the scene.
- 24 A We spoke with the minor , her mother and
- 25 and her father.

Officer Graham-direct by Durant

1 Q When you say we, who are you?

2 A Myself and Sergeant Tisdale. And we told
3 the mother to collect the underwear -- her
4 underwear that she had on, and bring them to
5 Investigator Richards.

6 Q Why did you tell the mother that?

7 A Because that's what Investigator Richards
8 told us to do.

9 Q So you were notified at some point?

10 A Yes, sir, he was notified.

11 MR. DURANT: I don't have any further
12 questions for Ms. Graham.

13 Cross Examination by Mr. Robinson:

14 Q Officer Graham, did you just happen to be
15 on call that night, or did they send you because
16 of the nature of the call and you are a female
17 officer?

18 A No, sir, that was my zone.

19 Q Okay.

20 A At that point I was on patrol. So that
21 was my zone, so that's why I was dispatched for
22 that.

23 Q Okay. And you told us basically what you
24 did that night. Is it typical in cases where
25 there is perhaps a female minor or especially a

Officer Graham-cross by Robinson

1 female defendant that if photographs need to be
2 taken or searches need to be done, that they would
3 send a female officer to make sure that there is
4 not any type of awkwardness or violation of the
5 law?

6 A I am not really sure about that. I know
7 we handle what calls are in our zone. When an
8 investigator, his call, that's left up. It's
9 their call.

10 Q You've never been in a situation where
11 another deputy called and said I have a female
12 suspect, I need you to come search her or help me
13 search her.

14 A Yes, sir.

15 Q Okay. So and the reason is because you're
16 a woman; isn't it?

17 A Yes, sir.

18 Q The guys are a little bit uncomfortable
19 patting down or doing whatever to a female.

20 A Yes, sir.

21 Q And vice versa. You've called males to
22 come pat down a male minor or not a minor, a
23 defendant or a suspect---

24 A Yes, sir.

25 Q Is that right? And did you -- you were

Officer Graham-cross by Robinson

1 the first one on the scene, the first officer on
2 the scene?

3 A Yes, sir, I was.

4 Q And did you take any photographs of Ms.
5 Keels to show her physical state or emotional
6 state? Document the clothing that she was
7 wearing? Anything like that?

8 A No, sir, I didn't.

9 Q Do you know if anybody else did that that
10 evening?

11 A I am not sure. I know we were, myself and
12 Sergeant Tisdale had gone to that scene. And then
13 we notified Investigator Richards, and he pretty
14 much handled, told us what to do from there.

15 Q Do you have a camera? Or access to a
16 camera?

17 A At that time I don't remember whether I
18 had a camera, but I'm probably pretty sure I did.

19 Q But you didn't take any photographs to
20 document her appearance or clothing, anything like
21 that?

22 A No, sir. It wasn't something that had
23 just happened as it, you know, it happened right
24 before we got there kind of situation. So...

25 Q Okay. Did you ask any questions to

Officer Graham-cross by Robinson

1 determine where the clothing that Investigator
2 Richards asked you all to collect was?

3 A No, sir, I don't remember asking.

4 Q So you don't know whether she was wearing
5 it. It was in the dirty clothes. She got it out
6 of the washing machine. You just told him to get
7 it and bring it to the sheriff's department. And
8 to the best of your knowledge, that's what they
9 did?

10 A If I am not mistaken is, she was told to
11 bring the underwear that she had on to the
12 sheriff's office.

13 Q That she was wearing then, or that she had
14 on at the time of the alleged incident?

15 A I really don't remember. I remember
16 saying the underwear that she had on. I don't
17 know which term I had said; whether it was the one
18 she had on at that point, or the ones that she had
19 on during the incident. I really don't remember
20 which one.

21 Q And you didn't accompany her into the
22 bedroom or anything to verify that. You just took
23 your report; give instructions, and continued
24 about your duties; is that right?

25 A Yes, sir.

Officer Graham-cross by Robinson

1 MR. ROBINSON: Thank you. I don't have
2 any further questions.

3 THE COURT: Anything further from the
4 state?

5 MR. DURANT: Just a couple of questions.

6 REDIRECT EXAMINATION by Mr. Durant:

7 Q Officer Graham, could you describe the
8 scene for us when you arrived at the house?

9 A There was, when I pulled into the yard,
10 there was a lot of family members and for the
11 minor in the yard. And there was a lot of mad
12 family members in the yard whenever I arrived.

13 Q Was the defendant there?

14 A No, sir. At that point he was in the back
15 seat of my patrol car.

16 MR. DURANT: I don't have any further
17 questions.

18 THE COURT: You can step down.

19 MR. DURANT: I beg the court's
20 indulgence. I am going to see if my next witness
21 is here. The state calls Amy Stephens.

22 THE COURT: Okay.

23 Amy Stephens, being first duly sworn,
24 testified as follows:

25 Direct Examination by Mr. Durant:

Officer Graham-cross by Robinson

1 Q Ms. Stephens, now that we have got your
2 name, would you tell us where you work?

3 A I'm employed with the South Carolina Law
4 Enforcement Division, also known as sled, in the
5 evidence control department.

6 Q How long have you worked there?

7 A Approximately 7 years.

8 Q And what are your job duties at sled?

9 A My main responsibilities are to log in
10 packages and transfer evidence for forensic
11 analysis in criminal cases.

12 Q Mr. Stephens, I am going to show what has
13 been marked as State's Exhibit 3, and ask if you
14 recognize that.

15 A The log number that is listed on this bag
16 corresponds with my chain of custody of 1110075
17 Item No. 2.

18 Q Okay. When you say a lab number
19 corresponds to your chain of custody, where does
20 the lab number come from?

21 A Every case that is submitted to our
22 laboratory is given a unique lab number generated
23 by our computer system.

24 Q So who would have put that lab number on
25 the packaging?

Amy Stephens-direct by Durant

1 A Well the computer system generates a lab
2 number. And then it prints out on a label, and I
3 would have placed that label in that package.

4 Q Okay. So you did handle that package at
5 some point?

6 A Yes, I did.

7 Q And you have records that reflect that?

8 A Yes, I do.

9 Q Can you tell me how the package came to
10 you?

11 A In this particular case, I received a CSC
12 kit from Barbara Proctor of the Clarendon County
13 Sheriff's Office. I would have opened the CSC
14 kit; separated the evidence accordingly. In that
15 particular bag, I placed the underwear from the
16 CSC kit into that bag and sealed it. And had
17 Barbara Proctor initial and date the seal and sign
18 the date on the front of the bag.

19 Q So you placed the underwear into that---

20 A Yes.

21 Q ---evidence bag. And did you seal it?

22 A Yes, I did.

23 Q After you sealed the underwear into that
24 bag, what did you do with it?

25 A Once I sealed it and the evidence was

Amy Stephens-direct by Durant

1 entered into our computer system, I transferred
2 the evidence to a storage location in our evidence
3 room.

4 Q Did you come into contact with any other
5 items in this case other than the CSC kit and the
6 underwear?

7 A Yes, I did.

8 Q What else?

9 A I received a buccal swab from the
10 suspect.

11 Q How was that packaged?

12 A I got to see the actual physical evidence,
13 but I sealed it into heat sealed pouch whenever I
14 received it.

15 Q Okay. And then what did you do with it?

16 A Once I logged it into our computer system,
17 I then transferred it into an intake storage
18 location in our evidence room.

19 Q Tell me when evidence comes to sled, do
20 you -- how do you separate it?

21 A In this particular case, it was a CSC kit.
22 We will actually open up the kit itself. The DNA
23 evidence will be packaged together. The underwear
24 is packaged separately. And if there is any
25 toxicology evidence we will package that

Amy Stephens-direct by Durant

1 separately, because they go to different
2 departments.

3 Q Do you give the evidence any identifying
4 marks?

5 A The lab number that's generated.

6 Q The actual pieces of evidence, do they
7 have any identifying numbers?

8 A Each piece that's logged in, gets an item
9 number.

10 Q Okay. Do your records reflect what item
11 number the underwear were?

12 A Item No. 2.

13 Q Okay. And what item number was the CSC
14 kit?

15 A Item No. 1.

16 Q When you separate items from the CSC kit,
17 do they receive additional numbers or are they
18 still Item 1?

19 A Not at the time that I handle it. When we
20 handle the evidence, control will log it in as
21 Item No. 1. It is the responsibility of the DNA
22 analyst to break it down further than that.

23 Q Okay. So everything contained in the
24 CSC kit was Item 1.

25 A Correct.

Amy Stephens-direct by Durant

1 Q The underwear is Item 2 as evidence?

2 A That underwear is typically packaged in
3 the CSC kit. And then we separate those out. The
4 CSC kit evidence will go to DNA for analysis, and
5 the underwear goes to our evidence processing
6 department for analysis.

7 Q And the buccal swab do you remember what
8 item that was?

9 A According to my chain of custody it was
10 Item No. 3.

11 Q Do your records reflect what the underwear
12 were in when they came to you?

13 A According to the packing slip that I
14 received from the submitting agency, they were in
15 a heat-sealed pouch.

16 Q If that pouch had been opened or tampered
17 with in any way, would you have received it in
18 evidence?

19 A No, we would not.

20 Q Again after you handled the underwear, you
21 put it in the evidence room; is that right?

22 A That's correct.

23 Q Did you have any further -- did you handle
24 the underwear, what's been referred to as Item No.
25 2, after placing them in the evidence room?

Amy Stephens-direct by Durant

1 A Yes, I did. I retrieved it from that
2 storage location and transferred it to the
3 forensic technician Betty Butler, of the evidence
4 processing department.

5 Q Was the package still in the same
6 condition that you left it, when you retrieved it?

7 A Yes, sir.

8 Q Was it still sealed?

9 A Yes, it was.

10 Q And when you handed it to Ms. Butler was
11 it still sealed?

12 A Yes, it was.

13 Q Did you have any further handling of Item
14 No. 2 in this case?

15 A No, I did not.

16 Q Item No. 3 after you placed that in the
17 evidence room, did you handle it further?

18 A No, I did not.

19 MR. DURANT: I don't have any further
20 questions for Ms. Stephens.

21 THE COURT: Any questions?

22 Cross Examination by Mr. Robinson:

23 Q Ms. Stephens, I just want to make sure I
24 understand. Item 1 was the CSC kit.

25 A That's correct.

Amy Stephens-direct by Durant

1 Q And you received that into evidence. Just
2 meaning you took the sealed bag from Clarendon
3 County Sheriff's Department and put it in one of
4 sled's sealed bags.

5 A It's actually a sexual assault kit. When
6 we break it down, we separate the evidence inside.

7 Q Okay. And you personally physically
8 separated the evidence, or does somebody else do
9 that?

10 A I personally open the box and take the DNA
11 evidence out of that box and place it in a heat
12 sealed pouch.

13 Q Okay. And so you said that you did or did
14 not label it 1.1, 1.1.1, all that good stuff.

15 A That would be the analyst's responsibility
16 to inventory the physical contents of it.

17 Q I mean when you say a box, is it a
18 cardboard box? A plastic box?

19 A It's a cardboard box that we generate at
20 the South Carolina Law Enforcement Division. And
21 we give it to the hospitals and local law
22 enforcement.

23 Q And that's -- what, are you familiar with
24 the kits?

25 A Somewhat.

Amy Stephens-cross by Robinson

1 Q Okay. What is hand collected in these
2 kits? What's in the CSC kits?

3 A Typically it can be vaginal swabs, oral
4 swabs, rectal swabs. Smears can be collected.
5 Buccal swabs from the minor can be collected.
6 Underwear from the minor . Clothing from minor ,
7 as well as the toxicology blood from the minor .

8 Q Okay. And so do you remember what was in
9 this CSC kit that you opened and separated? When
10 you separate it, you just put the items separately
11 into one bag?

12 A It comes inside. There are a couple of
13 envelopes inside the CSC kit itself. And there's
14 an envelope dedicated strictly to DNA evidence.
15 And then there is actual evidence inside of that
16 envelope. So we just take the envelope and place
17 it in a heat sealed pouch. We don't inventory the
18 physical contents of that envelope containing the
19 evidence.

20 Q Okay. And so I am just trying to make
21 sure. When you put it into a heat sealed; for
22 instance, if there was a swab of some sort in an
23 envelope, do you put that envelope in a separate
24 heat sealed bag by itself? Or you put that
25 envelope along with all the other envelopes out of

Amy Stephens-cross by Robinson

1 that into the same heat sealed bag?

2 A We put the DNA evidence, which is swabs,
3 smears, the minor 's, you know, the buccal swab
4 that's located in the designated envelope inside a
5 heat sealed pouch.

6 Q Who determines what's DNA evidence versus
7 what's whatever else? Is that on the little
8 envelopes?

9 A It's labeled.

10 Q Okay. And who makes that determination
11 when they are placed in the envelopes?

12 A The nurses who collect the evidence.

13 Q Okay. Or the doctors whoever does that.

14 A Uh-huh. (Affirmative.)

15 Q Do they initial it somehow to show they
16 put it in that envelope?

17 A There's actually seals located in the
18 physical box itself that the nurses or whoever
19 collects the evidence at the hospital, will place
20 on the envelope and initial it.

21 Q Okay. And so that's how you know what's
22 in there, and who separated it and made that
23 designation. And then you put in these heat
24 seals. And whichever department it's
25 appropriately routed to, they then open that and

Amy Stephens-cross by Robinson

1 give it the 1.1., 1.1.1., 1.2 et cetera. Those
2 type of numbers.

3 A That's correct.

4 Q Okay. But you didn't do any of that.

5 A No, sir.

6 MR. ROBINSON: Okay. Thank you. I don't
7 have any further questions.

8 THE COURT: No redirect? Thank you, you
9 can step down.

10 MR. DURANT: The state would call Doris
11 Yarborough.

12 DORIS YARBOROUGH, after being duly sworn,
13 testified as follows:

14 A Doris Yarborough.

15 Direct Examination by Mr. Durant:

16 Q Ms. Yarborough, would you please state
17 your full name for the record?

18 A My name is Doris Yarborough.

19 Y-A-R-B-O-R-O-U-G-H.

20 Q Ms. Yarborough, where do you work?

21 A I work for the South Carolina Law
22 Enforcement agency commonly known as sled.

23 Q And how long have you worked there?

24 A For 4 and a half years.

25 Q What are your job titles or your duties?

Doris Yarborough-direct by Durant

1 A I'm a forensic technician in the evidence
2 control department, also known as log-in, where
3 we receive evidence from throughout the state from
4 all law enforcement agencies.

5 Q Tell me, Ms. Yarborough, when you receive
6 evidence is it given any kind of identifying
7 marking so sled can keep up?

8 A Yes. Once it is logged in, it receives a
9 bar code label. A yellow bar coded label. And
10 that package follows or that label follows that
11 package all throughout the lab.

12 Q Does sled maintain the record to show who
13 handled that or the labeling of the package?

14 A They are maintained electronically.

15 Q Ms. Yarborough, I am going to show you
16 what's been marked State's Exhibit 3, and ask if
17 you recognize on that package.

18 A That's the bar code label that our records
19 show. This yellow label.

20 Q Do your records reflect whether or not you
21 handled that package or anything?

22 A Yes, they do.

23 Q Can you tell me when that was?

24 A On item No. 2, I took it in my possession
25 on September 22nd, 2011.

Doris Yarborough-direct by Durant

1 Q Where did you get it from?

2 A I got it from the evidence processing
3 person named Betty Butler there.

4 Q And was that the first time you have seen
5 that package?

6 A Correct.

7 Q What did you do with it when you got it
8 from Ms. Butler?

9 A I took the main package which is
10 Item No. 2, and placed it on -- in our evidence
11 room, secure evidence room, on shelf 9-D. Which
12 means that package will be returned to the agency.

13 Q Okay. You said you took the main package?

14 A Yes, sir.

15 Q What do you mean, was there another
16 package?

17 A There were some cuttings that were taken
18 from that original package.

19 Q Okay. So when you received the package,
20 it was no longer one. It was more than one
21 package?

22 A Yes, sir.

23 Q How many packages were there?

24 A That was Item 2. And they made cuttings
25 from that, the evidence that was in that bag and

Doris Yarborough-direct by Durant

1 those cuttings, went to for Item 2.1.

2 Q And do your records reflect who made those
3 cuttings?

4 A Betty Butler.

5 Q She created a second package for the
6 cutting; is that my understanding?

7 A Yes, sir.

8 Q And did you handle the second package as
9 well?

10 A Yes, sir. I placed it on what is called
11 DNA evidence intake storage. That's where those
12 cuttings go to wait for the analyst to request
13 them, to process them.

14 Q And did you have any further involvement
15 or handling of that package after placing it?

16 A No, sir, that was it.

17 MR. DURANT: I don't have any further
18 questions of Ms. Yarborough.

19 MR. ROBINSON: I don't have any questions
20 of this witness.

21 MR. DURANT: May we approach?

22 (Whereupon, the attorneys approach and
23 confer with judge.)

24 THE COURT: Ladies and gentlemen, the next
25 witness has been subpoenaed by another county.

Doris Yarborough-direct by Durant

1 They are in York right now testifying in another
2 trial. And they got them before did. So that
3 means that I can't get them until in the morning
4 at 9:30. So we are going to have to stop here,
5 and come back in the morning at 9:30 and finish
6 this case.

7 So I am going to let you go. And if you
8 will, just show back up at 9:30 in the morning. I
9 remind you, please, don't discuss this case.
10 Don't read anything about it. Don't talk about it
11 among yourselves. You have a nice evening, and I
12 will see you at 9:30 in morning.

13 (Whereupon, the jury is dismissed at 12:10
14 p.m.)

15 (Whereupon, the trial commences at 9:30
16 a.m. on Wednesday, January 30, 2013.)

17 THE COURT: Is the state ready?

18 MR. DURANT: Yes, sir, Your Honor.

19 THE COURT: Is the defense ready?

20 MR. ROBINSON: Yes, sir.

21 THE COURT: You may bring the jury.

22 (Whereupon, the following takes place
23 within the presence of the jury.)

24 THE COURT: You may call the next witness.

25 MR. DURANT: Betty Butler.

Doris Yarborough-direct by Durant

1 Betty Walker Butler,
2 being first duly sworn, testified as follows:

3 Direct Examination by Mr. Durant.

4 Q Ms. Butler, would you please state your
5 full name for the record?

6 A Betty Walker Butler.

7 Q Where are you employed, Ms. Butler?

8 A I'm employed with the South Carolina State
9 Law Enforcement Division also known as sled.

10 Q In what capacity are you employed at sled?

11 A I am a forensic technician in the DNA
12 Department.

13 Q What are your duties as a forensic's
14 technician at the DNA department?

15 A My duties as forensic's technician, I
16 examine evidence for presumptive tests for blood,
17 semen. I look for hairs, fibers, skin, nails,
18 body fluids, or anything that could be of value to
19 a particular case.

20 Q What educational background or training do
21 you have that prepared you for the position?

22 A What a forensic technician, I was trained
23 by two forensic technicians that qualify as an
24 expert in the court of South Carolina. Also a DNA
25 analyst that also qualified as experts. I was

Doris Yarborough-direct by Durant

1 trained on hundreds of items. Before I was able
2 to go on line, I had to take proficiency tests and
3 a competency test. And every year we have to take
4 a proficiency test to make sure that we know what
5 we are doing.

6 Q When you say presumptive testing, what do
7 you mean by that?

8 A When I say presumptive test, it means it
9 is a possibility it could be blood. Or it's a
10 possibility it could be semen.

11 Q Ms. Butler, during the course of your work
12 at sled, did you come into -- did you handle any
13 evidence in the State versus Charlie Belser?

14 A Yes, I did.

15 Q And what did you handle?

16 A I handled sled item No. 2 and 2.1.

17 Q Can you describe for me what items 2 and
18 2.1 were?

19 A Sled Item 2.2 is underwear black and pink
20 with a design. And 2.1 is a cutting I did from
21 the crotch of the underwear.

22 Q Would you tell me how did these items come
23 to you?

24 A They came to me into a heat-sealed pouch
25 where they had the agent put his initials and the

Doris Yarborough-direct by Durant

1 requested seal that is also assigned to you from
2 the agency. It comes sealed.

3 Q Now I show you whats been marked as
4 State's 3, and ask if you recognize that?

5 A Yes, I do.

6 Q What is it?

7 A This is sled item 2 State's Exhibit 3, the
8 underwears.

9 Q Okay. Is the packaging that they're in
10 now, is that how they came to you?

11 A It came to me, it didn't have this seal
12 broken, and it didn't have this. It was
13 completely sealed across the top. And everything
14 was sealed. I do the cutting, where once I seal
15 it back, it has my initials and the date.

16 Q Tell me where you retrieved it from?

17 A I retrieved it from the evidence control
18 department forensic technician, Amy Stephens gave
19 it to me.

20 Q Ms. Butler, after you retrieved that
21 package, tell me what you did you with it.

22 A Once I retrieved this package, I always
23 examine it and make sure it is completely sealed.
24 And initial the date properly. And sign the date
25 properly. Once that has been established, I open

Doris Yarborough-direct by Durant

1 up in the inside and I examine the evidence on the
2 inside.

3 Q Now, Ms. Butler, if you can, I hand you an
4 exhibit. I am going to show you inside here, and
5 ask you what's been marked as State's Exhibit
6 No. 1, and ask if you recognize that.

7 A Yes, I do.

8 Q And what is that?

9 A This is Sled Item No. 2.0, which is the
10 underwear.

11 Q And tell me how, the underwear, were they
12 in a separate package within the first exhibit I
13 showed you, or were they by themselves?

14 A They were inside that heat-sealed pouch
15 right there.

16 Q Were they -- the actual pouch that I gave
17 you there, was that inside the other pouches? Was
18 the second pouch inside, was that sealed?

19 A Yes, it was.

20 Q And who opened it?

21 A I did.

22 Q When did you do that?

23 A I opened it on September 15th 2011.

24 Q Tell me what you did with the underwear
25 when you opened it.

Doris Yarborough-direct by Durant

1 A Once I opened the underwear, I made a
2 description on the design of the underwear.
3 The -- and the request was semen or body fluids.
4 Once I established a request, I turn all the
5 lights off. We use a penny light source, where
6 you turn off the lights and use special glasses;
7 where anything fluoresces, we make a circle around
8 it.

9 Once it has, once we make the surface on
10 the particular underwear, I do a chemical test.
11 We are looking for the possibly where it could be
12 semen. If it's a possibility of semen, it will
13 turn purple. So we did. And I made a cutting
14 from the crotch of the underwear.

15 MR. DURANT: Judge, at this time, I would
16 ask to offer State's Exhibit No. 1 into evidence.

17 THE COURT: What says the defense?

18 MR. ROBINSON: No objection.

19 THE COURT: Okay. Exhibit 1 is in without
20 objection.

21 (Underwear marked State's Exhibit No. 1
22 into evidence.)

23 Q With the court's permission, would you
24 hold up the underwear and show us exactly where
25 you took the cut from?

Doris Yarborough-direct by Durant

1 A I took a cutting from the crotch of the,
2 the whole entire crotch came out of the underwear.

3 Q Okay. When you did your testing, did you
4 test inside or the outside of the crotch?

5 A It was the inside of the garment.

6 Q Okay. Ms. Butler, is there a size on
7 those underwear? Is there a tag?

8 A It's a medium size.

9 Q I want to get back to your testing. Tell
10 me what was the results of your testing?

11 A It was positive for the presumptive test
12 for semen.

13 Q And you say you did a cutting of the area,
14 and it tested positive; is that right?

15 A That's correct.

16 Q And what did you do with that cutting
17 afterwards?

18 A Once I have established that the cutting
19 was positive, I cut it out. And I put it into a
20 gold coin envelope. And I sealed that envelope.
21 I put my initials and a date across the seal.
22 Then I will put it into a heat sealed pouch. A
23 different heat sealed pouch. Where I seal it and
24 I put my initials and date on it. And also sign
25 that particular pouch, and date that pouch. Once

Doris Yarborough-direct by Durant

1 I finish that, then I gave it the evidence control
2 department to Dorothy Yarborough where she put it
3 into the DNA box for further analysis.

4 Q Is that the same Ms. Yarborough that was
5 here yesterday?

6 A That's correct.

7 Q What did you do with the remaining portion
8 of the underwear after you tested it?

9 A Once I complete the test, I put it into
10 the paper that I processed being an item on. Wrap
11 it up. I put my, I always put the item number. I
12 put my initials. Put the lab number and the date
13 I process it. Stick it back into the original
14 pouch that it came in. And put it into a, back
15 into a heat sealed pouch. Then I seal it up, and
16 I put my initials and the date on it. And gave it
17 back to Doris Yarborough.

18 Q Ms. Butler, after performing those tests
19 and giving the panties and the cuttings to Ms.
20 Yarborough, did you have any further involvement
21 in this case?

22 A No, I did not.

23 MR. DURANT: I don't have any further
24 questions. Please answer any questions Mr.
25 Robinson may have.

Doris Yarborough-direct by Durant

1 Cross Examination Mr. Robinson:

2 Q Mr. Butler, and I think Mr. Durant has
3 asked you this. I don't want to keep you long.
4 Have you had any contact with the CSC kit that was
5 brought in, or just specifically those panties?

6 A Just the underwear.

7 Q And you put some sort of substance on
8 them; that was your testing. And you sent it on
9 for further testing by somebody else?

10 A That's correct.

11 MR. ROBINSON: Thank you. I don't have
12 any further questions.

13 THE COURT: You can step down.

14 MR. DURANT: The state calls Patricia
15 Crooks.

16 Patricia Crooks, after being duly sworn,
17 testified as follows:

18 Direct Examination by Mr. Durant:

19 Q Ms. Crooks, where are you employed?

20 A I am employed with the South Carolina Law
21 Enforcement Division, also known as sled.

22 Q And in what capacity are you employed at
23 sled?

24 A I'm a forensic technician in the evidence
25 control department.

Doris Yarborough-cross by Robinson

1 Q Tell me what your duties are there?

2 A My duties are strictly within the evidence
3 room. I transfer evidence that has been brought
4 in from various agencies. It is logged in, and
5 placed in a specific spot in the evidence room.
6 And then in turn, I would take custody of that.
7 One of the forensic scientists or the forensic
8 technician are going to examine the evidence. So
9 I would pull that evidence and transfer it to DNA.
10 I also take evidence back once it has been
11 examined and then I return the evidence to the
12 submitting agency.

13 Q Ms. Crooks, did you come in contact with
14 any evidence in the state -- in the case we are
15 here for today, State v. Charlie Belser?

16 A Yes, I did.

17 Q Tell me what you handled in the case.

18 A Can I refer to my electronic chain?

19 Q Please do.

20 A Okay. And which item specifically?

21 Q I'm specifically interested in Item 2.

22 Did you handle that? First tell me what Item 2
23 is.

24 A Okay, item 2 is one sealed, heat sealed
25 pouch containing underwear described as the

Patricia Crooks-direct by Durant

1 minor 's underwear that was worn before and after
2 the sexual assault.

3 Q Tell me what -- tell your involvement with
4 that piece of evidence. What did you do?

5 A The only involvement I had with that
6 evidence was, once it had been examined and
7 returned to the evidence room, I then in turn
8 returned it to the submitting agency, Barbara
9 Proctor, with the Clarendon County Sheriff's
10 Office.

11 Q Did you have any involvement with Item
12 2.1?

13 A Yes, Item 2.1 is one sealed heat sealed
14 pouch containing cutting, as described from
15 underwear.

16 Q Tell me what you did with that?

17 A I took custody of that evidence from the
18 DNA shelf 47, which is located in our secure
19 evidence room. Took custody of it. And then I
20 transferred custody of that evidence to forensic
21 scientist Adrian Hefney.

22 Q When you -- was the package containing the
23 cutting was that sealed when it came to you?

24 A Yes, it was sealed.

25 Q And when you gave it to Ms. Hefney, was it

Patricia Crooks-direct by Durant

1 still sealed?

2 A Yes, It was.

3 Q What is Item No. 3?

4 A Item No. 3, is one sealed heat sealed
5 pouch containing buccal swab described as
6 suspect's buccal swab.

7 Q Did you handle that piece of evidence?

8 A Yes, I did.

9 Q Tell me where you got it from.

10 A I removed that evidence from DNA intake
11 shelf 66 in our evidence room; took custody of it.
12 And then in turn transferred custody to forensic
13 scientist Adrian Hefney.

14 Q Do your records reflect who placed the
15 evidence on the intake shelf?

16 A That was placed on the intake shelf by
17 forensic technician, Amy Stephens. And she is the
18 person who actually logged that evidence in.

19 Q Is that the same Ms. Stephens that was
20 here yesterday?

21 A Yes, it is.

22 Q Ms. Crooks, did you handle Item No. 1 as
23 well?

24 A Yes, I did.

25 Q Tell me what that was.

Patricia Crooks-direct by Durant

1 A That was one sealed, heat-sealed pouch
2 containing a CSC kit, described as minor
3 [REDACTED].

4 Q And tell me what you did with Item 1.

5 A Okay. Item 1, I removed that evidence
6 from the DNA intake refrigerator located in the
7 evidence room; took custody of it. And then I
8 transferred that item to Sherry Brown. She's a
9 forensic technician. That was on September 7th of
10 2011.

11 Q Did you have any further handling of that?

12 A Yes, I did. On October 5th 2011, Sherry
13 Brown returned that evidence to me. Placed it
14 back on the shelf then intake shelf 68. On
15 8/30/2012, I transferred that evidence to forensic
16 scientist to Adrian Hefney.

17 MR. DURANT: Ms. Crooks, I don't have any
18 further questions for you. Please answer any Mr.
19 Robinson might have.

20 Cross Examination by Mr. Robinson:

21 Q Thank you, Ms. Crooks. You didn't do any
22 testing or anything like that of any evidence; did
23 you?

24 A No, I did not.

25 Q Getting it from the evidence locker or

Patricia Crooks-direct by Durant

1 evidence room whatever it is, and transferring it
2 to the appropriate person for testing?

3 A Correct.

4 Q Now Item 1, I think you testified was the
5 CSC kit itself?

6 A Yes.

7 Q I notice on the, I think you called it
8 electronic chain of custody, list several items
9 under that. Item 1.1, 1.2, 1.3, 1.4, all the way
10 through 1.9.1.

11 Did you -- who separated Item 1 into those
12 sub-items?

13 A That would have been done upstairs in DNA.
14 That would be, I don't have anything to do with
15 that department, so I could not give you the
16 specifics.

17 Q Well I mean by looking at the chain that
18 you refer to, does that---

19 A Okay, Item 1.1 that's a sealed Ziploc bag
20 containing blood standard described as dry blood
21 standard from minor

22 Q And it looks like---

23 A That goes to Adrian Hefney the forensic
24 scientist.

25 Q And you gave that to her.

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1 A Yes, I did.

2 Q And Item 1.1.1 which is a blood standard,
3 again dried blood from Ms. Keels. You also gave
4 that to Ms. Hefney.

5 A I did.

6 Q The rest of it looks like I guess Ms.
7 Hefney handled herself?

8 A Yes.

9 Q And would she have retained custody of
10 that according to this sheet?

11 A According to the electronic chain; yes.

12 MR. ROBINSON: Okay. Thank you, ma'am. I
13 appreciate it. No further questions.

14 THE COURT: Thank you, ma'am, you can step
15 down.

16 MR. DURANT: The state calls Adrian
17 Hefney.

18 Adrian Raleigh Hefney,
19 being first duly sworn, testified as follows:

20 Direct Examination by Mr. Durant:

21 Q Ms. Hefney, where are you employed?

22 A With the South Carolina Law Enforcement
23 Division, commonly known as sled.

24 Q How long have you worked there?

25 A Since November of 1997. So about 15

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1 years.

2 Q And in what capacity are you employed at
3 sled?

4 A I'm a forensic DNA analyst.

5 Q And tell me what are your duties as a
6 forensic DNA analyst.

7 A My primary duty is the analysis of
8 biological evidence that may have been left behind
9 at a crime scene, and make comparison to a known
10 standard from the minor and or a suspect in the
11 case.

12 Q Would you describe for me your educational
13 background?

14 A Sure. I have a bachelor of Science degree
15 from the University of South Carolina in Biology.
16 I have an MBA from Winthrop University. I was
17 trained at sled under a court qualified analyst.
18 And on an annual basis, I continue my education by
19 attending symposiums or meetings to stay abreast
20 in any changes in the field of forensic DNA
21 analysis.

22 Q Did your training or education include the
23 study of DNA?

24 A Yes, sir, it did.

25 Q Did that include the hands on work of DNA?

Adrian Hefney-direct by Durant

1 A Yes. And my on the job training; yes,
2 sir.

3 Q With DNA testing techniques?

4 A Yes, sir.

5 MR. ROBINSON: Your Honor, and I will be
6 glad to save some time, we will stipulate to
7 Ms. Hefney as an expert in DNA analysis.

8 THE COURT: Okay.

9 MR. ROBINSON: If Mr. Durant is going to
10 qualifications.

11 THE COURT: All right. Then I so find to
12 defense counsel stipulations.

13 Q Ms. Hefney, would tell me, what is DNA?

14 A Sure. DNA stands for deoxyibonucleic
15 acid. And what that is, it's a chemical that's
16 done in the cells of our bodies that makes us who
17 we are. It's our genetic information that we
18 receive from our mother and our father. We
19 receive half of our DNA from our mother and the
20 other half of our DNA from the father. No two
21 people have the same DNA with the exception of
22 identical twins. And that's how we use it in
23 forensic DNA analysis to make comparisons.
24 Because no two people have the same DNA except
25 identical twins. We can compare unknown ethic

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1 samples that were left behind at a crime scene, to
2 known samples; such as, blood or a buccal swab
3 from a swab from the inside of the cheek of the
4 minor and or the suspect in the case.

5 Q Tell me, what type of DNA analysis do you
6 perform at sled?

7 A The type of testing that we currently do
8 at sled is known as PCR. And that stands for
9 polymerase chain reaction. What that is and the
10 type of testing that it requires a much smaller
11 stain than the type that we used to do in the
12 past. Theoretically, we can get a DNA profile out
13 of a pen head size stain; whereas, before it would
14 take almost a quarter size, a half dollar size
15 stain to get a DNA profile.

16 Q Tell me what specific types of bodily
17 fluids or tissues from which DNA can be obtained?

18 A DNA can be obtained from blood, from
19 semen, from saliva, from hair root. Just to name
20 a few. From bone. And the DNA that's in your
21 blood is the same DNA that's in your hair, in
22 semen of males, and saliva. It's the same
23 throughout the person.

24 Q Ms. Hefney, did you have occasion to
25 examine any evidence related to the case of State

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1 v. Charlie Belser?

2 A Yes, sir, I did.

3 Q Tell me what type of evidence did you
4 obtain?

5 A In this case I examined a sexual assault
6 evidence collection kit from minor . And
7 that kit included a blood standard from her.
8 Smears from her vaginal, oral and rectal smears.
9 Vaginal swabs, oral swabs, rectal swabs.
10 Fingernail scrapings. Head hairs, pubic hairs
11 pubic hair combings, underwear. And then I also
12 tested a buccal swab from Charlie Belser which
13 will be a known standard.

14 Q Ms. Hefney, what were the results of your
15 examinations?

16 A In the end we have to first determine what
17 we are working with. And that is known as
18 serology. That is scientific body fluid
19 identification. And serology tests for with
20 sexual assault cases. Field test for whether they
21 are P 30 protein. Which is a protein that's found
22 in seminal fluid of males, is present. So in this
23 case, I tested vaginal swabs, oral swabs and the
24 rectal swabs for semen. But there was no semen
25 identified On those.

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1 I also tested her fingernail scrapings. I
2 did DNA on those. And as well a hair from her
3 pubic combings. As well as cutting from her
4 underwear, her panties. And there was semen
5 identified on her panties.

6 Q I want to stop you for a minute. How did
7 you determine that there was semen on the panties?

8 A We have a test that tests for the P 30
9 protein that is found in male seminal fluid. And
10 if that test is positive, then we will say there
11 is semen indicated. We'll take it on to DNA and
12 we will get a male DNA profile. Then we can
13 definitely say semen was identified.

14 Q And I understand you tested cutting from
15 the panties?

16 A Yes, sir.

17 Q Had some preliminary tests been done on
18 that cutting before they came to you?

19 A Yes, sir. Our evidence processing unit
20 does the preliminary presumptive tests of the
21 panties. And if they found an area that's
22 positive, they cut it and submit it to us for
23 confirmatory testing.

24 Q So the test you did was additional to what
25 had already been done?

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1 A That's correct.

2 Q And tell me, once you identified semen on
3 the panties, what did you do?

4 A I developed a DNA profile from the panties
5 as well as from the dry blood standard from
6 minor and the buccal swab from Charles
7 Belser.

8 Q And would you tell me what the results of
9 the examination of the semen was?

10 A Yes. I'll read directly from my report.
11 The DNA profile developed from the semen on Item
12 2.1 which was a cutting from the underwear matches
13 the DNA profile of Charlie Belser. The
14 probability of randomly selecting an unrelated
15 individual having a DNA profile matching the semen
16 on this item, is approximately 1 in 16
17 quadrillion.

18 Q Tell me, you said the DNA profile matches
19 the DNA -- the DNA profile found on the panties
20 matches the DNA profile of Charlie Belser?

21 A The DNA profile that was developed from
22 the semen that was found on the panties.

23 Q Are there any different types of results
24 that you can get from DNA testing? A match is
25 that a type of result that you can get?

Adrian Hefney-direct by Durant

1 A Yes.

2 Q What are the other types of results?

3 A Well I'll keep reading in my report.

4 There was no DNA profile foreign to the [REDACTED]
5 minor developed from Item 1.6 where were
6 her fingernail scrapings. And the DNA profiles
7 developed from Item 1.9.1 which was a hair from
8 pubic combing. And the non's from fraction of
9 Item 2.1 are insufficient for reliable
10 interpretation.

11 So we got basically no DNA profile from
12 the pubic hair, are not enough to be able make a
13 call one way or the other or a match. And the
14 non's from fraction of Item 2.1. And what I mean
15 by sperm and non-sperm fraction, when we get a
16 cutting or a swab that contains semen, what we're
17 going to do is essentially treat them as two
18 different items. We're going to add the agents to
19 the one cutting that's going to light epithelial
20 cells. And what the epithelial cells are the
21 cells, your skin cells. So it will be the cells
22 from the minor that you would get.

23 Then we're going to add chemicals that
24 would light sperm cells or light sperm heads.
25 That's going to then become known as our male

Adrian Hefney-direct by Durant

1 fraction. Where the first one comes from is our
2 female fraction. Female and non-sperm or male and
3 sperm fraction.

4 Q Tell me how do you estimate the accuracy
5 of your results?

6 A Okay. Once we see when we've got a visual
7 match then we're going to apply a statistical
8 match to it. And essentially what the statistical
9 match says is in this case it was 1 and 16
10 quadrillion. So if you were to line up a
11 quadrillion people, you should only expect to see
12 this DNA profile one time as a probability.

13 Q Do you know how many zeros are in a
14 quadrillion?

15 A A quadrillion is a 1 followed by 15 zeros.

16 Q Tell me, after you do your testing, does
17 anybody follow up behind you at sled?

18 A Of course we do testing or we get ready to
19 issue a report. First, we review our own testing
20 before it is submitted for a peer review. Then
21 our peer review or somebody else, that's another
22 DNA analyst, they'll review our work. And then a
23 third review is done by our supervisor before it
24 is released.

25 Q And I want to back up a minute, and ask

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1 you about the items tested in the CSC kit. Tell
2 me, would you, which items you tested.

3 A Sure, I tested her vaginal swabs. Her
4 oral swabs and her rectal swabs.

5 Q And what were the results of those tests?

6 A There was no semen identified on either of
7 those three swabs.

8 Q Ms. Hefney, would you, is it uncommon to
9 find semen in the panties but not in the vaginal
10 swabs?

11 A Not necessarily. Not when there's a time
12 lapse between when the assault occurred or when
13 the incident occurred and when they go to the
14 hospital to get the kit collected. In this case
15 and looking at the profiles, a matter of a couple
16 of days. During those two days, the minor
17 washed. They went along their daily routine.
18 Which could remove so to speak, events, by daily
19 washing and everything. But as far as those
20 panties were worn before the assault and after---

21 MR. ROBINSON: Your Honor, I am going to
22 object. That's hearsay unless she has some basis
23 for that knowledge. She's just tested the
24 panties.

25 THE COURT: Okay. And I assume you did

Adrian Hefney-direct by Durant

1 not talk to any witnesses. You're just going by
2 what was submitted to you.

3 A I'm going by what was submitted. And on
4 the paperwork that was submitted, it says minor 's
5 underwear that was worn before and after the
6 assault.

7 MR. ROBINSON: That's not in evidence.

8 THE COURT: Okay. At this point I sustain
9 his objection.

10 Q Ms. Hefney, is it possible for semen to
11 degrade over time?

12 A Yes, it is.

13 Q Is it possible for -- have you found
14 during the course of your employment, that semen
15 could drain from the vaginal cavity over time?

16 A Yes. Just gravity itself will allow it to
17 drain down.

18 Q Is there a reason why you choose the
19 crotch area of the panties to make your analysis?

20 A Because that would be the drainage point
21 coming from the female's vagina area.

22 MR. DURANT: Ms. Hefney, I don't have any
23 further questions for you at this time. Please
24 answer any that Mr. Robinson has.

25 Cross Examination by Mr. Robinson:

Adrian Hefney-direct by Durant

1 Q Ms. Hefney, is it miss or doctor?

2 A It's miss.

3 Q I don't want to get it wrong. You
4 testified or you told Mr. Durant that you all use
5 the PCR technology. I am not going to make you
6 repeat that. But that's the DNA testing or
7 whatever that sled uses?

8 A Yes, sir.

9 Q And I think you testified that it's pretty
10 advanced especially in comparison to several years
11 ago that it only takes a few cells now to develop
12 a DNA profile?

13 A Theoretically, yes.

14 Q Okay. And in this particular testing, you
15 had two known standards to compare the cutting to;
16 is that correct?

17 A That's correct. I had a standard from the
18 minor , as well as from the suspect in this case.

19 Q And did I understand your testimony
20 correctly that from the cutting from the panties,
21 the female portion of the DNA that was found was
22 not sufficient to make a determination?

23 A That is correct. It was insufficient for
24 reliable interpretation. Meaning it was just got
25 a partial profile from the female fraction of the

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1 underwear.

2 Q Okay. So in follow up to the question
3 that Mr. Durant asked you about the reason you
4 test the crotch area of the panties is because
5 that is typically where the drainage would occur.

6 A That is correct.

7 Q And wouldn't it also be typical especially
8 if these were the pants that were worn or the
9 panties worn immediately after the assault, that
10 there would be some of the minor 's DNA in that
11 drainage as well?

12 A Yes. And there is some of the minor 's
13 DNA in it, but it's just a partial amount. And we
14 see this a lot of times when we have like a pure
15 semen stain, where most of the stain in the crotch
16 of the panties is semen.

17 Q So you say a partial amount. Are you able
18 to determine to a reasonable degree of expert
19 certainty beyond a reasonable doubt, that's it a
20 100 percent match?

21 A To the---

22 Q To the minor i?

23 A ---minor i?

24 Q Yes, ma'am.

25 A No, sir. We just have just a partial

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1 profile, so I would not be able to make a match.

2 Q So what you said in your report is
3 accurate. You cannot conclusively determine that
4 the minor 's DNA was actually in the pants.

5 A I said it's sufficient for reliable
6 interpretation.

7 Q Right. So you can't tell this jury that
8 that's her DNA.

9 A I can tell the jury I did not make a
10 match; no, sir.

11 Q Okay. And Mr. Durant also asked you about
12 the swabs that were taken from Ms. Keels vaginal
13 area. And you said washing time. Isn't it true
14 that typically sperm can stay in what they call
15 the vaginal vault inside the vagina for 3 or 4
16 days?

17 A Typically 3 days is the extended limit.

18 Q Okay.

19 A 72 hours. Because after 72 hours we don't
20 test.

21 Q Okay. And do you know whether or not the
22 physical examination that Ms. Keels had was within
23 that 72 hours? Were those swabs collected within
24 72 hours?

25 A I'm looking at the protocol that is

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1 submitted along with the sexual assault kit. And
2 that protocol comes from the hospital. In this
3 case it was the Care House of the Pee Dee. And it
4 just lists incident of collection date of 8/15.
5 And an incident date of 8/13/2011.

6 Q So that would have been within 48 hours.
7 Give or take.

8 A That's a couple of days. Yes.

9 Q So there should have been, sperm, sperm
10 cells, DNA within the vaginal vault.

11 A That's depending. And it depends on a lot
12 of different conditions of the person's vagina.
13 How they're washing. If they're standing up more
14 than they are sitting down. It depends on so many
15 different factors as to whether we're going to get
16 anything after that length of time. Still in
17 vagina.

18 Q In your experience, would it have been a
19 better practice to have, if the incident was
20 reported on 8/13 or 8/14 a rape kit done at a
21 local facility immediately to preserve some of
22 that evidence?

23 A Typically if it happens, they go to the
24 hospital and it's collected at that time.

25 Q Okay. And is there any other possible

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1 explanation for how the semen got on the panties
2 besides drainage from Ms. Keel's vagina?

3 A In the crotch area, I can't think of
4 really any other explanation other than if a
5 subject just ejaculated straight onto her panties.

6 Q How about something, have you ever heard
7 of the term secondary transfer?

8 A Yes, sir, I have. But usually with
9 secondary transfer, I will get a minute amount of
10 DNA, because it's rubbing against something or
11 coming off of another item onto another item. We
12 wouldn't get a strong DNA profile like this one.

13 Q And that's an absolute guarantee? I mean?

14 A No, nothing is guarantee.

15 Q Okay. So I mean that's typical.

16 A Exactly.

17 Q But you couldn't rule out in this
18 situation that this was the result of a secondary
19 transfer.

20 A I couldn't rule that out. That would be
21 unlikely, but I couldn't rule it out.

22 Q And what about Ms. Keels' mother's DNA?
23 Would that be typically somewhat -- there would be
24 some common traits that would show up in a DNA
25 profile?

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1 A Yes, the minor would share half her DNA
2 with her biological mother.

3 Q So the non-sperm fraction that we talked
4 about, or the female DNA that were found in her
5 panties, you can't say with any certainty that it
6 did not come from her mother; could you?

7 A All I can say is two weeks to interpret.
8 So I can't say too much about it at all.

9 Q You can't rule that out.

10 A It's not enough to rule out or say it is.

11 Q So hypothetically speaking, if the known
12 sample of Mr. Belser, if Mr. Belser had had a
13 sexual relation with the mother and ejaculated in
14 a towel or the mother's panties, if those panties
15 had gone into a hamper and come directly
16 immediately into contact with the minor 's
17 panties, would that be a plausible ex --
18 possibility of how the fluids got there?

19 A Well a lot of things would have to happen
20 for that to happen. Like if he ejaculated into
21 the panties, his ejaculation would have to be wet,
22 pretty much to be able to leak onto another item
23 of clothing in the hamper. Considering that he
24 ejaculated and it soaked into the panties over the
25 time, or dried or whatever before it gets onto

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1 another item of clothing that was on the hamper.

2 In the crotch too.

3 Q So in other words, you can't rule out that
4 the semen was placed in the panties by secondary
5 transfer.

6 A You can't rule anything out. It's
7 unlikely, but of course, you can't rule anything
8 out.

9 Q Well in this case, you can't rule that out
10 had the DNA and the panties been a sufficient
11 match to the minor that could have certainly
12 helped rule that out; couldn't it?

13 A Yes, sir, it could have.

14 Q Or if it had been a specific match to the
15 mother's DNA that could have ruled out that it
16 came out of the minor 's vagina?

17 A If I had the known standard to.

18 Q The only thing that you can really tell us
19 is that the semen belongs to Mr. Belser.

20 A And it's in the crotch of the panties:
21 Yes, sir.

22 Q Right. But there is more than one way
23 that it could have gotten there. And perhaps the
24 female DNA from the mother or the minor could not
25 be ruled out; is that correct?

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1 A That's correct.

2 MR. ROBINSON: Okay. Thank you. I don't
3 have any further questions.

4 MR. DURANT: No redirect, Judge.

5 THE COURT: Okay. Thank you, ma'am. You
6 can step down.

7 MR. DURANT: Judge, at this time, the
8 state rests.

9 THE COURT: Ladies and gentlemen, I am
10 going to have to take up some matters of law. And
11 I am going to send you to the jury room. While
12 you're in the jury room, I don't know how long
13 this is going to take. I need you to do a favor
14 for me. You all have been together a day or so.
15 I need you to select a foreperson. That person is
16 not going to have any greater vote than anyone
17 else. They're simply going to preside over the
18 deliberations when I give you this case and sign
19 the verdict form.

20 So when you get back there, if you will
21 select, it needs to be from one of the original
22 12. But if you will select a foreperson, and when
23 you come back out that person will sit on that end
24 seat. And I'll get you back out just as quick as
25 I can. Don't discuss this case at all, but just

1 decide who you want to be as foreperson and I'll
2 see you all back out here.

3 (Whereupon, the following takes place
4 outside the presence of the jury.)

5 MR. ROBINSON: Can we have about two or three
6 minutes just for me to get my notes and thoughts
7 together before I do anything else?

8 THE COURT: Sure.

9 (Whereupon, court takes a short recess.)

10 THE COURT: Mr. Belser, we have reached
11 this point in the trial where you have the right
12 to put up evidence if you want to. And you have
13 the right to testify, but you are not required to
14 do so. If you decide that you do not want to
15 testify, I will instruct the jury that as your
16 constitutional right that they cannot consider
17 that in any way or hold that against you.

18 If you decide to testify, you will be subjected
19 to cross examination just like any other witness. And I
20 don't know if you have got a criminal record, or if is
21 brought out of any kind involving dishonesty. And your
22 lawyer can talk to you about that. But if you do that,
23 you may be impeached on that. Do you understand that?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Now you and your lawyer can talk

1 about whether to decide for you to testify or not
2 testify. And you need to get his advice. But
3 ultimately it is your decision. Do you understand that?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: So after you talk to your lawyer,
6 you can certainly decide whether you want to testify or
7 you don't want to testify. And like I say, if you
8 choose not to, I will instruct them they can't hold that
9 against you. If you decide to testify, you certainly
10 have a right to do so. But you will be subject to cross
11 examination.

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: Do you have any questions at all
14 concerning your rights?

15 THE DEFENDANT: No, sir, Your Honor.

16 THE COURT: All right. Then I will give you
17 some time to talk to your lawyer so that you can make a
18 decision as to what you want to do.

19 MR. ROBINSON: Thank you, Your Honor.

20 (Whereupon, attorney and defendant confer.)

21 THE COURT: Are you ready?

22 MR. DURANT: Yes, if it pleases the court. The
23 state would actually ask to reopen the case and recall
24 Ricky Richards to the stand. And I understand that the
25 ruling is in your discretion.

1 THE COURT: Is he here?

2 MR. DURANT: He's on the way, Judge.

3 THE COURT: Well you all approach the bench for
4 a minute.

5 (Whereupon, the attorneys approach the bench and
6 confer with judge.)

7 THE COURT: We had a bench conference.
8 Mr. Robinson, my understanding is that you object to the
9 state reopening their case?

10 MR. ROBINSON: I do, Your Honor. It's my
11 understanding that the state wants to recall
12 Investigator Richards who was here yesterday. He's the
13 lead investigator in this case. As Your Honor is well
14 aware, we are 11 o'clock in day three of this trial.
15 And we have been through a number of witnesses. And
16 some of them rather long and painful.

17 Had a break yesterday afternoon with the
18 witnesses, Your Honor. And quite frankly, you know,
19 whatever the state wanted to put in, they had more than
20 ample time to prepare and put in. They called the case.
21 And, you know, I think after having rested on the
22 record, it's just time to move forward and allow my
23 client to make his motions and proceed with the trial.

24 THE COURT: Well based on the trial, my
25 understanding is the state's intention is to do this for

1 a limited purpose.

2 MR. DURANT: That's correct.

3 THE COURT: And I will allow him to recall
4 Investigator Richards for that limited purpose. Now
5 that we are, and that should not take very long. So
6 instead of sending the jury back out again, I would like
7 to at least entertain your motions to this point. And
8 if you want to renew them after that.

9 MR. ROBINSON: And, Your Honor, thank you.
10 First of all, let me address what I understand the
11 testimony of Investigator Richards to concern, Your
12 Honor. I would certainly object to that without some
13 proper foundation and how he came about that
14 information.

15 If he's going to testify that he is getting it
16 off of a driver's license or some other item, I would
17 certainly like that to -- and the reason is, I don't
18 want to go through all this with the jury here. There's
19 got to be some way other than saying well it was on this
20 paper or that paper. It's on the warrant. None of that
21 is in evidence. And none of that is admissible without
22 a proper chain or a proper foundation or a record's
23 custodian or something of that effect. If it's coming
24 from, I asked Mr. Belser and that's what he told me,
25 then we've got some sort of Jackson v. Denno issue that

1 needs to be addressed. Because that quite honestly, is
2 a crucial element in this case. And that's part of the
3 reason for the objection. You know, we were certainly
4 prepared to argue that as part of our directed verdict
5 motion. In allowing the state to reopen the case and
6 supplement the record, you know, I think is improper at
7 this time.

8 So those are some concerns about that. I
9 understand you have already overruled that objection.
10 But, you know, just for the record, I wanted to be clear
11 on that. And that, you know, before we bring him here
12 and do a lot of other things, I, you know, I am going to
13 object to him testifying to that without substantial
14 foundation. Of course, in the court's discretion.

15 THE COURT: I understand. I just simply allowed
16 them to reopen the case. Now they've still got to
17 comply with the rules of evidence and deal with hearsay.
18 And they are going to have to get it under one exception
19 to the hearsay. So I mean I'm not excluding you from
20 objecting to a hearsay objection. I'm just allowing
21 them to reopen the case. I'm trying to figure out
22 whatever information they are going to give to this jury
23 that they can comply with the rules of evidence.

24 MR. ROBINSON: And Your Honor as that goes, I
25 would certainly ask the court to consider limiting the

1 opportunity to reopen the case. And there he is now,
2 walking in the door. But certainly any delay beyond
3 this, I would object to beyond him testifying and going
4 through this portion. Having said all that, my second
5 motion, Your Honor. Since the state has in fact
6 reopened it's case, I would ask Your Honor to reconsider
7 your ruling yesterday as to testimony relating to the
8 rape shield statute which would bar testimony in the
9 state's case, has now been reopened. And I would like
10 to have the opportunity to question the minor about her
11 statement, and the veracity of that statement.

12 Again, the fact that she claims that Mr. Belser
13 said boys, whatever it was, don't like virgins. Which I
14 think gives the jury an improper inference that she was
15 a virgin. And he used that statement. And Mr. Durant
16 said that clearly in his opening, that that's what he
17 told her to coerce her into having sex with him.
18 Leaving them with the impression that she was in fact a
19 virgin. When in fact Mr. Durant knows that is not true.
20 It's in the forensic interview that that's not true.
21 She admitted to the forensic examiner that on two
22 occasions she had had intercourse with this boy named
23 Devon, prior to these alleged incidents with Mr. Belser.
24 And I think that is a burden shifting situation. And it
25 allows the jury to draw number one, an improper

1 inference. And number two, to be influenced by my
2 request not to allow me to influence their caprice and
3 passion and things of that nature. But the thought that
4 this girl is a virgin. They are holding her -- drawing
5 an improper inference about, you know, old sweet little
6 innocent girl. That's maybe. But the fact is, she's
7 not a virgin. And that is what we have been left with.

8 And I think it goes elementally to the crime
9 that's been charged. Even though I understand age is a
10 fact here. Mr. Durant told them well I understand
11 that's not evidence; told them in his opening argument,
12 that's how he coerced her. And that's what the jury is
13 left with believing that Mr. Belser told this young,
14 innocent, virgin that boys don't like virgins. She left
15 her -- let him have sex with her. When she knows, he
16 knows that she was not in fact a virgin. So that allows
17 them to draw an improper inference from that entire
18 situation. And it wouldn't be a coercive statement.

19 THE COURT: Well and I understand your argument.
20 But I think that's exactly what the rape -- this case is
21 exactly what the rape shield statute is there it
22 protect. Now in this situation whether she was a virgin
23 or wasn't a virgin has nothing to do with the criminal
24 sexual conduct. If your client was charged with
25 attempted criminal sexual conduct and the state's case

1 was based on the fact that the statement, he may have
2 heard, boys don't like virgins, and I am going to help
3 you. That may effect an attempt in the situation. But
4 in this situation, they're not alleging attempt.
5 They're alleging actual sexual conduct. And the
6 situation is, consensual or nonconsensual under the law,
7 she's not old enough to consent.

8 So the legal issue is whether sexual conduct
9 occurred or didn't occur. And no matter what he said or
10 didn't say to her, it doesn't change the law. So I am
11 not going to allow you to call her back to stand from
12 the state's case. Now if you want to call her as a
13 witness. But you're not -- you know, you can't get past
14 the rape shield situation in this. And simply the
15 statement he made.

16 MR. ROBINSON: And Your Honor let me refine that
17 a little bit. I'm not trying to beat a dead horse. But
18 the reason I think that's important. 16-3-655 (b)2,
19 which is what I think he was indicted under.

20 THE COURT: Okay.

21 MR. ROBINSON: Says, it's got two prongs. Or
22 two either or. The actor is in a position of familial,
23 custodial or official authority to coerce the minor to
24 submit or is older. There's no proof in the record at
25 this point of Mr. Belser's age. That's why the state

1 wants to reopen the case. So the only possible grounds
2 is that he coerced her. In Mr. Durant's opening
3 statement said, he told her, boys don't like virgins.
4 That's how he coerced.

5 THE COURT: He was -- the evidence in the
6 record, he was in a custodial role at the time.

7 MR. ROBINSON: Right, and used coercion. Which
8 is an element. Or that he's older. It's our argument
9 that there is no proof that he is older at this point.
10 That's why Mr. Durant wants to reopen the case. So at
11 this point, that is an element of the crime that there
12 was coercion. And that that statement was used to
13 coerce. And that statement was false.

14 THE COURT: I understand your argument. But....

15 MR. ROBINSON: I think the court is assuming
16 because she says there was sex and he is older. But
17 that's assuming facts that are not yet in evidence. And
18 that's why Mr. Durant wants to reopen this case. Right
19 now as I make this argument, the only element of that
20 crime that has been put into evidence is that he was in
21 a position of custodial or that authority to coerce the
22 minor And that statement was coercion used.

23 THE COURT: All right.

24 MR. DURANT: May I interject?

25 THE COURT: Okay.

1 MR. DURANT: We would argue that there is
2 evidence in the record of the defendant saying to the
3 minor testified that the defendant told her that he was
4 in his 20's. Additionally, the mother testified that
5 she went to school with the minor or the defendant and
6 knew him from there. And, Judge, as far as the minor 's
7 sexual history, it is not true that she had lost her
8 virginity before this. Her first statement at forensic
9 interview was that she attempted to have sex with her
10 boyfriend but there was no penetration. That's a
11 standard under the law, penetration. She states
12 specifically at the forensic interview, that they
13 attempted to, but there was no penetration. No
14 penetration, no sex. She was still virgin at the time.

15 And, Judge, we didn't argue. I didn't ask her,
16 are you a virgin. If I had asked her that, maybe it
17 would be proper for her to attempt to impeach the
18 minor , but with the testimony that she attempted to
19 have sex. But I didn't ask her that question. I
20 steered clear from it. She testified that the defendant
21 told her, boys don't like virgins. He's trying to
22 impeach the defendant's statement, not hers.

23 THE COURT: I understand. And I've ruled on it.
24 And nothing I've heard is changing my ruling. And I
25 think the rape shield statute bars me from going there,

1 Mr. Robinson. I understand. And you've got it on the
2 record. And if the Appellate Court thinks I am wrong
3 on that, then that will be directed at some later date.
4 Okay, anything else?

5 MR. ROBINSON: Well I mean, if you want me to go
6 ahead with that and I don't know. And I guess the court
7 can determine whether or not there was evidence of the
8 age on the record. The state is confident in that. But
9 I renew my objection to reopening the case and let it
10 stand as it is. And would renew my motion to quash the
11 warrant. I mean, not the warrant, the indictment again
12 based on that the indictment simply says, she was 14
13 less than 16. And the court has the indictment. And
14 that the defendant, which it does have a date of birth
15 on here, but this is not in evidence, was older than 18
16 years of age.

17 And that's all put us on notice to defend for;
18 not this custodial relationship. So I would again move
19 to quash on a different ground and renew my earlier
20 grounds of lack of specificity, and things of that
21 nature.

22 THE COURT: Okay. And I note your motion, but I
23 respectfully deny it. I think the indictment is
24 sufficient. If it wasn't, you had to make that argument
25 before the jury was sworn. It's a notice document. You

1 know, I think your client was put on the notice of
2 charges against him certainly. As well as the fact that
3 he was in fact allegedly babysitting at the time.

4 Okay, what else?

5 MR. DURANT: And, Judge, just so we are clear,
6 and I don't want to have this argument once he gets to
7 the stand. He tells me he received the birthday -- the
8 defendant's birthday from the defendant himself when he
9 took the buccal swab.

10 THE COURT: Okay. Now, Mr. Robinson, what is
11 your position?

12 MR. ROBINSON: Well, Your Honor, my position
13 would be unless he was mirandized, again, at that point
14 and time before they discussed that and took that
15 information is clearly being now used against him, if he
16 wasn't given rights and opportunities and made aware of
17 that, then I would object to that coming in.

18 THE COURT: Okay. And it's a case right on
19 point with that, and I just can't remember the name of
20 it. I'll get my law clerk to look that up.

21 MR. ROBINSON: And, Your Honor, if you would
22 like me to just for the record, I'll go ahead and make
23 my---

24 THE COURT: Okay.

25 MR. ROBINSON: ---directed verdict motion.

1 Which is obviously that the state has failed in its
2 burden of proving. Because it is my contention at this
3 point, and certainly the only testimony I remember, and
4 I'm not the court reporter. Or the only information
5 that I remember, was that Mr. Durant said in his opening
6 statement the age difference; that the minor said that
7 Charlie knew how old she was. There was never any
8 testimony that he had told her about. There was
9 information in the forensic interview that she told the
10 forensic interviewer how old she thought he was. But I
11 don't recall any testimony from the minor about Mr.
12 Belser's age. And the mother simply saying we went to
13 school together, I think allows them, it doesn't say
14 when we went to school together. Whether they were
15 students together, whether she was his teacher. Again,
16 I think that's allowing the jury to make an improper
17 inference. And I will grant you certainly sitting here,
18 he appears that way.

19 But this is a case, the state has the burden of
20 proving the elements of the crime beyond a reasonable
21 doubt. And if the element is, he's over the age of 18
22 or older than the minor, there has to be some proof of
23 his age not of what their belief his age is. Some proof
24 of what his age actually is. And it's, even if the
25 minor testified that she thought he was some age, that

1 doesn't make it a crime because that may be incorrect.
2 That's no more correct than saying, oh, I thought the
3 minor was 18. It has to be proof beyond a reasonable
4 doubt. And it has to be clearly established. And I
5 don't think it has been.

6 And again, that's a question that Your Honor
7 will have to answer from memory or some review of the
8 record. But that would be our position on the directed
9 verdict.

10 THE COURT: All right.

11 MR. DURANT: And, Judge, just for the court's
12 consideration, if you will recall, Mr. Robinson has
13 stipulated that the buccal swab was voluntarily given by
14 the defendant. And that's a conversation that
15 Investigator Richards would say that he verified the
16 defendant's birthday.

17 The consent form does state that his miranda
18 warnings and rights were given to him and he waived them
19 at that time.

20 THE COURT: Were you shown that form, Mr.
21 Robinson?

22 MR. ROBINSON: Your Honor, it does say that he
23 waives that. But there is no date of birth on here.
24 It's not on this particular form.

25 MR. DURANT: But my understanding from the

1 officer is that the defendant told him the date of birth
2 earlier. During that conversation he verifies the
3 identity before taking the buccal swab.

4 MR. ROBINSON: And where is that date of birth?
5 I mean, he just remembers it off the top of his head
6 all of this time? Is it in some note somewhere that I
7 don't have?

8 MR. DURANT: It's in the incident report, Judge.

9 MR. ROBINSON: It's not in evidence. I mean, he
10 didn't prepare the evidence report. He testified to
11 that on his direct that the officer who first responded
12 to that. And the buccal swab was taken after the
13 incident report. So how he got it from Mr. Belser in
14 the buccal swab, and it got in the incident report which
15 was two or three days prior to the buccal swab being
16 taken.

17 And I think we're getting in to issues of
18 reliability and trying very hard to stir the hearsay
19 rule. I just have a problem with that. And I think
20 that, you know, the buccal swab that form doesn't say
21 any statements. It certainly says the miranda rights,
22 but with the understanding, I waive my right to consult
23 my attorney before I give this buccal swab. Not that
24 anything else, you know, that you get from me. And
25 certainly there should have been some notes,

1 moralization, recording, something to go along with
2 that. And, you know, it's just not there.

3 THE COURT: I haven't heard the testimony
4 yet to know whether it's admissible or not
5 admissible. I mean you can -- we can either -- I
6 can either stop and go find it. Or you can
7 proceed if you have, if the state is comfortable
8 if they have a way to make -- get the evidence in,
9 it's up you. I don't know what you -- you want to
10 call. I'll allow you to reopen the case and call
11 one witness back. So if you are ready to do that,
12 I can rule on it then or it's up to you.

13 MR. DURANT: I beg the court's indulgence.
14 Do you want me to proffer that testimony or?

15 THE COURT: No, yeah I mean you can. If
16 you want to do it outside the presence of the
17 jury, that may be the safest way to do it.

18 MR. DURANT: I would ask to proffer the
19 testimony.

20 THE COURT: Put your witness up. I remind
21 you, you are still under oath.

22 MR. RICHARDS: Yes, sir.

23 MR. ROBINSON: And, Your Honor, just for
24 the purposes of clarity, during this proffer, do
25 you want me to object when I feel it is

1 objectionable, or just let him proffer the
2 testimony and then make my objections?

3 THE COURT: You can let him proffer and
4 then object afterwards.

5 MR. ROBINSON: I just don't want to make
6 it difficult, but I also know how the Court of
7 Appeals can be about preservation and I don't want
8 to mess it up.

9 THE COURT: I understand. You can do it
10 any way you want to. I'll certainly give you an
11 opportunity to object before the jury hears you.

12 Ricky Richards, being
13 previously sworn, retakes the witness stand and
14 testifies as follows:

15 Direct Examination by Mr. Durant:

16 Q Investigator Richards, when you took the
17 buccal swab from Mr. Belser, did you verify his
18 identify at that time?

19 A Yes.

20 Q How did you do that?

21 A Just by asking him.

22 Q Had you read him his miranda rights before
23 then?

24 A Yes, sir, we do. And that's part of
25 giving a buccal swab.

1 Q Had he agreed to waive that?

2 A Yes, sir. He signed the consent form.

3 Q And did you ask Mr. Belser what his date
4 of birth was?

5 A Yeah, I confirmed with him what I already
6 had; yes, sir.

7 Q You already had a date of birth?

8 A Yes.

9 Q How did you have it before then?

10 A I actually got it from him the night that
11 we were called. It's actually in my notes.

12 Q Did Mr. Belser give you a date of birth
13 before you took the buccal swabs?

14 A Yes, that night; yes, sir.

15 Q What did he tell you his date of birth
16 was?

17 A It's [REDACTED], something I believe. I don't
18 remember right now. But I know it's...

19 Q Do you remember how old he was?

20 A 29 at the time, I believe.

21 MR. DURANT: No further questions.

22 MR. ROBINSON: Your Honor, based on that

23 A, I have a hearsay objection. B, I have a

24 speculation objection. He told me his month and

25 his date, but not the year. And he believes he's

1 29, that's certainly speculation. I don't think
2 that rises to the level of proof required. And
3 it's hearsay. You know, just to have him actually
4 been before the jury, we're entitled to ask him to
5 show in this report and ask him if he verified the
6 date of birth that Mr. Belser gave him with what
7 was on the report.

8 THE COURT: You better do that now, or it
9 isn't going to ever get before the jury.

10 Q Investigator Richards, I am going to show
11 you what's been marked as State's Exhibit No. 4,
12 and ask if you recognize that.

13 A That is a Clarendon County report prepared
14 by the, at the time, Kimberly Marlowe.

15 Q Does that report contain a date of birth
16 on it.

17 A Yes, sir.

18 Q For Mr. Belser?

19 A Yes, sir.

20 Q What's the date of birth on the report?

21 A It's [REDACTED]/1982.

22 Q Is that the same date of birth Mr. Belser
23 gave you when you took his buccal swab?

24 A That's what I would have asked him; yes.

25 Q And you would have verified the report?

1 A Yes.

2 MR. ROBINSON: Do you, and, Judge, can I
3 ask some questions as well?

4 THE COURT: Certainly.

5 Cross Examination by Robinson:

6 Q Do you recall verifying that, or that's
7 just what you would have done?

8 A No, I have actually notes from that --
9 from that night. I know that's what we're talking
10 about. But that first night that I verified what
11 his birth date was, and what Mr. Keels' birthday
12 was, and it's written down. I also wrote down
13 some other people that were there.

14 Q Now when did you write those notes down?

15 A That was the night of the report.

16 Q Okay. But I mean was that done at the
17 scene? At the sheriff's office?

18 A It was at the sheriff's office.

19 Q Okay. And was Mr. Belser present at the
20 sheriff's office at that time?

21 A Yes.

22 Q And who mirandized him at the time?

23 A Me.

24 Q And the sheriff's office has audio and
25 video recording equipment?

1 A Yes.

2 Q Did you audio and video record?

3 A It was not working at the time. So no, I
4 didn't, no.

5 Q And the notes that you are talking about,
6 where are those?

7 A Right on the desk. And it should, I mean,
8 it was in my the case file that was given.

9 Q Just the handwritten?

10 A Yes.

11 Q Several notes.

12 A It's got the case number and some other
13 names written on it.

14 Q Did Mr. Belser sign a written, since the
15 audio and video wasn't working,---

16 A No.

17 Q ---did you have him sign anything?

18 A No.

19 MR. ROBINSON: Court's indulgence for just
20 a moment, Your Honor.

21 Q So this was done at the sheriff's
22 department with Mr. Belser present.

23 A Yes.

24 Q And you mirandized him, but didn't have
25 him sign a written waiver or anything of that

1 nature.

2 A No.

3 Q And your audio and video stuff wasn't
4 working.

5 A It was not working.

6 Q Was he mirandized at the scene?

7 A That I do not know.

8 Q Who transported him to the sheriff's
9 department?

10 A Deputy Marlowe. It's Deputy Graham now.

11 Q Did you prepare the incident report?

12 A No.

13 Q So when did you get the buccal swab from
14 him?

15 A It was about 10 days later. I don't
16 remember the exact day it was.

17 Q I guess just for purpose of clarification,
18 which time when he told you what his birthday was,
19 and telling him you know how old he is.

20 A Well he gave it to me that night, which
21 would have been that Sunday night.

22 Q Uh-huh. (Affirmative.)

23 A I would have confirmed that through DNA by
24 pulling up his photo. Using information to
25 confirm that that's the guy that I know as Charlie

1 Belser I just talked to. And then I would have
2 gotten the warrant, which would have had the same
3 date of birth on it.

4 Q And isn't it true that on the night of, I
5 guess it was the 14th, when you started
6 questioning him, he said I don't want to talk
7 without a lawyer. I don't want to talk to you.

8 A He wouldn't tell me anything. He didn't
9 actually say, I don't want to talk. I asked him
10 his name. Who was there. But he didn't -- he
11 just wouldn't ans -- he never said, I don't want
12 to talk to you. He just wouldn't answer. So at
13 that point, I stopped talking to him.

14 Q And other than Mr. Belser telling you
15 this, have you got any other independent evidence
16 of age?

17 A No, I don't -- I mean, it's his date of
18 birth. I don't know who else I could ask. He was
19 giving me his date of birth.

20 MR. ROBINSON: Thank you. Your Honor, my
21 objection still, that that's hearsay. I mean the
22 fact that perhaps he was mirandized may take it
23 out of, you know, a suppression situation, but I
24 still think it's hearsay. It's an out of court
25 statement offered for the truth of the matter

1 asserted. I think it certainly heightens the
2 court's gatekeeping situation here, because it's a
3 criminal prosecution. And it's a miranda type
4 situation. One where he didn't answer any other
5 questions, and wouldn't talk to the police. It
6 wasn't videotaped. It wasn't audio taped.
7 There's no written recording other than a few
8 notes.

9 And the second time is when he got a
10 buccal swab and he says he told him that, but
11 that's not written down and it's not on the form
12 anywhere. So I think there's reliability issues.
13 But the major problem here is hearsay.

14 THE COURT: Okay. You want to argue that?

15 MR. DURANT: Judge, if it isn't in fact,
16 well our position would be that's not hearsay
17 because it's a statement against interest. If age
18 is an element of the crime, then clearly him
19 telling the officer how old he is, is a statement
20 against his interest.

21 THE COURT: Okay. Then I, you know, I
22 think it falls exception of 801(d)2. Which
23 basically says that submission by a party
24 opponent, the statement comes under A of that
25 section. It's the party's own statement

1 individually or in a representative capacity. And
2 then, you know, I find that his miranda rights
3 were given to him. And that---

4 MR. ROBINSON: And what -- and, Your
5 Honor, before you make that finding, if that's
6 your ruling, I would certainly like to have a
7 Jackson v. Denno hearing. Because this is being
8 treated by the court as an admission.

9 THE COURT: Okay. And that's what I
10 thought we were just doing. I mean you can cross
11 examine him.

12 MR. ROBINSON: Well I haven't called my
13 client.

14 THE COURT: Well you can -- if you want to
15 call your client. Do you want to call your
16 client?

17 MR. ROBINSON: Certainly.

18 THE COURT: You can do that.

19 Charlie Belser, Being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION by Mr. Robinson:

22 Q Mr. Belser, state your full name for the
23 record, if you would please.

24 A Charlie Lamont Belser.

25 Q Mr. Belser, do you remember talking to

1 Investigator Richards on the night of August 14th,
2 2011?

3 A Yes, sir.

4 Q Where did you talk with him?

5 A At the sheriff's office.

6 Q And do you remember who took you to the
7 sheriff's office? A man? A woman?

8 A It was a man.

9 Q Okay. And do you remember, and do you
10 know what miranda rights are? I know we've used
11 that term a lot. That's where the officer tells
12 you you have the right to remain silent. Anything
13 you say can and will be used against you in a
14 court of law, et cetera, et cetera. Do you
15 understand that?

16 A Yes, sir.

17 Q Did an officer tell you that before they
18 put you in handcuffs, and put you in a patrol car?

19 A When I was put in the patrol car, I was
20 told that I was coming back to the scene of the
21 crime and to give some statements. I was
22 mirandized.

23 Q Okay.

24 A I remember the words.

25 Q Okay. And how about when you talked with

1 Investigator Richards down at the Clarendon County
2 Sheriff's Department?

3 A No, sir, I was not. He just told me what
4 he was investigating. And that I was free to ask
5 the questions. If I wanted to, I was free. And
6 what was the facts and what was not. But, no,
7 sir.

8 Q He didn't tell you that you had the right
9 to remain silent. You didn't have to talk to him.
10 You could have an attorney. If you couldn't
11 afford one,---

12 A No, sir.

13 Q ---one would be appointed.

14 A No, sir. He came in with the
15 investigation. The first thing he said, you know
16 what I am here for. Okay, I just need to know the
17 facts, whether this happened or this didn't
18 happen.

19 Q Okay. And did you -- did he ask you what
20 your date of birth was? Did he ask you your name,
21 date of birth, things of that nature?

22 A I don't recall.

23 Q Was there anybody else, did you see
24 anybody else at the sheriff's department when you
25 went there that night?

1 A Yes, sir. There was other officers
2 present.

3 Q And I am sorry. That was not a good
4 question. Anybody else as far as not police
5 officers, that was involved with this? People
6 that would have been at the house or things of
7 that nature?

8 A No, sir.

9 Q And I honestly don't remember what you
10 just told me. Did you -- did he ask you your date
11 of birth, or do you remember telling him your date
12 of birth?

13 A No, sir. I don't remember telling him
14 that.

15 Q Okay. How about when you sometime later
16 when you got the -- on August 24th 2011, when this
17 stick, this big Q-tip in your mouth, do you
18 remember giving your date of birth on that day?

19 A No, sir. I remember him coming to the
20 jail and doing the buccal swab. There was no
21 birthday mentioned. I talked to him prior at the
22 sheriff's office when he was stating a lot of the
23 tests were being done. Well he done the test and
24 I passed that. The state will drop charges which
25 is mandatory. Which he never done the test. But

1 he also mentioned that he would come and do a
2 buccal swab, because that's in the case to prove
3 my innocence if that's what I am saying. And when
4 he came and did the test, he mentioned nothing
5 about my birthday. He just said, I'm Investigator
6 Richards. And he had another investigator with
7 him. And he asked me did I consent to the swab,
8 and I tell him yes, because I have nothing to
9 hide. And he did the buccal swabs and that was
10 that. And I was sent back to my cell.

11 MR. ROBINSON: Thank you. I don't have
12 anymore questions. You need to answer any
13 Mr. Durant might have for you.

14 Cross Examination by Mr. Durant:

15 Q Mr. Belser, you never signed a form when
16 Investigator Richards came out there to take a
17 buccal swab.

18 A I believe I did sign a form.

19 Q I am going to show you State's Exhibit 2,
20 and ask you, is this your signature?

21 A Yes, sir, that's my signature.

22 MR. DURANT: I don't have any further
23 questions.

24 THE COURT: You don't have any further
25 questions?

1 MR. DURANT: No, sir.

2 THE COURT: You can step down.

3 MR. ROBINSON: Judge, I would still
4 object. In understanding Your Honor's ruling on
5 the hearsay portion of that, but I would at this
6 point object under the best evidence standard.
7 Investigator Richards says he contemporaneously
8 recorded this in some notes. Those notes haven't
9 been put into evidence. There is some question
10 based on Mr. Belser's testimony as to it. And I
11 understand that that is for the court's
12 consideration as to whether or not the statement
13 was actually taken. But, you know, I think in an
14 investigation of this type where we have all these
15 documents and all these procedures, and in this
16 particular instance we are trying to prove his
17 date of birth.

18 And, you know, we got, I remember I think
19 he told me, and I wrote it down on some notes.
20 And I think that, you know, the best evidence
21 rule would apply here. Because certainly when he
22 testified, when Investigator Richards testified,
23 initially he couldn't remember. He had to look at
24 those -- an incident report which can't come in,
25 to refresh that. But that information on the

1 incident report didn't come from Mr. Belser or
2 from him. So I think we've got a best evidence
3 rule situation here where his testimony alone,
4 based on his proffered testimony is not
5 sufficiently reliable as to its accuracy. Because
6 he first testified he couldn't remember. And
7 verification came from a source that wasn't what
8 he testified that he had retained.

9 So even if you allow it under the hearsay,
10 think we've got a reliability issue and a best
11 evidence issue. So I would ask the court to not
12 allow it on those grounds.

13 THE COURT: Are you asking -- I understand
14 that under the best evidence rule then are you
15 taking the position that his notes are admissible?

16 MR. ROBINSON: No, sir.

17 THE COURT: Even his testimony is
18 admissible. Or if you take the position that his
19 testimony is not admissible. The best evidence is
20 his notes, and I haven't seen any of those, then
21 the notes become admissible.

22 MR. ROBINSON: Well I understand, Your
23 Honor. It was the state's proffer. I'm just
24 saying they haven't been proffered. And I think
25 that his -- there's certainly enough questioning

1 here based on the totality of the circumstances
2 and the sensitive nature of what we're talking
3 about here. We're talking, you know, about
4 somebody's 5th Amendment rights. And, you know,
5 initially testified that he couldn't remember
6 until his recollection was reflected. I mean,
7 refreshed by looking at the incident report.
8 Which is -- he testified he didn't prepare.

9 So the only thing that -- he talked about
10 making those. I understand. They haven't been
11 offered or proffered. And so's what before the
12 court right now, I think none of this comes in
13 because of the best evidence rule. Now if there's
14 an additional proffer, the court would entertain
15 that. But I would, you know, object. Because
16 what we're doing is we're just saying, okay,
17 that's not good enough. Try again. Try again.

18 This is the state's case, Your Honor.
19 And, you know, we get to this point. The state
20 rested and prepared to make a directed verdict
21 motion. And we've been in here, you know for a
22 considerable amount of time. And the problem is,
23 Mr. Belser's 5th Amendment Rights are getting
24 ready to get trampled. And we don't have anything
25 that would ordinarily, customarily be before the

1 court in a situation. A written miranda waiver.
2 Some audio or video recording. A road side, blue
3 lights and cameras; you've got body mics and
4 cameras. None of that is here to show that he was
5 ever mirandized. And I'm not attacking
6 Investigator Richards' credibility, because I
7 don't think he is a liar. I just think the state
8 has to prove it. And we don't have to be asked to
9 take their word for it. Especially in this type
10 of a situation. So, you know, and especially when
11 he first took the stand in this proffer, he said
12 it was 8/25 something, I can't remember. Then he
13 refreshed his recollection, but with the incident
14 report that he said he didn't prepare.

15 It was my understanding that he had the
16 incident report with him when he went to buccal
17 swab. And that he confirmed what was on the
18 incident report. So even though he didn't prepare
19 the incident report, my recollection of his
20 testimony is he had the incident report with him
21 when he did the buccal swab.

22 MR. ROBINSON: I understand that, Your
23 Honor. He testified---

24 THE COURT: You don't have anything in
25 your discovery from the state that contradicts

1 that his rights were read to him. I mean your
2 client says he didn't give him his rights. In
3 your discovery package, do you have anything that
4 the state has given you that shows he didn't give
5 them?

6 MR. ROBINSON: I have a signed confession
7 from Investigator Richards that he violated -- no,
8 I am kidding. No, I mean obviously I don't have
9 anything that shows he doesn't. But I don't
10 have the typical safeguards that I ordinarily get.
11 And I think---

12 THE COURT: And there was this form that
13 the buccal swab was signed. You all have been
14 talking about it. Nobody's introduced it into
15 evidence. I have no idea what is on it.

16 MR. ROBINSON: Well I can -- and I
17 understand that, Your Honor. And my response for
18 that, and I'm not trying to put you off. But the
19 state has the burden of proving all of these
20 things; including, the reliability of these
21 statements. And again, I am not trying to attack
22 Investigator Richards character at all. I think
23 we have to prove this with a little more certainty
24 when you're getting into something that I think is
25 this important or of this magnitude in a case.

1 When all of the customary safeguards aren't there.
2 And the problem is, that he says I can't promise
3 you in the incident report. The incident report
4 is not evidence. We don't know who did it.
5 That's hearsay. You can't confirm hearsay with
6 hearsay.

7 MR. DURANT: Judge, Mr. Robinson
8 stipulated that the buccal swab was voluntarily
9 given. And in doing so, stipulated that his
10 miranda rights were given to him and that he
11 waived them. Investigator Richards was saying
12 during that conversation he told me his date of
13 birth.

14 MR. ROBINSON: Well I just stipulated he
15 voluntarily gave the swab. The sheets not in.
16 And there was no portion that he was mirandized.
17 I just stipulated he gave the swab. That's it.

18 THE COURT: The sheet is there before now,
19 is there a miranda form on that sheet?

20 MR. ROBINSON: It just says -- it's a
21 waiver. It says I voluntarily waive. But the
22 date of birth is not on the sheet.

23 THE COURT: I understand. But is the
24 voluntary waiver on the sheet?

25 MR. ROBINSON: The rights are not on

1 there. It says, I knowlege, I've waived my
2 rights and give this swab voluntarily. It
3 doesn't say anything about giving any other
4 information or speak to the police. You know, and
5 I think that's -- I think that's a little bit of a
6 slippery slope, Your Honor. You know, waive my
7 rights and let you collect this sample. And if
8 you give us any biographical information we are
9 going to use it against you. You know, it's a
10 little bit misleading. His consent was to a DNA
11 swab, period.

12 And again, the rights are not explained on
13 there. It just says a note that it was a waiver.
14 And then he got it. And Mr. Belser says, I don't
15 remember telling him my date of birth. It's not
16 written on the form. There aren't any notes or
17 testimony that he had notes from that particular
18 date, only from the 14th. And that if he said
19 that on -- what he refreshed it with was hearsay.
20 Not in evidence; that he admitted he didn't
21 prepare. Nobody here says. I mean, we are about
22 the 8th back door of trying to get around hearsay
23 in my opinion. And again, it's perhaps not be a
24 big deal if it's a civil case or something. It's
25 a criminal case, 5th Amendment.

1 THE COURT: Is there anything else for me
2 to decide?

3 MR. DURANT: Judge, we're at about Mr.
4 Robinson's 8th argument to deny what Investigator
5 Richards said that he took his miranda rights when
6 he came to the sheriff's office. He verified the
7 date of the birth, with what was on the incident
8 report. Mr. Robinson is coming up with unique
9 ways to argue against that evidence's
10 admissibility.

11 MR. ROBINSON: And one final thing to
12 that. The problem with that is saying that I
13 verified against what is on the incident report.
14 The incident report is not in evidence; was not
15 prepared by him. And we don't have the author to
16 come in here and say where I got this. This is
17 reliable. This is not a public regularly kept
18 record that's been admitted. It's just a piece of
19 paper. It is generally not admissible in
20 prosecution.

21 So I mean that's the problem with that
22 logic; is that, I confirmed it was against the
23 incident report. That confirms it against
24 nothing.

25 THE COURT: I understand. I'm going to

1 take a break and see if I can find the case. I
2 will be back in a minute.

3 (WHEREUPON, THE COURT BREAKS.)

4 THE COURT: The circumstances I found that
5 the evidence as for the defendant's age doesn't
6 necessarily fall under the miranda warnings under
7 State v. Brown. It is routine administrative
8 questions asked by law enforcement and or booking
9 them in the jail. Normally a person's name and
10 date of birth is something is routinely taken.
11 And doesn't necessarily require miranda warnings,
12 because that happens in every arrest, in every
13 situation. And according to State vs. Brown found
14 that.

15 And that there is testimony in the record
16 the officer read him his rights prior to
17 confirming his date of birth. I understand the
18 defendant gave the position that his rights were
19 not read to him. But the, you know, the officer
20 testified that he did and he confirmed his date of
21 birth. And even so even if he had read him his
22 miranda rights, it's probably admissible in the
23 logic in State v. Brown.

24 MR. ROBINSON: Can I be heard again?

25 THE COURT: Certainly.

1 MR. ROBINSON: Because I haven't had the
2 benefit of State v. Brown until just a few minutes
3 ago, Your Honor. But I think that this
4 particular case is distinguishable from
5 State v. Brown. Although it stands for that, that
6 is the highlighted proposition in there. I think
7 the facts in this case are different, because it's
8 referring to that type of questioning.

9 THE COURT: Certainly.

10 THE COURT: And I think the exact language
11 is, normal booking or intending to arrest. The
12 problem here is Mr. Belser was neither being
13 booked nor arrested at this point. He had
14 already -- Investigator Richards testified he was
15 not the investigating officer. He had been
16 arrested at the scene by a different deputy, who
17 mirandized him and went through all that, you
18 know, according to the state's testimony. Brought
19 him to the jail for interrogation purposes only.
20 Not to the jail, to the sheriff's department. And
21 that Investigator Richards was neither booking him
22 in at the jail nor the officer that was arresting
23 him.

24 On both of these occasions, and I still
25 may need some clarification on which once we're

1 talking about and which one is trying to get in.
2 But in either situation under this argument, I
3 think it's distinguishable because it was not a
4 routine part of their business. It was a question
5 that may very well have been asked in that, but it
6 was not being asked as a routine question under
7 these circumstances because he had already been
8 arrested and booked.

9 In the State vs. Brown case, the officer
10 that testified was the officer who was the
11 arresting officer who transported and was getting
12 this for booking purposes. The purposes in this
13 case were different and are now being used
14 differently.

15 And in addition to that, and I've tried to
16 skim over the case, I think this is almost like
17 harmless -- the contention in this case is they
18 allowed the state to comment on post arrest
19 silence. In this particular case, the statement
20 that is at issue, is a material element of the
21 crime or the offense that has been charged by
22 Mr. Belser.

23 So again, you know, it goes to the weight,
24 the purpose, and the setting. So I think
25 State v. Brown is distinguishable from this

1 particular case. Because in that case it really
2 had nothing to do with the statement other than
3 commenting on his silence. And that he, you know,
4 took miranda afterwards. And said oh, he told me
5 this and that was it. And that was not an
6 element in any way of the crime or a defense in
7 this case. And in this particular case it is.
8 And it was elicited by an officer that was booking
9 or arrested. It was elicited during interrogation
10 and evidence collection during a buccal swab and
11 trying to get a statement from Mr. Belser.

12 So I think under those factors, even
13 though the language says that, I think you have to
14 look at the totality of the circumstances. They
15 are different. They are distinguishable. So I
16 would ask the court based on that to reconsider
17 that and exclude that evidence.

18 THE COURT: I understand. And but my
19 recollection of the testimony from Officer
20 Richards; that he had the incident report, and he
21 confirmed the date of birth that was given to the
22 initial officer who responded to and filled out
23 the incident report, and identifying your client.
24 And it asked the question that's normally asked by
25 law enforcement to identify a particular person.

1 And would have come in.

2 And your point that, in fact in this, most
3 of the time age is not an issue in a crime. In
4 this particular crime it is an issue. And I
5 understand that. And the point is well taken.
6 But I think it's admissible under Brown. And his
7 testimony that he confirmed with your client the
8 date of birth that appeared on the incident
9 report.

10 MR. ROBINSON: But, Your Honor, and I'm
11 not to second, but just for clarity of the record,
12 if you could, I guess, could rule on that, if my
13 objection beyond the Brown situation; is that,
14 that is still hearsay. Because he is confirming
15 it with hearsay.

16 We don't have anybody here to authenticate
17 this incident report.

18 THE COURT: I understand that. It
19 doesn't, but he is confirming it with hearsay. If
20 your client had denied that that was his date of
21 birth, then it would have come in. But my
22 understanding from the officer that he confirmed
23 with your client that that was his date of birth.
24 And therefore, if he had said then it comes under
25 801 on the admission of your client versus if he

1 had not confirmed it or denied or said nothing,
2 would be different. Because the only thing coming
3 in there would be that hearsay document.

4 My recollection of the testimony is your
5 client confirmed that that was in fact his date of
6 birth. Now, you know, that goes to the weight of
7 what -- how the jury deals with that or not. You
8 certainly can argue that with them if you want to.
9 But he, you know, if your client had not confirmed
10 it with him, then it would be hearsay. But he
11 took a piece of hearsay. And your client
12 confirmed it that was his date of birth. He said
13 no, it wasn't my date of birth. I'm not telling
14 you my date of birth. They would have another
15 problem to deal with. I don't know why they
16 didn't just put his driver's license down.

17 MR. ROBINSON: My recollection is from and
18 certainly, my recollection of the testimony he
19 asked Mr. Belser what his date of birth was on his
20 initi -- couldn't remember the year. And then
21 confirmed that with not saying, is this your date
22 of birth. What is it. And then confirming it.
23 But have trouble remembering it in his initial
24 testimony.

25 THE COURT: I understand he didn't take

1 his notes to the stand. You know, direct.

2 MR. ROBINSON: Well, Your Honor, again, I
3 understand your ruling. Just for the record. And
4 could you rule on my best evidence objection? I
5 think what we've got here, we've got testimony---

6 THE COURT: I understand that. But you
7 can't rule on -- if you are going to rule best
8 evidence in the incident report, then you have got
9 to put the incident report in.

10 MR. ROBINSON: Okay. I mean I am making
11 an objection that his testimony is not the best
12 evidence. Because there is other more reliable
13 evidence out there that would leave no doubt in
14 anybody's mind. It's the state's burden to allow
15 them to come in here and say, I remember this is
16 said. When there are independent documents and
17 safeguards that would prove that; that are in
18 writing, that nobody can question. I think that
19 certainly goes directly to the question---

20 THE COURT: I agree with you on that, but
21 I am not presented with those documents. I
22 understand that.

23 MR. ROBINSON: I understand. What I am
24 saying is, I don't---

25 THE COURT: And it deals with the weight,

1 not the admissibility. Clearly a copy of his
2 birth certificate or his driver's license may
3 carry more weight to the jury than an officer's
4 recollection and memory. I understand that. But
5 the question is whether it is admissible or not.

6 Now the best evidence rule that they
7 should have used something else, doesn't cut it.
8 I mean the best evidence rule usually deals with
9 the document. And the document is a better
10 evidence than the testimony. Or usually it's the
11 other way around way. And the testimony is a
12 better evidence than the document. And most of
13 the time when one party is trying to introduce the
14 document, the other says no, the best evidence is
15 the person where I can cross examine him. So the
16 testimony comes ahead of the document. Anyway, I
17 understand your argument.

18 MR. ROBINSON: I just wanted you to rule
19 for the record.

20 THE COURT: My proposal is to let the
21 state reopen briefly and put this one issue in.
22 Break and go to lunch. Come back at 2:30 and
23 either present your case or argue and charge.
24 Okay.

25 THE COURT: Okay. Bring the jury.

1 (Whereupon, the following takes place
2 within the presence of the jury.)

3 THE COURT: Have you all decided on a
4 foreperson? You are sitting the hot seat, so it
5 is you?

6 THE FOREPERSON: Yes, sir.

7 THE COURT: And I appreciate you all being
8 back there, and I'm sorry it took so long to deal
9 with the issues that I had to deal with. We are
10 going to probably hear one more quick witness, and
11 then we are going to lunch and come back at 2:30
12 and finish this case. Mr. Solicitor.

13 THE COURT: Mr. Solicitor.

14 MR. DURANT: The state calls Investigator
15 Rick Richards back to the stand.

16 (Whereupon, the attorneys approach the
17 bench and confer with judge.)

18 Ricky Richards, being
19 previously sworn, testified as follows:

20 Direct Examination by Mr. Durant:

21 Q Investigator, I believe you told us
22 yesterday, were you the investigating officer in
23 the State v. Charlie Belser?

24 A Yes.

25 Q When did you first meet with Mr. Belser?

1 A On the night of the incident where it was
2 reported to law enforcement.

3 Q Where did you meet with him?

4 A At the sheriff's office.

5 Q Before you spoke to him, did you read him
6 his miranda warnings?

7 A Yes, sir.

8 Q And did you tell him he had a right to
9 remain silent?

10 A Yes.

11 Q And did you tell him he had a right to an
12 attorney?

13 A Yes.

14 Q And did you tell him if he couldn't afford
15 one, that one would be appointed for him?

16 A Yes.

17 Q And did you tell him that if at any point
18 he wanted to stop answering your questions, he
19 could do so?

20 A Yes.

21 Q When you met with Mr. Belser at the
22 sheriff's office, did you ask him when his date of
23 birth was?

24 A Yes.

25 Q And did he tell you what it was?

1 A Yeah, I asked him his name, date of birth,
2 and his social security number.

3 Q What did Mr. Belser tell you his date of
4 birth was?

5 A He gave me [REDACTED]/1982.

6 Q So how old would that have made Mr. Belser
7 at the time of this -- these alleged incidents?

8 A He was 29.

9 MR. DURANT: I don't have any further
10 questions.

11 THE COURT: Okay. Mr. Robinson:

12 Cross Examination by Mr. Robinson:

13 Q Officer Richards, the testimony is that
14 you met with Mr. Belser at the sheriff's
15 department?

16 A Yes.

17 Q Did you transport Mr. Belser to the
18 sheriff's department?

19 A No, I didn't.

20 Q Somebody else brought him there?

21 A Yes.

22 Q So he was already under arrest when he got
23 there?

24 A I believe so, yes.

25 Q Okay. I mean, you didn't arrest him; did

1 you?

2 A No, I didn't arrest him, no.

3 Q And so at the sheriff's department you all
4 have an interview room?

5 A Yes.

6 Q With some glass in it. And it's got audio
7 and video recording equipment?

8 A That's correct.

9 Q And typically when you interview somebody,
10 you turn that on you so you have what they said,
11 and all that. A picture of them and their voice.
12 And it's a movie. A picture is worth a thousand
13 words. You all have got that equipment there;
14 right?

15 A Yes, sir.

16 Q Did you do that in this particular
17 incident?

18 A I was unable to do that.

19 Q Did you have -- you all have got a form in
20 the sheriff's office or all of law enforcement,
21 that explains the miranda rights and has a place
22 for him, the defendant, in this case, Mr. Belser,
23 to sign. It says, I understand those rights, and
24 I waive them or give them up, or have been given
25 that; is that right?

1 A Yeah, we do have a statement for them.

2 Q Did you get one of those done in this
3 particular case?

4 A No.

5 Q But you just -- the only proof you have
6 got of that is your memory.

7 A Yes.

8 Q Okay. And that was August 14th 2011?

9 A It was that night; yes, sir.

10 Q Okay. I mean is that the right date? Is
11 the 14th, the 13th?

12 A I signed the warrant on the 15th.

13 Q Did you remember that today independently,
14 or did you have to look at something to remember
15 Mr. Belser's birthday?

16 A I don't remember his birthday. No, I had
17 to look at notes I had.

18 Q Okay. So you made some notes that night.

19 A Yes.

20 Q And that night when you made notes, in
21 addition to writing down Mr. Belser's birthday and
22 social security number, you wrote down some names.
23 Do you remember that?

24 A Yes.

25 Q And Jermaine, Josh, Fitz, Renegade,

1 Travis, D.J., Latonya, minor , minor Do you
2 remember writing all those things down?

3 A Yes, sir.

4 Q What do those mean? Why did you write
5 those down?

6 A You have the same notes, the copy of notes
7 above the line.

8 Q Uh-huh. (Affirmative.)

9 A Where his name is at, Mr. Belser had given
10 me a list of people that was there, that was
11 outside. And I understand it was some angry folks.
12 That's who he stated was outside.

13 Q Those were people that were there at the
14 time that Mr. Belser was arrested that night?

15 A That's what he told me, yeah.

16 MR. ROBINSON: Thank you. I don't --
17 well, I do have one other question.

18 Q Do you have a copy of Mr. Belser's
19 driver's license or birth certificate or anything
20 like that?

21 A No, sir. The ones I've got are not
22 certified copies in there.

23 Q Okay, so you just---

24 A So I really didn't use those. I just use
25 them for identification.

1 Q Okay. So whatever he told you, that's
2 what you wrote down.

3 A Yes.

4 Q Okay. You're trusting him for its
5 accuracy.

6 A As his birthday, yes.

7 MR. ROBINSON: Okay. Thank you. No
8 further questions.

9 MR. DURANT: No redirect.

10 THE COURT: You can step down.

11 Okay, Ladies and gentlemen, we are going
12 to break for lunch. And I'll ask you to be back
13 in the jury room at 2:15. And of course we will
14 be in a position to finish this trial. I remind
15 you to please not discuss this case among
16 yourselves or allow anyone to discuss it with you
17 over lunch. I'll see you at 2:15. Thank you.

18 (Whereupon, the jury goes to lunch at
19 12:37 p.m. jury.)

20 (Whereupon, the following takes place
21 outside the presence of the jury.)

22 THE COURT: The other -- it's Pennsylvania
23 versus Muniz is a Federal case that deals with the
24 exact same issue in the State v. Brown. I knew I
25 had read that somewhere. I just whatever reason,

1 I couldn't find it. I read Brown in the advance
2 sheets. Okay. And I checked the law on the
3 question you had at the bench. And he does not to
4 reopen.

5 MR. ROBINSON: I mean, which didn't effect
6 him. I just didn't want to---

7 THE COURT: I understand.

8 MR. ROBINSON: Give anything away if we
9 didn't need to.

10 THE COURT: Anything else we need to deal
11 with before lunch?

12 MR. ROBINSON: Judge, I mean, I made my
13 motions. I really don't have any additional
14 grounds, because his testimony has been proffered.
15 For the record, I would renew all my previous
16 objections and motions that I made prior to the
17 state's proffer and during the state's proffer.
18 No new information has come out, so my grounds
19 would be the same just for the record
20 preservation; including my directed verdict
21 motion.

22 THE COURT: Well---

23 MR. ROBINSON: And let me do that in my
24 directed verdict motions, Your Honor. Just
25 briefly, same grounds. A, there is an element of

1 the crime requires proof by the state.

2 Investigator Richards' testimony was that he took
3 Mr. Belser's word for what his age was. And did
4 not verify that through any other source. And
5 didn't have any other source from which to verify
6 that.

7 I understand Your Honor will probably tell
8 me that's a weight issue versus a proof --
9 existence of proof. But that would be my
10 additional grounds to add to my earlier directed
11 verdict motion. Just simply that that doesn't
12 rise to the level of competent proof required to
13 prove an element of the crime, because he said I
14 didn't have any way to know whether that was true
15 or false. He said it was his birthday.

16 THE COURT: Okay. I understand that. And
17 I've already ruled it is admissible. I think it
18 is. And the jury will give whatever weight it
19 deems appropriate. And the other issue that the
20 jury has the benefit in this particular case is,
21 your client has been present throughout this
22 entire trial. And they are sitting there and the
23 the jury can make their own observations about
24 what they think his age is. And give it whatever
25 weight they feel is appropriate.

1 (Whereupon, the following takes place outside
2 the presence of the jury.)

3 THE COURT: Anything before we bring the jury
4 in?

5 MR. ROBINSON: Just for the record, my client
6 does not intend to testify or offer any evidence in this
7 case, so the defendant would rest. If that helps.

8 THE COURT: Okay.

9 MR. DURANT: Judge, I didn't rest after I
10 recalled Investigator Richards. Do you want me to
11 do that in front of the jury?

12 THE COURT: Yeah, that will be fine.

13 MR. ROBINSON: And then I will do
14 likewise. Your Honor, just for the record, I, at
15 the point I rested, we don't have to send the jury
16 back out. I renew all the motions I previously
17 made. Since there is not going to be any
18 additional testimony between now and then, I
19 certainly don't have additional grounds, but would
20 renew all motions previously made and objections.

21 THE COURT: Okay. Let it be so noted.
22 Bring me the jury.

23 (Whereupon, the following takes place
24 within the presence of the jury.)

25 THE COURT: Okay, gentlemen.

1 MR. DURANT: Your Honor, at this time the
2 state rests.

3 THE COURT: Mr. Robinson.

4 MR. ROBINSON: Your Honor, the defense
5 also rests.

6 THE COURT: ladies and gentlemen, you have
7 heard all the evidence you are going to hear in
8 this case. Now it's time for you to hear the
9 closing arguments of the attorneys. After which I
10 will charge you on the law and give you this case
11 to decide. Solicitor.

12 MR. DURANT: Yes, Your Honor. May it
13 Please the Court.

14 THE COURT: Yes, sir.

15 MR. DURANT: Mr. Robinson, Madam Clerk.
16 Ladies and gentlemen of the jury, first of all, I
17 thank you all for bearing with us this week. I
18 know this -- we didn't do it quite as quick as
19 they do it on television. We had some pretty
20 significant breaks in between. And you can put
21 the blame where it belongs, that was my fault. I
22 was the one that didn't have or didn't have the
23 witness or didn't get my subpoena in on time and
24 had witnesses here yesterday.

25 And I appreciate your bearing with us.

1 You all bearing with me. The last time I tried a
2 case, I had to hear some testimony played back,
3 and I had -- and I had no idea how redneck I sound
4 until I heard it. It was painful. So I
5 appreciate you all bearing with me. This is my
6 last chance to talk to you. The defense will get
7 the last chance to address you when I finish.

8 So I want to start by just kind of giving
9 you some framework that I think is actually more
10 when you think about this case. I told you before
11 that the burden of proof in this case, is beyond a
12 reasonable doubt. That hasn't changed. If you
13 don't feel that the State of South Carolina has
14 proven beyond a reasonable doubt that Charlie
15 Belser committed the crime he is charged with;
16 that he had sex with that 14-year-old girl; if we
17 haven't proven beyond a reasonable doubt that to
18 you, you have got to let him go. Whether you
19 think he did something wrong or not, you have got
20 to let him go.

21 Listen to the burden the Judge tells you,
22 the state must prove it beyond a reasonable doubt.
23 And I ask you to pay close attention though,
24 because I submit to you what you won't hear is the
25 Judge say that the state must prove their case

1 beyond any and all doubt. He's not going to tell
2 you the state must prove the case beyond every
3 conceivable doubt; beyond every possibility. He's
4 not going to tell you that the state must prove
5 their case beyond a shadow of a doubt. It's a
6 reasonable doubt.

7 So the question is, what does reasonable
8 mean? I submit to you that some people might say
9 that reasonable means make sense. Does it make
10 sense? Does it appeal to your common sense. You
11 folks saw the jury selection process. We said
12 yeah and nay when jurors came -- perspective
13 jurors came up. We picked you, because we believe
14 with your collective experiences you could have --
15 you had the common sense necessary to hear this
16 case and try this case. And I ask you to apply
17 your common sense. Look and decide what makes
18 sense as you think about this case.

19 Your job is that at the end of the case
20 the Judge is going to send back a verdict form and
21 ask you to return a verdict. I heard the word
22 verdict that comes from the latin phrase. The
23 word verdict comes from the latin phrase verdictum
24 which means to speak the truth. And what is the
25 truth in the case? Let's kind of run through the

1 testimony and the evidence you have heard. But
2 first I would like to ask you if you think back on
3 that evidence, to set aside the DNA for a minute.
4 Put it out of your mind. Consider this case
5 without the DNA. Forget about the panties and the
6 semen for a minute. And let's consider what must
7 be true for the defendant to be not guilty.
8 Because for every truth, there must be other
9 statements that are not true.

10 If I tell you today is Wednesday if that's
11 the truth, then obviously today is not Tuesday.
12 So the statement today is Tuesday would be untrue.
13 For the defendant to be not guilty, let's consider
14 what that means. First, would be is the obvious.
15 For the defendant to be not guilty, the minor
16 must be lying. That little girl must be lying.
17 She got on this stand and told you that the
18 defendant raped her; that he sexually assaulted;
19 that he had sex with her.

20 Remember the standard is, consent doesn't
21 matter. It's statutory rape. She told you that
22 the defendant had sex with her. For him to be not
23 guilty, she must be lying. We can all agree
24 there. Let's consider the next thing. For the
25 defendant to be not guilty, that minor 's got --

1 she's got to be the meanest person in the world,
2 because she, not only did she make up these false
3 allegations, but she drug Mr. Belser through the
4 criminal justice system for 18 months; including,
5 this 3-day-trial.

6 She drug him through this process. For
7 him to be not guilty, she has got to be lying.
8 She's got to be the meanest person in the world.
9 For the defendant to be not guilty, the minor
10 must be lying. She's got to be the meanest person
11 in the world. And either that 14-year-old hatched
12 this plan, she made this story up on her own, or
13 her mom helped her, and therefore her mom is lying
14 too.

15 Either that 14-year-old girl made up the
16 story on her own or her mom had an axe to grind
17 against the defendant that she made this story up.
18 Put her daughter up to telling these lies and drug
19 him through the criminal justice system. For the
20 defendant to be not guilty, all these things must
21 be true. Either all these things are true, or the
22 defendant is guilty. Now let's run back through
23 them. Does it makes sense that the minor is
24 lying or that when she got on that witness stand
25 and she recounted this embarrassing story to

1 complete strangers, when she recounted that
2 embarrassing story with all these details in front
3 of complete strangers, does it make sense that she
4 was lying or she was telling the truth? Does it
5 make sense that she was telling that story,
6 because it was true? Does it make sense that the
7 minor is the meanest person in the world for
8 dragging him through the criminal justice system
9 or that the reason she drug her dad's best friend
10 to court, is because these things shouldn't have
11 happened?

12 Does it make sense that that 14-year-old
13 hatched that plan on her own, or that she's
14 telling the truth? Does it make sense that a girl
15 that would come up with this plan, knowing how
16 important the semen was, would get up there and
17 say, I don't remember anything coming out. That
18 would be inconsistent. That wouldn't fall in with
19 the plan. I submit to you that the reason she
20 told you that is because she is telling the truth.
21 She didn't see it.

22 The inconsistency there shows you the
23 truth. She'd get the story right if this were all
24 a lie. She'd get it right. She'd tell you, yeah,
25 I saw something coming out knowing that it's on

1 her panties. Does it make sense that a mom would
2 have such -- the mom that had to have such an axe
3 to grind to make up this story and get up here and
4 lie. Convince her daughter to lie. Does it make
5 sense for a mom with that axe to grind, to leave
6 her children alone with some man. They had to
7 despise him to make that up. Does it make sense
8 that she would leave her children home with him if
9 that was true.

10 Folks, either all these things are true or
11 the defendant is guilty. Now I recall that the
12 semen was found on the inside of that
13 14-year-old's panties. On that size middle 6
14 little girl's panties. Not on the outside and on
15 the side, but on the crotch. On the inside on the
16 crotch. And I want you to consider what
17 outrageous explanation must be true about that
18 piece of evidence for the the defendant to be
19 guilty. Consider how lucky the minor and her mom
20 must have been to have hatched this plan, this
21 story. And at the same time have this key piece
22 of evidence. Or consider how clairvoyant they
23 must be to be able to predict the future and know
24 that these panties were going to test positive for
25 Charlie Belser's semen beyond a shadow of a doubt,

1 1 in 16 quadrillion chance that it is anybody's
2 but Charlie Belser's. Consider that piece of
3 evidence.

4 Folks, I asked you before the trial, to
5 pay close attention. Your job is important. And
6 I know you paid close attention throughout the
7 trial. I ask you to take it seriously. This is
8 important. You have to get it right. I told you
9 your job is to render a verdict that speaks the
10 truth. I ask you to do that. Render a verdict
11 that speaks the truth and find Charlie Belser
12 guilty of criminal sexual conduct with a minor.
13 Thank you.

14 MR. ROBINSON: Thank you, Your Honor. May
15 it Please the Court.

16 THE COURT: Yes, sir.

17 MR. ROBINSON: Ladies and gentlemen, I
18 want to agree with a little bit of what Mr. Durant
19 said. A, I want to thank you all for being
20 patient. Sitting through this, I know it's not
21 pleasant. It's not fun. I haven't been having
22 the time of my life either. I know there's things
23 that everybody would rather be doing; including,
24 you and me and the solicitor and Mr. Belser, but
25 this is important.

1 It's an important day. It's an important
2 situation. It's an important time. Not just
3 quite frankly for Mr. Belser, but for all of you,
4 for all of us. Because this as I told you in my
5 opening statement, this is how we settle
6 differences and disputes in the United States. We
7 have this system where no one person's word is any
8 better than anybody else's. They get to pick 12
9 people that don't have any bias, don't have
10 prejudice, don't have any prior knowledge of what
11 is going on, to sit independently, openmindedly
12 objectively and decide the truth of the case.

13 And I'm going to tell you, I've done this
14 for a few years and I'm nervous. Because although
15 we don't have the burden of proof, I'm
16 representing Mr Belser. I basically right now,
17 his life is in my hands. Now in a few minutes, I
18 am going to pass that burden. I won't be as
19 nervous. I'll still be nervous, but that awesome
20 responsibility is going to fall on the 12 of you
21 all. His life will be in your hands.

22 So as Mr. Durant said, this is important.
23 This is very important. This is an awesome
24 responsibility but we trust you all. That's why
25 we picked you all. We had the opportunity, we

1 could have struck any of you. Because we have
2 that right. We don't have to get forced into a
3 situation. We get a chance to look at you. Think
4 about your background. See how you look.
5 Different things, whatever. But we have that
6 right. So we picked the 12 of you all or the 13,
7 just depending on if somebody is unable to serve,
8 to go back there and decide Mr. Belser's fate.

9 And as Mr. Durant said, I agree with him
10 as well. If you decide that the state hasn't met
11 its burden, you have to turn him loose. You don't
12 have to like him. You don't have to enjoy it.
13 You don't have to necessarily want to give him the
14 key to the city. I don't know how you feel about
15 it. This is not an emotional decision. This is a
16 factual legal decision where you have been asked
17 to leave your emotions out of it. Not to jump to
18 conclusions. Remember I asked you when we started
19 that these accusations are -- they are just tough.
20 They are tough to think about, to deal with. And
21 I know that any time you hear it, you want to
22 assume well why would this little girl lie. Why
23 would she make this up. Why would somebody say
24 this if it wasn't true. And the truth of matter
25 is, I have no idea. But we don't have to prove

1 that.

2 And I do want to disagree with Mr. Durant.
3 Because in order for you to find Mr. Belser not
4 guilty, you don't have to decide that these people
5 are mean, hateful liars with axes to grind and
6 vindictive. But you do have to remember in
7 courtrooms all across this country every day,
8 there are verdicts of not guilty. And that
9 doesn't mean that we have got a bunch of mean,
10 hateful, vindictive liars making up stories to do
11 stuff. Sometimes the state just can't meet its
12 burden. It happens.

13 This is not a situation where you have to
14 decide who you like and don't like. You don't
15 have any friends out here that you are looking to
16 reward or any enemies you want to punish. You
17 have to be fair, impartial and completely
18 objective and weigh the evidence. The evidence
19 that has been put in.

20 We talked about a ton of stuff. A ton of
21 stuff. We have had painstaking days of talking
22 about Item 1.1.1., 2.1, 3. And out of all of
23 that, we have got that little bag of evidence.
24 That's it. That's the only physical item in
25 evidence. And I am not telling you testimony is

1 not evidence. That is a piece of physical
2 evidence that exists in this case. When you go to
3 the jury room other than your recollection of the
4 testimony, out of everything that we've talked
5 about, the only shred of physical evidence that
6 you get to carry in to that jury room is that bag.
7 Nothing else. Absolutely nothing else. That's
8 not because there wasn't anything else. I mean
9 you've heard the sled expert testify. She talked
10 about it. You know, we did a criminal, a CSC kit,
11 where we do swabs, blood samples and all of this
12 stuff. They did all that. Went to a doctor. None
13 of that is in evidence. You know, why? Because
14 it didn't show anything. It didn't prove
15 anything. The state couldn't meet its burden of
16 proof on any swab. Not the vaginal swab, not the
17 annal swab, not the oral swab. There was
18 absolutely no proof.

19 What did that state prove? The state
20 proved that in that bag is a pair of panties. A
21 part of them has been cut out. The part that was
22 cut out is not even in evidence. It's not here
23 for you all to look at. But what they proved was
24 that there was semen on that. I can't argue with
25 that. I mean, expert said, I don't think she is a

1 liar. But what else did she say? Did she tell
2 you that as an expert she could conclude without
3 any question beyond a reasonable doubt that that
4 came from sex. She didn't say that. She said she
5 couldn't even tell you that the other DNA in there
6 was definitely from Ms. Keels. She couldn't tell
7 you that. She couldn't tell you that it wasn't
8 the mothers who she -- the mother admitted,
9 Ms. Billups, that she and Mr. Belser were having a
10 sexual relationship.

11 She could not tell you beyond a reasonable
12 doubt this wasn't from secondary transfer; that
13 this is no way to date that semen.

14 Now the state would have you believe, that
15 oh, yeah, that's got to be, because that was the
16 last time she remembered it happened. And those
17 were the panties she had on. Did the state really
18 do what was necessary to guarantee that, to prove
19 that beyond a reasonable doubt? Did the female
20 officer who had a camera in her car who was the
21 first one on the scene, take a picture of what she
22 was wearing, accompany her in the room to get
23 these panties to make sure that some defense
24 lawyer can't come up here and say, where did they
25 come from. Did her mamma tell you that? No. Did

1 Investigator Richards, the chief investigator on
2 this case did he tell you that? What did he tell
3 you? I don't know, they brought me a bag at the
4 sheriff's department that night. I don't know
5 where they came from. I'm assuming they came from
6 the minor . I'm assuming those are the panties
7 she had on that night.

8 We cannot assume in this case, ladies and
9 gentlemen. Because that is taking you outside of
10 what you are sworn to do. Which is to follow the
11 law. If there is any doubt, any doubt, the judge
12 will tell you -- any reasonable doubt. Any
13 reasonable doubt, you have resolve it. You have
14 to, whether want to or not. You have to resolve
15 that doubt in favor of Mr. Belser. Said plainly,
16 he gets the benefit of the doubt. That's the law.
17 Because what we've got here is a situation where
18 this man is being put on trial. He doesn't have
19 to prove anything. He's presumed innocent. Still
20 presumed innocent. And the State of South
21 Carolina with all the witnesses you have seen and
22 talked about, forensic interviews, doctors, sled
23 agents. How many, 4 or 5 different sled agents up
24 here. Paying for a forensic interview with
25 Ms. Debbie Elliott. Paying for a doctor. They've

1 got a Care House. They've got victim's advocates
2 driving back and forth. They have this PCR Palmer
3 Race, whatever technology. They've got all of
4 this stuff so that these questions don't exist in
5 your mind. This should be a slam dunk case, and
6 it's not.

7 It could have been. If the doctor -- you
8 heard the forensic interviewer, Ms. Elliott, that
9 works up in Florence come up there and say, yes,
10 we sent her to the doctor. Dr. John Keith. He's
11 still in Florence. He practices in Florence. He
12 did an exam. He collected a criminal sexual
13 conduct or a rape kit as it is known. He did all
14 the swabs. He did all that. Where is he. He
15 did a physical examination of this child. And he
16 could sit right there and said, yep, I examined
17 her clearly. She's had sex with Mr. Belser.
18 Because I have got his semen out of her vagina.
19 And I examined it. And it is definitely what they
20 asserted.

21 MR. DURANT: Objection, Your Honor.
22 That's assuming facts that are not in evidence.
23 And it's speculation at best.

24 THE COURT: I'll allow it. Go ahead.

25 MR. ROBINSON: The state has that burden.

1 They brought four people from sled in Columbia.
2 One lady already from Florence. Where is this
3 doctor? Taking away your reasonable doubt. Your
4 shadow of a doubt to prove that. You heard the
5 sled expert say, I can't tell you how long semen
6 or DNA. I don't know. Listen, I don't enjoy
7 using these terms, but this is important. How
8 long does semen or DNA stay in the vaginal vault.
9 That just means inside of this little girl. How
10 long? 72 hours give or take. When did she
11 disclose this? Within 24 hours or less than 24
12 hours. She claims this happened on Saturday the
13 13th, early morning of the 14th. 12 or 1 o'clock
14 in the morning. She told her aunt at lunchtime 12
15 hours later. Her aunt didn't tell anybody until
16 that night. Did they go to the hospital that
17 night? No, they told law enforcement, who is
18 trained to do this; who didn't take any pictures.
19 Didn't take any statements. Didn't collect any
20 evidence except, how about bring me some
21 underwear. Don't know where they came from.
22 Aren't sure that they came off of her. They want
23 you to take their word because they took hers.
24 That's not good enough, Ladies and gentlemen.
25 We cannot afford to assume that things are

1 the way they appear. Especially when there are
2 full proof ways to prevent that. That is the
3 state's job. That is why we have got law
4 enforcement investigators, deputies that are first
5 responders. Evidence custodians, all these people
6 keeping this chain of evidence; is to, so that
7 when they come in here they can tell you beyond a
8 reasonable doubt, I took it from this point to
9 that point. Nobody else touched it. You can
10 trust it. It's a guarantee. It's safe. But we
11 can't get that until Investigator Richards got the
12 underwear. Somebody brought them to him in a
13 Ziploc bag.

14 We don't have any pictures of what she had
15 on that night. We don't have a doctor. Why
16 didn't she go to the hospital that night. There's
17 a hospital in Manning. They've got an emergency
18 room. They're open 24 hours a day and 7 days a
19 week. They don't close. This isn't the first
20 time these people -- these officers, the state
21 with its resources, set up to be with this thing,
22 has handled this.

23 Mr. Durant told you he subpoenaed the sled
24 people. Which means they had to come whether they
25 wanted to or not. He could have subpoenaed Dr.

1 Keith out of Florence. Made him come whether it
2 was inconvenient or not. He could have made him
3 come. He could have answered these questions. So
4 the question is, has the state even proven that
5 they had sex. They've offered testimony that there
6 was sex. But there is zero physical evidence of
7 sex. Semen in the panties, yes. But you heard
8 the doctor. I'm sorry, the DNA expert from sled,
9 she can't say for certainty that there -- there
10 was some female DNA in that sample. She can't say
11 it wasn't the mama's, or that it was the
12 daughter's. Which means she can't tell you with
13 certainty that it came out of the daughter. Or
14 where it came from or when it got there. But what
15 she can tell with certainty; is that, when they
16 did those swabs within 48 hours, that typically
17 sperm stays in there 72 hours. There wasn't any
18 sperm inside. Zero, none. No other physical
19 evidence. So you've got to take that leap of
20 faith and say that because she said it, and
21 because we've got this, it must be true. A leap
22 of faith, Ladies and gentlemen is not beyond a
23 reasonable doubt. That's a heck of a divide to
24 gap. That's a big leap. Especially when we know
25 there's a bridge available. Photographs, doctor's

1 testimony, physical evidence to prove sexual
2 intercourse.

3 Now Mr. Durant would have you believe and
4 I wrote it down, in addition to that, you'd have
5 to decide everybody is lying. You also have to
6 believe this. This is interesting. This is what
7 he wants you to believe. That inconsistency shows
8 truth. That's what he said. Because her story
9 was inconsistent that it was true. This is the
10 part where I don't think there is a charge on.
11 There ain't no law on that. This is where your
12 common sense comes in to play.

13 I wasn't raised that way. The way I was
14 raised, easy to remember the truth. A lie is like
15 a spider web. You tell one, you've got to cover
16 it with another. And you get entangled and you
17 can't remember. That's when you get tripped up.
18 That's where inconsistencies come from.

19 The state would have you believe
20 inconsistency is the key to the truth. That's why
21 you should believe it. And there were
22 inconsistencies. Make no doubt about it. Ms.
23 Keels testified. Sort of testified. The state
24 did a lot of leading questions. But she
25 testified in some sense about what allegedly

1 happened. And based on her testimony and it's
2 yours to decide. It's within your province. I
3 can't do anything about it. But I just ask you to
4 consider, is it reasonable? That's what we're
5 talking about. Reasonable people.

6 Is it reasonable to believe that first of
7 all, she said the first time it happened, was when
8 her mom was working at night. Her mom testified
9 that she only worked one time at night. She also
10 said that time that her little brother and her
11 little sister were down the street at her aunt's
12 house. And remember I asked her, I said, are you
13 sure that's right. You sure you don't remember
14 saying that your sister walked in on you. Oh,
15 yeah, well I forgot that. It must have been
16 something different.

17 What about the panties. The panties. The
18 only piece of evidence that is in evidence in this
19 case. The panties. How did she forget that she
20 couldn't find them to start with. When she
21 testified Monday afternoon, think back. And
22 remember, don't take my word. Just remember. Did
23 she ever say anything about she couldn't find her
24 panties, had trouble. She said what do you do,
25 I'll put my panties back on. And I had them on

1 when they got home.

2 When I asked her Tuesday morning, what did
3 she tell you? Oh, yeah, I had a hard time finding
4 them. I found them on the floor in the living
5 room up under a bag of school supplies. Yeah, I
6 forgot. That's right.

7 Ladies and gentlemen, I don't know what
8 happened. You don't know what happened. It's not
9 my job to prove that. It's not your job to assume
10 that. It's the state's job to prove that. I
11 would submit to you quite frankly, that they
12 haven't been able to do that. I don't think you
13 have to determine that the little girl is a liar
14 or mean or vindictive or have any type of
15 emotional reaction in this case at all. I think
16 you have simply have to look at what's out there.
17 What's available. Remember I told you proof in my
18 opinion comes from not only what you hear from the
19 witness stand and what you receive in evidence,
20 but what you don't hear.

21 Where is Aunt Jerrica that she disclosed
22 to. Why did she wait 12 hours. Where is the
23 doctor that did the physical exam. Where is any
24 physical evidence that could slam dunk this case?
25 It's not in this courtroom, Ladies and gentlemen.

1 Their version of the slam dunk evidence is the
2 sled expert saying, Charlie Belser's semen in her
3 panties. Okay. I don't disagree with that. But
4 can you tell me and this jury beyond a reasonable
5 doubt that that came from them having sex. No.
6 That the other DNA in there is hers. No. That
7 it's not mama's. No. That it didn't come from
8 secondary transfer. No.

9 I just hope you all believe that it came
10 from them having sex. Because I can't prove it.
11 Because the state can't prove it. They want you
12 to believe it.

13 I don't know if you all have ever seen the
14 movie, Law Abiding Citizen. It's not the
15 greatest. It's kind of an action movie. It's kind
16 of rough. But there's a guy in there that plays
17 the prosecutor. In that movie he's talking with
18 the minor .. And he's like, man, I know this and I
19 know that. And he said, it's not what you know.
20 It's what you can prove in court. And that's the
21 truth. It's not what you know and what you think.
22 It's what you can prove.

23 I know a bunch of stuff that I can't prove
24 to you today in court. But I didn't call this
25 case. I don't have the burden. When the state

1 calls the case, they've got the burden to prove.
2 They better be ready. They didn't have to call
3 this case Monday. They control when they call
4 this case. They call the case. They waited a
5 year and a half. Had all these witnesses,
6 collected all this stuff. And at the end of the
7 day today, collected a pair of panties that we
8 can't even prove the minor had on. We don't have
9 any of her DNA in them. And that's where there is
10 smoking mirrors.

11 Ladies and gentlemen, I submit to you that
12 whatever your stomach tells you, whatever your
13 heart tells you, you have to ignore. And you have
14 to follow your brain, your common sense, your
15 intellect. And you have to decide not whether or
16 not Ms. Keels is a liar, but whether or not the
17 state has met its burden of proof beyond a
18 reasonable doubt.

19 And consider all the things that I talked
20 about. Is it reasonable that they could have
21 brought the doctor. Is it reasonable that these
22 swabs should have shown something. Because they
23 were collected within 48 hours. And the doctor
24 said it was within 72 hours. Is it reasonable
25 that they can't prove to you that she had these

1 panties on. Her DNA is not even in them. Is that
2 reasonable. Is that enough to convince you to
3 find this man guilty of criminal sexual conduct
4 with this little girl? Is it reasonable they
5 really have offered no physical evidence of sex?
6 None. None. They've offered testimony. But the
7 physical evidence of sex there exists none.

8 THE COURT: Ladies and gentlemen, now that
9 you have heard the evidence in this case and the
10 arguments of both attorneys, I am going to now
11 explain to you the law that you are to apply in
12 this case.

13 And under our constitution and code of
14 laws only the jury can make a finding of facts. I
15 am not permitted to indicate to you how I might
16 feel about the facts. So if I said anything or
17 done anything throughout this trial that you think
18 I have an opinion about the facts, you are to
19 disregard that and apply the facts as you believe
20 them to be. And draw no inference whatsoever to
21 what you think I may think about the facts.

22 And under the same law and constitution
23 that makes you the sole judges of the facts, it
24 makes me the sole judge of the law. So if you
25 have an idea of what you think the law is or what

1 you think the law ought to be and it differs from
2 what I tell you the law is, you are to disregard
3 your ideas and apply the law exactly as I give it
4 to you.

5 Now the fact that the defendant was
6 arrested and charged and indicted in this case is
7 not evidence in this case and cannot be considered
8 by you as evidence, nor does it create any
9 presumption of guilt or inference of guilt in this
10 case. This indictment is simply a formal written
11 instrument which contains the charges against this
12 defendant and it serves as a formal document to
13 bring this case to court.

14 Now this defendant has pled not guilty to
15 this indictment and it casts the burden of proof
16 upon the State of South Carolina to prove each and
17 every element of this indictment beyond a
18 reasonable doubt. A person charged with
19 committing a criminal offense in South Carolina is
20 never required to prove himself or herself
21 innocent. And I instruct you and emphasize to
22 you, the fact that the defendant did not testify
23 in this case is not a factor to be considered by
24 you in any way in your deliberations.

25 The question of guilt or innocence of the

1 defendant cannot be considered by you and the fact
2 that he did not testify. It must be considered by
3 you -- it must not be considered by you in any
4 manner whatsoever. The defendant has a
5 constitutional right to remain silent. And the
6 assertion of this right must not be considered by
7 you in our deliberations. I repeat, under your
8 oath, you are to draw no conclusions whatsoever
9 from the fact the defendant in this case did not
10 testify. That fact should not even be discussed
11 in the jury room.

12 It is an important rule of the law in this
13 country that a defendant in a criminal trial, will
14 always be presumed to be innocent for the crime
15 for which he or she is charged and indicted unless
16 and until his guilt has been proven by evidence
17 that satisfies you of that guilt beyond a
18 reasonable doubt.

19 The presumption of innocence is not a mere
20 legal theory. It is not just a legal phrase. It
21 is a substantial, constitutional right to which
22 every defendant is entitled. This presumption of
23 innocence accompanies the defendant from the time
24 he is charged throughout the trial until you
25 reach a verdict of guilt based on the evidence

1 that satisfies you of that guilt beyond a
2 reasonable doubt.

3 A reasonable doubt is a doubt which makes
4 an honest, sincere, conscientious juror in search
5 of the truth to hesitate to act. Proof beyond a
6 reasonable doubt must be proof of such a
7 convincing character that a reasonable person
8 would not hesitate to rely upon it in the most
9 important of his or her own affairs. Proof beyond
10 a reasonable doubt can also be described as proof
11 that leaves you firmly convinced of the
12 defendant's guilt.

13 Now there are very few things in this
14 world that we know with absolute certainty. And
15 in a criminal case the law does not require proof
16 that overcomes every possible doubt. If based on
17 your consideration of the evidence you are firmly
18 convinced that the defendant is guilty of the
19 crime charged, you must find him guilty. If on
20 the other hand you think there is a real
21 possibility he is not guilty, you must give him
22 the benefit of that doubt and find him not guilty.

23 In determining what the facts are in a
24 case, you must necessarily pass upon the
25 credibility which simply means the believability

1 of the witnesses and the value or weight to be
2 given to their testimony. You alone must decide
3 the force and effect and the truth of that
4 testimony. In making these decisions, there are
5 many things that you should take into
6 consideration; such as, the appearance and manner
7 of the witness on the stand sometimes referred to
8 as the demeanor of the witness. Was the witness
9 forthright or hesitant. Was the witness'
10 testimony consistent or did it contain
11 discrepancies. What was the ability of the
12 witness to know the facts about which he or she
13 testified. Did the witness have cause or reason
14 to be biased and prejudice in favor of their
15 testimony. And was the testimony of a witness
16 corroborated or made strong by other testimony and
17 evidence or was it made weaker or impeached by
18 such other testimony and evidence.

19 Now the rules of evidence do not
20 ordinarily permit a witness to testify to opinions
21 or conclusions. An exception to this rule exists
22 for a witness we call expert witnesses. A
23 witness who by education and experience has become
24 an expert in some science, art, profession or
25 calling may state an opinion as to the relevant

1 and material matters in which the witness claims
2 to be an expert. And may also state the reasons
3 for that opinion. You should consider an expert
4 opinion received in evidence in this case like any
5 other evidence. Give it the weight you think it
6 deserves. If you decide that an opinion of an
7 expert is not based on sufficient education and
8 experience, or if you conclude that the reasons
9 given in support of the opinion are not sound or
10 that the opinion is outweighed by other evidence
11 you may disregard the opinion in its entirety.

12 An expert witness' testimony is to be
13 given no greater weight than that of any other
14 witness simply because the witness is an expert.
15 Further you are not required to accept an expert's
16 opinion even though it is not contradicted. As
17 jurors you have a right to believe a small portion
18 of a witness' testimony and disregard the larger
19 or vice versa. You may believe all of a witness'
20 testimony or none. You may believe the testimony
21 of a single witness against that of many witnesses
22 or the other way around.

23 Now in a criminal trial, criminal intent
24 is a necessary element of each crime that must be
25 proven beyond a reasonable doubt. Criminal intent

1 is always a matter that must be determined by the
2 jury from the circumstances surrounding the
3 situation. There is no way to prove intent to a
4 mathematical certainty. There is no way medical
5 science can dissect a person's brain and determine
6 what he or she had in mind.

7 So the law states criminal intent may be
8 inferred from circumstances shown to have existed
9 both before and after the fact. This is how you
10 the jury makes a determination on whether or not
11 the elements of required intent was present.

12 Criminal intent is a state of mind that operates
13 jointly with an act or omission in the commission
14 of a crime. Criminal intent is the mental state
15 or conscious wrongdoing. So it is up to you the
16 jury to determine what the defendant intended to
17 do based on the circumstances shown to have
18 existed. And I tell you that the state must prove
19 criminal intent just as it must prove each element
20 beyond a reasonable doubt.

21 There are two types of evidence that are
22 generally presented during a trial: Direct
23 evidence and circumstantial evidence. Direct
24 evidence is testimony of a person who asserts or
25 claims to have actual knowledge of the fact; such

1 as, an eye witness. Circumstantial evidence is
2 proof of a chain of facts and circumstances
3 indicating the existence of a fact. The law makes
4 absolutely no distinction between the weight you
5 should give to the circumstantial evidence or
6 direct evidence. Nor is there a greater degree of
7 certainty required for circumstantial evidence
8 than that of direct evidence. You would weigh all
9 of the evidence in the case. And after weighing
10 all of the evidence you are convinced of the
11 guilt of the defendant beyond a reasonable doubt
12 you must find him guilty. If not, you must find
13 him not guilty.

14 Now the defendant is charged with the
15 crime of criminal sexual conduct with a minor in
16 the second degree. The state must proof beyond a
17 reasonable doubt that the defendant engaged in a
18 sexual battery with the minor . A sexual battery
19 is sexual intercourse, cunnilingus, fellatio,
20 anal intercourse or any other intrusion however
21 slight of any part of a person's body. Or any
22 object into the genital or anal openings of
23 another person's body except when the intrusion is
24 accomplished for medically recognized treatments
25 for diagnostic purposes.

1 The state must also prove beyond a
2 reasonable doubt that the minor . was less than 16
3 years old but at least 14 years old. And that the
4 defendant was either in a position of familial,
5 custodial or official authority to coerce the
6 minor to submit or that the defendant was older
7 than the minor .

8 Now, Ladies and gentlemen, you are not
9 partisans for the State of South Carolina or this
10 defendant. You do not serve as jurors to reward
11 your friends or punish your enemies. That system
12 of justice simply will not be tolerated. You have
13 been selected by both the State of South Carolina
14 and this defendant to be fair and impartial. It
15 is your duty than by your joint deliberations to
16 determine the truth in this case, giving to this
17 defendant the benefit of every reasonable doubt on
18 each and every issue. Then to the facts that you
19 determine to be the true, you should take and
20 apply the law which I have given you, and arrive
21 at a verdict that speaks the truth.

22 And when you will have accomplished this,
23 you would have satisfied your oath as jurors and
24 discharged your duty to this court.

25 Now I have had my law clerk type up a

1 possible verdict form for you. And he simply put
2 the caption of the case at the top of the form.
3 And it's basically the State of South Carolina
4 versus Charlie Lamont Belser in the Court of
5 General Sessions and the docket number. And you
6 have two possible verdicts in this case. We the
7 jury unanimously find the defendant Charlie Lamont
8 Belser, guilty of criminal sexual conduct with a
9 minor in the second degree. Or not guilty of
10 criminal sexual conduct with a minor in the second
11 degree.

12 In the order that he's placed them in, you
13 should draw no significance from them whatsoever.
14 We just had to put them in some order. Once you
15 have reached your verdict and it is a unanimous
16 verdict, madam foreman, you are to check the
17 appropriate block on this form. Sign your name to
18 the bottom and date it. And knock on the door,
19 and inform the bailiff that you all have reached a
20 verdict. We will bring you back out and receive
21 your verdict.

22 Now while you are in there deliberating,
23 anybody that needs to be excused, you have got to
24 stop your deliberations. You can only talk about
25 the case when all 12 of you are present in the

1 room. So if somebody had to go to the restroom or
2 had to go out for some reason you have just got to
3 stop talking about the case until they return and
4 you can continue.

5 And as I said, your verdict must be a
6 unanimous verdict, which means all 12 of you must
7 agree on the verdict. I am going to send you to
8 the jury room for a few minutes, because I have
9 got to talk with these lawyers to be sure I have
10 covered everything in my charge. If I need to
11 bring you back out and explain some law to you
12 further, I will. If I don't, then I am going to
13 send the evidence in. When you receive this
14 verdict form and the evidence in the case that
15 will be your indication to begin your
16 deliberations. And just simply knock on the door
17 when you have reached a verdict.

18 Now, Mr. Alternate, you stay with me.
19 Because the only reason I was going to need you is
20 if somebody got sick. But everybody looks like
21 they are going to make it. So if you will just
22 hang with me. And if you all will go to the jury
23 room now, I will get you back out as soon as I
24 can.

25 (Whereupon, the following takes place

1 outside the presence of the jury.)

2 THE COURT: Any exceptions or additions on
3 behalf of the state?

4 MR. DURANT: No, sir, Your Honor.

5 THE COURT: On behalf of the defense?

6 MR. ROBINSON: No, sir, Your Honor.

7 THE COURT: Okay, gentlemen, if you all
8 will get the evidence together with the reporter
9 and check you alls list with hers. And have the
10 bailiff send them in.

11 (Whereupon, at 3:07 p.m. jury commences
12 deliberates.)

13 (Whereupon, the alternate is excused.)

14 (Whereupon, At 3:40 p.m. the jury reaches
15 a verdict.)

16 THE COURT: Is the state ready?

17 MR. DURANT: State is ready.

18 THE COURT: The defense ready?

19 MR. ROBINSON: The defense is ready.

20 THE COURT: Okay, bring the jury.

21 (Whereupon, the following takes place
22 within the presence of the jury.)

23 THE CLERK: Madam forelady, have you
24 reached a verdict?

25 THE FORELADY: Yes.

1 THE CLERK: Is it unanimous?

2 THE FORELADY: Yes.

3 THE COURT: You may publish the verdict.

4 THE CLERK: On indictment No.

5 2011-GS-14-480 the State of South Carolina versus
6 Charlie Lamont Belser, we the jury unanimously
7 find the defendant the Charlie Lamont Belser
8 guilty of criminal sexual conduct with a minor in
9 the second degree. And certified by the
10 foreperson Jody Cleto, January 30th 2013.

11 THE COURT: Anything further from the
12 state before I dismiss the jury?

13 MR. DURANT: Not from the state.

14 THE COURT: From the defense?

15 MR. ROBINSON: Poll the jury please, sir.

16 THE COURT: Madam Clerk, if you will poll
17 the jury.

18 THE CLERK: All right, sir. Starting with
19 our foreman. Jody Cleto, is this your verdict?

20 THE JUROR: Yes.

21 THE CLERK: And still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Rhunette Billups, is this your
24 verdict?

25 THE JUROR: Yes.

1 THE CLERK: And still your verdict?
2 THE JUROR: Still.
3 THE CLERK: Thank you, ma'am. Arian
4 Dupree, is this your verdict?
5 THE JUROR: Yes.
6 THE CLERK: And still your verdict?
7 THE JUROR: Yes.
8 THE CLERK: Brant D. Barrineau, is this
9 your verdict?
10 THE JUROR: Yes.
11 THE CLERK: And still your verdict?
12 THE JUROR: Yes.
13 THE CLERK: Gary Stewart.
14 THE JUROR: Yes.
15 THE CLERK: Is this your verdict?
16 THE JUROR: Yes.
17 THE CLERK: And still your verdict?
18 THE JUROR: Yes, ma'am.
19 THE CLERK: Charles D. Hinds, is this your
20 verdict?
21 THE JUROR: Yes.
22 THE CLERK: And still your verdict?
23 THE JUROR: Yes.
24 THE CLERK: Marilyn Conyers, is this your
25 verdict?

1 THE JUROR: Yes.

2 THE CLERK: And still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Thank you, sir. Ruth Ann

5 Bench, is this your verdict?

6 THE JUROR: Yes.

7 THE CLERK: And still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Janeen Byerly, is this your
10 verdict?

11 THE JUROR: Yes.

12 THE CLERK: And still your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Carl H. Hill.

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Is this your verdict?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: And still your verdict?

19 THE JUROR: Yes, sir.

20 THE CLERK: Simon P. Wilson, is this your
21 verdict?

22 THE JUROR: Yes.

23 THE CLERK: And still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Your Honor, the jury has been

1 polled.

2 MR. ROBINSON: Judge, if I could, I would
3 like to A, reserve until perhaps up to 10 days and
4 I will probably until tomorrow, make any
5 post-trial motions that I may have.

6 THE COURT: Okay.

7 MR. ROBINSON: And I would ask the court
8 to consider holding sentencing until first thing
9 in the morning, just to give me a chance to get
10 Mr. Belser and his family, and be able to offer
11 anything in mitigation on his behalf if we need
12 to. But I may not be fully prepared for this this
13 afternoon. Or at least to give us a few minutes
14 if the court is not inclined to do that at this
15 point. And, Your Honor, once again, I understand
16 that's not going to delay him going into custody.
17 Simply giving us a chance to deal with that aspect
18 of the case before Your Honor imposes sentence.

19 THE COURT: What is the state's position
20 on that?

21 MR. DURANT: Judge, I would ask if you
22 would, to sentence Mr. Belser today. And the
23 reason is, because the minor and her family are
24 from North Carolina. The minor 's mother has
25 taken off work three days earlier this week to be

1 here for the trial. And she would like to get
2 back on the road so she can be at work tomorrow
3 morning.

4 THE COURT: Mr. Robinson my problem is,
5 this is not a surprise. We have been doing this
6 since Monday. And it was a probability that he
7 was going be convicted or either turned loose. So
8 whatever information or whatever family thing you
9 do, they should be ready. Now, I'll give you, you
10 know, 15 minutes or 20 minutes to talk with them,
11 but I will do it this afternoon.

12 MR. ROBINSON: Okay. Thank Your Honor.

13 (Whereupon, the court takes a short
14 recess.)

15 MR. ROBINSON: Your Honor, and if I could
16 before we start, I just want to make sure I am
17 clear. Can I have at least until tomorrow to make
18 any post-trial motions I would like to make rather
19 than having to do them right now? I don't know
20 that the minor would necessarily need to be
21 present for that.

22 THE COURT: Okay.

23 MR. ROBINSON: Thank you.

24 THE COURT: Do you want to tell me
25 anything, Mr. Solicitor?

1 MR. DURANT: This is Charlie Lamont Belser
2 under indictment 2011-GS-14-408. Convicted of
3 criminal sexual conduct with a minor in the second
4 degree. Judge, you've heard the facts. They
5 speak for themselves. The minors are in the
6 courtroom. They do wish to address the court
7 about this, but the charges do speak for
8 themselves, Your Honor.

9 As far as Mr. Belser's prior record, I
10 show two counts of forgery that he was convicted
11 on or pled guilty to in 2006. Possession of crack
12 cocaine in 2007. And possession of cocaine in
13 2008.

14 THE COURT: Mr. Robinson.

15 MR. ROBINSON: Thank you, Your Honor.
16 Mr. Belser is a 30-years-old. He is a high school
17 graduate, and has attended some college credit
18 courses. He is currently or was currently
19 employed at Pilgrim's Pride in Sumter. He's got
20 two children ages, 8 and 5. He stands here today,
21 Your Honor, with his mother, Ms. Lillie Thompson,
22 who is standing right behind him. His pastor, Ms.
23 Carrie Sands is standing with him.

24 Also with him today, but seated out there,
25 his girlfriend Tiara Blanding, his brother,

1 Mr. Eugene Thompson. His aunt, Ms. Beulah Farmer.
2 And another member of his church, Ms. Jennifer
3 Dingle. They have been here throughout the course
4 of this trial to support him, Your Honor. He is
5 faithful member of the the House of God Miracle
6 Temple in Davis Station. And as I said, his
7 pastor is here today and has been throughout this
8 trial. She tells me that he is a regular and
9 faithful attender.

10 That obviously 2006 through 2008, weren't
11 the brightest times in Mr. Belser's life. He had
12 a drug problem where he got into some forgeries,
13 and a possession of crack and a possession of
14 powder cocaine. During that period, his family
15 stood by him and his church stood by him. And he
16 made it through that, Your Honor.

17 Mr. Belser pled not guilty to these
18 charges. Voluntarily gave a buccal swab.
19 Offered to give a polygraph on these charges, Your
20 Honor. And despite the jury's verdict, maintains
21 his innocence here today. Understanding the court
22 is not bound by that, I simply wanted, you know,
23 this isn't a situation where Mr. Belser decided he
24 would roll the dice and didn't have a lot to lose.
25 As the court knows, there is a lot at stake here

1 for him personally as far as time is concerned.

2 But he does maintain his innocence, but is
3 standing before you ready to accept the court's
4 sentencing in this matter.

5 Your Honor, and what I would ask the court
6 to consider, although Mr. Belser does have a
7 prior criminal record, he has nothing on his
8 record of this type of behavior of any sort
9 whatsoever. No crimes of violence. Just simply
10 crimes that would indicate that he had a drug
11 problem. But no crimes of violence. No type of
12 sexual crimes. He was allegedly 28 or 29 when
13 these crimes took place. So this is not something
14 that Mr. Belser is some sort of predator or
15 someone that takes advantage of these situations.

16 He has children of his own. And other
17 than a drug problem, some charges that have
18 stemmed from that. He has been gainfully employed
19 in a, you know, not up here giving you this
20 general I do construction work or handyman work,
21 but Pilgrim's Pride, and has worked in other
22 industrial settings prior to that. He has got the
23 support of his family, his church members all here
24 to attest that Mr. Belser is a good person; that
25 this is not something they believe that he did.

1 It's not something that is in his character.
2 Understanding that the court has to deal with the
3 finding of the jury, which was that he is guilty
4 of this charge. However I want to make sure that
5 the court in sentencing takes into account all of
6 the information.

7 This was a long trial. There was lots of
8 information shared. But Mr. Belser has never
9 wavered from his position that this didn't take
10 place. However, as I said before, he stands
11 before you ready to accept the court's sentencing,
12 Your Honor. He is certainly is somebody that
13 again, not somebody I think needs to be locked
14 away to protect society. This is not in his
15 character or his nature. There has no evidence or
16 information that he's, you know, preys on young
17 women or that he has a history of this type of
18 behavior.

19 I understand he has to be punished, and
20 that's within Your Honor's discretion. But he is
21 a productive member of society that supports his
22 family; that supports his children; that has a job
23 that earns an income. And I certainly think he
24 can be rehabilitated from this situation. So I
25 would ask the court rather than impose a huge

1 burden and lean heavily on the side of punishment,
2 that the court would indicate some punishment for
3 what the jury has said. But also take into
4 account the person that Charlie Belser is. Not
5 take two weeks of his life and judge everything on
6 that, Your Honor.

7 I'm not sure if any his family members
8 want to say anything or his pastor. But Your
9 Honor we would ask for lenience, mercy and a
10 sentence that takes into account the good things
11 that have happened in Charles Belser's life. The
12 things that he has done for others. The fact that
13 he has small children. The fact that he has been
14 and up until today, was gainfully employed. And
15 he is a productive member of society that
16 certainly can be reformed and returned to society
17 without any type of danger of this behavior
18 happening again.

19 Your Honor, this is Ms. Lillie Thompson.
20 This is Mr. Belser's mother.

21 MS. THOMPSON: I am Charlie's mother. And
22 I know that sentence that you give him, that he is
23 not guilty. But I raised my son better than that.
24 I don't care what they say, what been done put up
25 against him. I raised him better than that. He

1 didn't come from a background to do what they put
2 on him that he did. He's a better person. We all
3 make mistakes. Get out there, you know, and make
4 mistakes with the wrong crowd. May do the wrong
5 thing, but yet still he was taught better.

6 What they got him accused of, that's what
7 touched my son. That's a big mistake and that was
8 wrong. We are going by what we say and what we
9 told. But the man up above there, God knows all
10 and God sees all. God knows my heart. And God
11 know his heart. God knows he's innocent. I don't
12 care what they say, what went on, I know. I know
13 my son. My son didn't did what they got on him.
14 He's not that kind of person.

15 I'm a mother, Your Honor, of four boys. I
16 raised all of them by myself. This guy and my
17 pastor teach me with them. He grow up in church
18 from a little infant, a little baby. He might get
19 out there, you know, with the wrong crowd, you
20 know, and do things wrong. And get with them and
21 say things or do things. But this is down in his
22 heart. He was taught better. Raised better. He
23 come from a better family.

24 And then our pastor taught him, not on
25 myself. His father didn't been in his life. I

1 raised him and I did a good job. I could pat my
2 own self on my back. All alone, Your Honor, by
3 myself. I didn't have no trouble with my sons but
4 for them doing a little wrong things. But like I
5 say, Your Honor, like I say, it's coming from the
6 bottom of my heart, what they got on him, my son
7 ain't that kind of person. He's got kids of his
8 own, Your Honor. His own. Why would he go out
9 there and threat to a little 14-year-old girl. I
10 don't care what they say. What they put out on
11 him. That's not my son. That's not him.

12 He come from a better family. I raised
13 him. I taught him better. Thank Your Honor, I
14 had four. Four boys to deal with. Thank you,
15 Your Honor.

16 THE COURT: Yes, ma'am.

17 MR. ROBINSON: Your Honor, this is Ms.
18 Carrie Sands. This is Mr. Belser's pastor.

19 PASTOR SANDS: I am Carrie Sands. Monty's
20 pastor. And he was in the church ever since I
21 have known him. His mother always brought him to
22 church. Even when my mom was the pastor there to
23 know Charlie in such accusations being brought
24 against him, for me to speak is unbelievable for
25 me.

1 We all make mistakes. None of us are
2 perfect. Nobody is perfect. And I know we was
3 taught from the doctrine, you know, we have to
4 obey the laws of the land. So the word of God was
5 instilled in Charlie ever since he was child. And
6 for him to say somebody -- for him to say, you
7 know, to rape a 14-year-old child unbelievable.
8 It's unbelievable. And as me being his pastor,
9 he's a faithful member to the church. Always was.
10 Played the drum. Get into the service or
11 whatever. But, you know, just like I say, from
12 what I see, I was here every day. And the little
13 pieces of evidence that they got, is unbelievable.
14 Thank you.

15 THE COURT: Anything else from anybody?

16 MR. ROBINSON: I think that's it, Your
17 Honor. You want to say anything, Mr. Belser?

18 (Whereupon, the Defendant nods in the
19 negative.)

20 THE COURT: Mr. Belser, I assume that your
21 lawyer has advised you that this is considered a
22 violent offense under South Carolina law and a
23 most serious offense. And if you get another most
24 serious offense, you would be looking at life
25 without the possibility of parole. And you have

1 10 days to appeal this conviction and all
2 sentences. And I understand what your mother and
3 your pastor told me. But under the law you are
4 guilty of the crime.

5 You have been tried before a jury and the
6 jury has found you guilty, and I have to treat you
7 so. The Sentence of the Court is you are
8 committed to the State Department of Corrections
9 for a term of 15 years. Good luck to you.

10 MR. ROBINSON: Thank Your Honor.

11 -----End of Requested Transcript of Record----

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the General Sessions Court on January 28th-30th 2013, in Clarendon County, Manning, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

6/13/13
DATE

Margaret T. Sullivan
COURT REPORTER

My Commission expires: 9/7/21

WITNESSES

Ricky Richards Clarendon County Sheriff

DOCKET NO. 2011-GS-14-0480

The State of South Carolina

County of CLARENDON

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

THE STATE

vs.

CHARLIE LAMONT BELSER

ARREST WARRANT NUMBER

MD85988

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

10/6/11

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

CRIMINAL SEXUAL CONDUCT WITH MINOR,
SECOND

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

CLARENDON COUNTY SC
CLERK OF COURT
JAMES H. HARRIS
DATE
OF ORIGINAL FILED IN CLERK'S OFFICE
CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CLARENDON)

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT WITH MINOR, SECOND

At a Court of General Sessions, convened on October 6, 2011, the Grand Jurors of
CLARENDON County present upon their oath:

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 minor numerous times, minor's date of birth: age 14, and that the defendant, date of birth: [REDACTED] 1982, was older than 18 years of age, in violation of Section 16-3-655(2), South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made
and provided.

Solicitor

Ernest A. Finley III

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/30/2015
Brenda H. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

COUNTY OF Clarendon
 STATE VS.
Charlie Lamont Belser
 AKA:
 Race: 2 Sex: M Age: 28
 DOB: 1982 SS#: [REDACTED]
 Address: Cambridge Road
 City, State, Zip: Manning, SC 29102
 DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2011-GS-14-0480
 A/W#: M085988
 Date of Offense: 7/29/2011
 S.C. Code §: 16-03-0655(B)(2)
 CDR Code #: 0397

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Criminal Sexual Conduct with a minor - 2nd Degree (0-20 years)

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-655(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0397
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature]
Durant, Christopher Ryan

78080
 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ca \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fee

Other: _____

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE: 3/30/2015
[Signature]
 CLERK OF COURT
 CLARENDON COUNTY, SC

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

[Signature]
2144
1/30/2013

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Clarendon

IN THE COURT OF COMMON PLEAS

Charlie Belser # 331210
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

CERTIFIED TRUE COPY
OF ORIGINAL FILED IN THIS OFFICE
DATE 3/30/2015

2015-CP-14-0156

Beulah H. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

2015 MAR 27 AM 10:21

BEULAH H. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Turbeville Correctional Inst.
2. Name and location of Court which imposed sentence Clarendon County, Manning S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-65-14-0480
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) January 30, 2013
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 1, 2014 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Charlie Nelson Remittitur Oct. 10, 2014 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel (6th Amendment)
 (b) Due Process Violations (14th Amendment)
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) No investigations / Failed to request direct verdict / Acquitted
 (b) No substantial proof of allegation of charge
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. Direct Appeal
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. S.C. Court of Appeals, Columbia S.C.
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Denied
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. October 1, 2014
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) PCR issues
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? No
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Scott Robinson - P.O. Box 1292 Manning, SC 29102
- ii. Kathrine Hudgins - P.O. Box 11589 Columbia, SC 29211
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Sentencing
- ii. Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
- New Trial / Acquittal
20. Are you now under sentence from any other court that you have not challenged?
- No

STATE OF SOUTH CAROLINA

County of Clarendon

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Charles D. Baker # 331210

SWORN to and subscribed before me this 23rd
day of March, 2015.

Emily H. Hark (L.S.)
Notary Public

My Commission Expires: 4-27-2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Chad Babin #331210
Applicant

SWORN or affirmed to and subscribed before me this
23rd day of March, 2015.

Emily Hodge
Notary Public

My Commission Expires: 4-27-2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	C/A NO: 2015-CP-14-156
	)	
Charlie Belser, #331210,	)	
	)	
Applicant,	)	
	)	FIRST AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, at his request and through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed March 30, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (i) Ineffective assistance of counsel for failing to timely move for directed verdict.
 - (ii) Ineffective assistance of counsel for failing to review defense strategies, evidence and trial strategy with Applicant prior to trial.
 - (iii) Ineffective assistance of prior retained counsel, Charles Barr, for failing to enter an appearance on Applicant's behalf.

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543

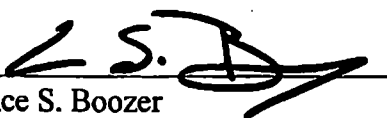
September 30, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF CLARENDON	)	C/A NO: 2015-CP-14-156
	)	
Charlie Belser, #331210,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 September 30, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Charlie Belser, #331210,	)	2015-CP-14-0156
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 30, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was true bill indicted at the October 2011 term of the Clarendon County Grand Jury for criminal sexual conduct with a minor – second degree (2011-GS-14-0480). Scott Robinson, Esquire represented Applicant. Applicant proceeded to a jury trial and was convicted as indicted on January 30, 2013. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to fifteen year term of imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders¹ brief was submitted. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Belser, 2014-UP-335 (Ct. App. filed September 24, 2014). The Remittitur was issued on October, 10, 2014.

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

Attached herewith and incorporated herein are the records of the Clarendon County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate
2. Due Process Violation
 - a. No substantial proof of allegation of charge.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCR.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

[Signature block on following page]

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

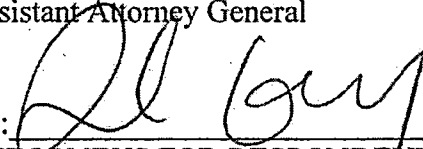
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

May 1, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS

2015-CP-14-0156

CHARLIE BELSER, #331210,
Applicant,

vs

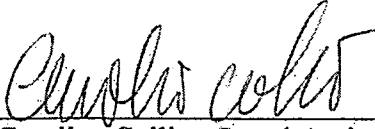
AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,
Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 1st day of May, 2015.


Caroline Collins, Legal Assistant
For Respondent

State of South Carolina)
)
County of Clarendon)

In the Court of Common Pleas
Third Judicial Circuit
2015-CP-14-0156

Charlie Belser,
Applicant,
vs.
State of South Carolina,
Respondent.

Transcript of Record

March 14, 2016
Sumter, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

A P P E A R A N C E S:

Lance S. Boozer, Esquire
Attorney for the Applicant

Daniel F. Gourley, II, Esquire, Assistant Attorney General
Attorney for the Respondent

Reported By:
Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

Transcribed By:
Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

I N D E X

<u>Witness/Description</u>	<u>Page No.</u>
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Direct Examination by Mr. Boozer..	4
Cross-examination by Mr. Gourley..	24
Scott Robinson	
Direct Examination by Mr. Boozer..	29
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>Ev.</u>

No exhibits introduced.

1 MR. GOURLEY: May it please the court, Your Honor?
2 This is *Charlie Belser vs. State of South Carolina*, docket
3 number 2015-CP-14-156. Presently confined in the South
4 Carolina Department of Corrections pursuant to orders of
5 commitment of the Clarendon County Clerk of Court.
6 True-bill indicted at the October 2011 term of the
7 Clarendon County Grand Jury for criminal sexual conduct
8 with a minor in the second degree. Mr. Robinson
9 represented him. Proceeded to a jury trial. Was convicted
10 as a indicted on January 30, 2013. The Honorable R.
11 Ferrell Cothran, Jr., sentenced him to a fifteen-year term
12 of imprisonment.

13 Timely notice of appeal was filed on the applicant's
14 behalf, and an *Anders* brief was submitted. South Carolina
15 Court of Appeals affirmed the applicant's conviction and
16 sentence, and the remittitur was issued on October 10,
17 2014.

18 He subsequently filed a timely application for
19 post-conviction relief on March 30, 2015, alleging
20 ineffective assistance of counsel for failure to
21 investigate, a due-process violation. He filed an amended
22 application on September 30, 2015, alleging additional
23 claims of ineffective assistance of counsel for failure to
24 timely move for a directed verdict, failure to review
25 defendant's strategies, evidence of trial strategies with

1 the applicant prior to trial, and the ineffective
2 assistance of prior-retained counsel for failing to appear
3 on the applicant's behalf. State filed its return on May
4 1, 2015, and he's represented in this matter by Mr. Boozer.

5 MR. BOOZER: Thank you, Your Honor. If it pleases the
6 court? We call Mr. Belser to the stand to testify.

7 CHARLIE L. BELSER, BEING DULY
8 SWORN, TESTIFIES AS FOLLOWS:

9 BAILIFF: Please state your full name and spell your
10 last name for the record.

11 WITNESS: Yes, sir. Charlie Lamont Belser,
12 B-E-L-S-E-R.

13 DIRECT EXAMINATION BY MR. BOOZER:

14 Q. Mr. Belser, how are you doing today?

15 A. Doing fine, sir.

16 Q. Good, and do you know why you're here today?

17 A. Yes, sir.

18 Q. And why is that? What have you filed to get you into
19 this courtroom?

20 A. My PCR.

21 Q. And you filed an application for post-conviction
22 relief?

23 A. Yes, sir.

24 Q. All right. Now, you had a, you had a trial?

25 A. Yes, sir, I did.

C. BELSER - DIRECT EXAMINATION BY MR. BOOZER

5

1 Q. And you were found guilty of criminal sexual conduct
2 second degree and sentenced to fifteen years?

3 A. Yes, sir.

4 Q. All right, and you understand the relief that you are
5 seeking, the only thing this court can do for you is to
6 grant you a new trial, basically have your case start over,
7 correct?

8 A. Yes, sir.

9 Q. And is that what you're asking the court for today?

10 A. Yes, sir.

11 Q. All right. Now, you filed your application, and I
12 want to make sure we got your allegations from your
13 application. You initially filed your application alleging
14 that counsel failed to investigate. Is that correct?

15 A. Yes, sir.

16 Q. You also allege due process violation and no
17 substantial proof of the allegation?

18 A. Yes, sir.

19 Q. And then you filed an amendment and in that amendment,
20 you've alleged that counsel moved timely for directed
21 verdict. Is that one of your allegations?

22 A. Yes, sir, it is.

23 Q. All right. You've also alleged that counsel failed to
24 review your defense or any defense strategies, evidence, or
25 trial strategy with you prior to the trial. Is that an

1 allegation?

2 A. Yes, sir.

3 Q. And you've also alleged that your prior retained
4 counsel, Mr. Charles Barr, failed to enter an appearance on
5 your behalf. Is that also one of your allegations?

6 A. Yes, sir, it is.

7 Q. All right. Who was your trial lawyer?

8 A. My trial lawyer originally was Mr. Charles Barr out of
9 Kingstree.

10 Q. All right. When did you first -- did you hire Mr.
11 Barr?

12 A. Yes, sir. I gave him partially fee that he asked up
13 front to retain him in my case.

14 Q. Did, did you pay that fee, or did you have someone in
15 your family pay that fee on your behalf?

16 A. Yes, sir. My mother paid the fee for me.

17 Q. When you hired him, did you -- were you appointed a
18 lawyer, or did you not have a lawyer when you hired Mr.
19 Barr?

20 A. When I hired him, I didn't have a lawyer when I hired
21 Mr. Barr.

22 Q. Okay. When you hired -- when did you hire Mr. Barr?

23 A. I believe it was the week before general sessions, but
24 when I went to general sessions, that's when they did the
25 trial that day, which I wasn't aware of.

C. BELSER - DIRECT EXAMINATION BY MR. BOOZER

7

1 Q. Had you had any conversations with the lawyer who
2 eventually represented you, Scott Robinson, about this?

3 A. Once in the county jail and once prior when he called
4 me and asked and make sure that I was present for the roll
5 call. He asked me then did I retain another lawyer, and I
6 told him yes, sir. I hired Charles Barr.

7 Q. Okay. Walk me through. When did you find out that
8 you were going to be on the trial roster?

9 A. I originally didn't find out until the day I thought
10 was going to be roll call, and that's when Mr. Robinson
11 came to me. And he was, like, did you hire Charles Barr
12 and I was, like, yes, sir. He was, like, well, you might
13 want to, you know, go downstairs and call him because the
14 state is going to trial today. And when he told me that, I
15 went downstairs, got on my cell phone, and that's when I
16 proceeded to try to get ahold of Mr. Barr, which he wasn't
17 in his office at the time. But I talked to the secretary,
18 and that's when she informed me that he was in another
19 county. He was in, I believe, a civil case in Marion, and
20 she said she would have him contact the court, and it just
21 passed forward to the trial.

22 Q. Okay. Did Mr. Barr ever appear on your behalf?

23 A. No, sir, he didn't.

24 Q. Okay. Who -- and then who ended up representing you
25 at trial?

1 A. Mr. Scott Robinson.

2 Q. All right. How many times had you met with Mr. Scott
3 Robinson prior to your trial?

4 A. Once in the county when I first got booked on the
5 charge and he represented me for a bench warrant, to get
6 the bench warrant lifted.

7 Q. Okay. Did you ever meet with him to discuss this
8 case?

9 A. No, sir.

10 Q. Did you ever meet with him -- you never met with him
11 to discuss anything about this case?

12 A. No, sir.

13 Q. All right. I want to jump ahead a minute, but I want
14 to come back. Eventually what happened with Charles Barr?
15 Did you -- did he ever -- you paid him some money you said,
16 right?

17 A. Yes, sir, I did.

18 Q. Okay. Well, what happened to that money?

19 A. When I contacted my mother when I was in SCDC, she
20 told me that he was refund -- she was refunded the money
21 because he say he didn't get a chance to represent me. So,
22 he gave her the, the money back.

23 Q. All right. Now when you went to trial, did you file
24 or did -- your lawyer at that point, it was Mr. Robinson,
25 right?

C. BELSER - DIRECT EXAMINATION BY MR. BOOZER

9

1 A. Yes, sir.

2 Q. All right. Did Mr. Robinson ask for a continuance on
3 your behalf at trial?

4 A. Yes, sir, he did.

5 Q. Okay, and are you familiar -- have you read the
6 transcript in this case, Mr. Belser?

7 A. Yes, sir, I have.

8 Q. All right.

9 MR. BOOZER: And, Your Honor, just for the court's
10 information, the continuance request will be on --
11 beginning on page 7 of the record.

12 THE COURT: I'm there.

13 MR. BOOZER: Okay.

14 BY MR. BOOZER:

15 Q. Now, do you recall what the basis of Mr. Robinson's
16 motion to continue the case was?

17 A. Yes, sir. I believe his motion for continuance was
18 because he was informing the judge he didn't have a chance
19 to properly sit down and prepare with me for my defense
20 because he was aware that I was represented by Mr. Barr,
21 and I informed him that I hired Mr. Barr. So, he told the
22 judge even though he was familiar with the case, he didn't
23 have the time sit down and properly prepare a defense for
24 me and to talk about me with the case.

25 Q. Did you want Mr. Barr to represent you?

1 A. Yes, sir, because that's who I paid to represent me.

2 Q. Did you know prior to your trial what sort of
3 investigation Mr. Robinson did on your behalf?

4 A. No, sir, I didn't know at all.

5 Q. Did you have any idea what sort of trial strategy you
6 would have for your trial?

7 A. No, sir.

8 Q. Did you know what your defenses were going to be at
9 trial?

10 A. No, sir.

11 Q. Did you review responses to what was called a request
12 for Rule 5 discovery with Mr. Robinson?

13 A. Can you repeat the question?

14 Q. Yes, sir. Do you recall receiving any, any discovery
15 evidence from the state and reviewing that with Mr.
16 Robinson prior to trial or during the trial?

17 A. Yes, sir.

18 Q. Which would it be then? Did you review any evidence
19 with Mr. Robinson prior to trial, or were you reviewing it
20 as it came up at trial?

21 A. As it came out. I believe the Rule 5 was actually
22 mailed to me, but as far as receiving it from him and
23 discussing anything, no, sir.

24 Q. Did you discuss prior to trial whether you would be
25 taking the stand to testify at the trial with your lawyer?

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1 Did you discuss that with him?

2 A. Yes, sir. I believe at the close of the trial was
3 when that was discussed.

4 Q. Not before the trial but during the trial?

5 A. No, sir, not before the trial.

6 Q. Now during, during the trial, do you recall at some
7 point where the state rested its case? Do you recall that
8 happening?

9 A. Yes, sir, I do.

10 Q. All right. When the state rested its case, were you
11 -- obviously you were sitting there next to your lawyer,
12 Mr. Robinson?

13 A. Yes, sir.

14 Q. All right.

15 MR. BOOZER: And, Your Honor, for the court's
16 reference, I'm looking at page 209 of the record on appeal
17 when the state rested its case.

18 THE COURT: Okay.

19 BY MR. BOOZER:

20 Q. Mr. Belser, when, when the state rested its case, were
21 you having any sort of conversation with Mr. Robinson at
22 this point?

23 A. Yes, sir, I was.

24 Q. What was that conversation?

25 A. During the case, during the state's -- I guess with

1 their closing, he looked over at me and he was, like, well,
2 you might be going home today, and I was, like, why is
3 that. He was, like, if they don't present key evidence,
4 which is your age, I'm'll put in a motion for directed
5 verdict of acquittal.

6 At that time, I'm very unfamiliar with the law. I
7 don't know what that meant, but that was his words to me,
8 say if the state didn't put in key evidence, which would be
9 my age -- because up to that point, none of that was in --
10 he say he would have put in a directed verdict of acquittal
11 motion.

12 Q. And, and just by way of background, what was it
13 alleged -- why were you on trial? What was it alleged that
14 you had done?

15 A. Criminal sexual conduct with a minor.

16 Q. And, and the minor was who? Not name but who? Who
17 was the minor related to?

18 A. She was the daughter of a female that I was kind of
19 sort of dating.

20 Q. Okay. You had a relationship with the mother?

21 A. Yes, sir.

22 Q. All right, and it was alleged that she was a minor?

23 A. Yes, sir.

24 Q. All right. What was your understanding of one of the,
25 I guess, the key elements that the state had to prove, and

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1 I'm not talking about then at the trial but now since
2 you've been incarcerated, I guess. You, have you learned a
3 little bit more about the law since you've been
4 incarcerated?

5 A. Yes, sir, I have.

6 Q. All right. What was one of the elements that the
7 state would have had to have proven in its case to find you
8 guilty of CSC second?

9 A. Sexual intercourse or sexual encounter occurred.

10 Q. Okay. Isn't there another prong to that as well
11 regarding the age difference between you and the minor?

12 A. Yes, sir. It has to be proven that she is less than
13 the age of sixteen and proven that I am over the age of
14 eighteen.

15 Q. Okay. When you -- do you know why your lawyer, why --
16 you just said that Mr. Robinson said you may be going home
17 today. Do you know what he was talking about at that time?

18 A. Not at that time, but now after reading and studying
19 the case, I know what he's talking about now.

20 Q. Okay. Now what do you know that he was talking about?

21 A. He was talking about the fact that even though, from
22 my understanding, sexual conduct had to occur, but at the
23 same time one of the prongs is that she be less than
24 sixteen and me be over eighteen. But at that time of the
25 trial, the state never presented anything into evidence of

1 my age or me being over the age of eighteen.

2 Q. All right. So, when the -- they would have to put in
3 evidence that you were over -- that you were older than
4 her, right?

5 A. Yes, sir.

6 Q. At that point, looking back, had they presented any
7 evidence that you were older than the minor?

8 A. No, sir.

9 Q. Okay. Now as we were discussing earlier, the state
10 rested its case, and then what happened after that, after
11 the state rested? Did your lawyer make a motion for a
12 directed verdict at that point?

13 A. No, sir, not at that time. When the state rest, he
14 rested as well and not too familiar the timeframe, but it
15 seems like it wasn't no more than two minutes that the
16 solicitor came back in and immediately asked the state to
17 reopen, to recall Investigator Richards to the stand to
18 testify to my age and me being over eighteen.

19 Q. Let me correct one thing you may have said right
20 there. I think you said that y'all rested at that point as
21 well. That's -- y'all didn't exactly rest then, right?

22 A. I'm pretty sure we did.

23 Q. Okay, but if the court -- if the transcript reflects
24 that y'all didn't rest at that point, you would agree with
25 the transcript?

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1 A. Yes, sir.

2 Q. Okay. Did your lawyer object them trying to reopen
3 the case and recall a witness? Do you recall?

4 A. Yes, sir, I believe he did object to them reopening.

5 MR. BOOZER: And for the court's reference, it's on
6 page 211 of the record.

7 THE COURT: Okay.

8 BY MR. BOOZER:

9 Q. And your lawyer actually did try to make a stringent
10 argument that they shouldn't reopen the case, right?

11 A. Yes, sir, he did.

12 Q. But ultimately what happened, the judge ruled that
13 they could, correct?

14 A. Yes, sir.

15 Q. And then at that point, did Mr. Richards then testify
16 as to your age?

17 A. Yes, sir, he did.

18 Q. And at that point, was there then a motion for a
19 directed verdict that was, that was made?

20 A. No, sir.

21 Q. Well, eventually did your lawyer make a motion for
22 directed verdict?

23 A. Eventually he did.

24 Q. But at this point, it was after the state was allowed
25 to reopen its case?

1 A. Yes, sir.

2 Q. Do you think that -- and it was denied obviously?

3 A. Yes, sir.

4 Q. Do you think that that prejudiced your case?

5 A. I believe it prejudiced it, yes, sir, it did.

6 Q. Okay. Mr. Richards, he actually testified that you
7 were twenty-nine years old at the time of the crime?

8 A. Yes, sir.

9 Q. And there was no other evidence at that point of your
10 age, was there?

11 A. No, sir, it wasn't.

12 Q. Okay. Did you ever discuss your case anymore with Mr.
13 Robinson after your trial?

14 A. I believe -- well, right before I got sentenced I
15 discussed it, but after that, no, sir.

16 Q. Okay. Now, there was also -- there was an expert who
17 testified at your trial. Is that right?

18 A. Yes, sir.

19 Q. Okay, and that was on behalf of the state?

20 A. Yes, sir.

21 Q. Did you have any discussion with Mr. Robinson about
22 the expert testimony that would be presented?

23 A. Yes, sir, I had.

24 Q. When did you have that discussion with Mr. Robinson?

25 A. This was during the course of the trial. It was a

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1 three-day trial, so right when they recessed for the next
2 day, we would meet up, like, in his chamber and he
3 discussed the fact about the secondary transfer.

4 Q. And, and explain sort of what you mean by that,
5 secondary transfer.

6 A. At this time, we was talking about a defense, I guess,
7 to question the fact that he was using the panties and my
8 semen being found in the panties, and he was asking me what
9 other way, form, or fashion could that be other than the
10 state alleging sex, and that's when I told him.

11 I said, well, I'm not denying the fact that me and the
12 mother was in a sexual relationship but totally deny the
13 fact that me and the daughter ever messed around, and I
14 told him. I was, like, me and the mother, not only were we
15 in a sexual relationship. We wasn't using -- and having
16 unprotected sex and I tell him on numerous occasions when I
17 would ejaculate either in her or when I, you know, didn't,
18 I would wipe off with a towel, put the towel in the hamper
19 that is shared with the rest of the household. And I told
20 him I know it's very, very plausible, it's very likely that
21 when I ejaculate into the towel and put it into the hamper,
22 that whatever that was on the towel came in contact with
23 the panties.

24 Q. When were you having this discussion with Mr.
25 Robinson?

1 A. In his chamber -- in, in his office.

2 Q. In his office or in the courtroom?

3 A. In the courtroom.

4 Q. Okay. When did you receive the Rule 5 by mail? Who
5 sent that to you?

6 A. The Rule 5 was sent to me, I believe, by Mr., Mr.
7 Robinson.

8 Q. Okay. Do you know when you received it?

9 A. I knew I was out of jail on bond at the time. So, it
10 was during the course when I finally got a bond, that I was
11 out on bond and I received the Rule 5.

12 Q. Did you say that he represented you at the bond
13 hearing, Mr. Robinson?

14 A. Yes, sir, at the bond hearing he did.

15 Q. Did y'all discuss the case at all at the bond hearing?

16 A. No, sir. Just for me to get a bond.

17 Q. Okay. Were you telling him at that point that you
18 were hiring Charles Barr?

19 A. At that time, I wasn't sure if I was going to hire Mr.
20 Barr at that time because I was still incarcerated in the
21 county jail. So, I didn't retain Mr. Barr until I was
22 bonded out. So, when he represented me for the bond
23 hearing, at no time did I ever mention anything about Mr.
24 Barr.

25 Q. Other than what we've talked about so far, is there

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1 anything that we have not covered with regard to your
2 allegations as they are in your PCR application that you
3 want to bring to His Honor's attention?

4 A. Yes, sir.

5 Q. Okay. Now we're talking about your allegations for
6 your PCR, that support your allegations. What else are you
7 alleging about Mr. Robinson?

8 A. Up under the ineffective assistance of counsel for
9 failure to properly and adequately prepare for trial and
10 prepare my defense.

11 Q. Okay. What, what is it that you think he should have
12 done?

13 A. Subpoena Dr. Keith, who did the initial examination on
14 the minor .

15 Q. Well, did Dr. Keith testify at your trial?

16 A. No, sir. He wasn't there at all.

17 Q. Okay. Who testified at your, at your trial?

18 A. The minor .

19 Q. Well, didn't they have, didn't they have a -- did, did
20 an expert testify?

21 A. Yes, sir. They had multiple experts testifying from
22 the SLED agent.

23 Q. Why was it important that Dr. Keith testify?

24 A. Because he would testify to the findings of no sexual
25 battery that would link me to the minor .

1 Q. Well, did you discuss any of that with Mr. Robinson
2 prior to your trial?

3 A. No, sir. I didn't discuss none of that because I was
4 ignorant to the law; I didn't know anything about that.
5 It's now through my incarceration that -- me studying other
6 cases and studying my case that I seen that was key because
7 Dr. Keith was the one that did the examination on her.
8 Everything that she alleged during the course of the trial
9 he could have contradict because she was alleging oral sex,
10 anal sex, rectal sex. And when I was incarcerated or when
11 I was locked up on these charges, I consented to a buccal
12 swab because like I told them, I told the investigator, I
13 said I have nothing to hide in this thing. I'm not lying
14 about anything that happened. I was, like, I would consent
15 to a buccal swab, that, along with a lie detector test.
16 So, when they did the buccal swab, everything that she
17 claimed happened tested negative with my semen.

18 I mean -- and I kind of find it hard to believe to
19 allege -- not only did she allege sex, but she also alleged
20 unprotected sex. And I'm not, you know, no rookie or
21 anything or virgin to the point where I'm not familiar how
22 sex occurred. There's no way, form, or fashion where you
23 can have unprotected sex with a female and then you not --
24 or you allege ejac -- ejaculation but my semen is nowhere
25 in you, and not only that. They did a pubic combing. My

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1 hair, no nothing was found on this, on this female.

2 Q. Well, did you discuss that with Mr. Robinson prior to
3 the trial?

4 A. I discussed the fact that -- when he told me the only
5 evidence the state was using against me, which was the fact
6 that her panties and my semen being found in the, in
7 panties -- because they never said the minor 's panties.
8 They just said alleged minor 's panties. So, I discussed
9 that.

10 Q. Well, what else do you think that he should have done
11 for you under failure to investigate and prepare for your
12 case?

13 A. I mean, other than calling a forensic expert for the
14 defense to argue the secondary transfer, I also figured he
15 should have retained a expert witness to testify more on
16 secondary transfer and to validate for the defense the
17 likeliness of semen being in the panties because only thing
18 the state was alleging, okay, semen in panties, it had to
19 come from sex, which is very -- there's more reasons to
20 that because -- on top of that. When they tested the
21 panties, yes, they found my semen, correct, but when they
22 tested the female fraction of it, the DNA that was found in
23 it was unsufficient for, for interpretation.

24 Now, I admitted to being in a sexual relationship with
25 the mother. Now according to DNA, the mother and the

1 daughter would share the same DNA. So, they didn't even
2 have the correct interpretation to say the panties even
3 belonged to the daughter.

4 Q. Are you, are you saying that the state's expert
5 through SLED testified that there was, there was a mixture
6 found? They couldn't identify the female. They could
7 identify ---

8 A. Yes, sir.

9 Q. --- it was, it was your DNA?

10 A. Yes, sir.

11 Q. Is that what you're saying?

12 A. As far as the male portion, they could identify my
13 semen, but the female portion, they said it was
14 unsufficient for interpretation, which is telling me you
15 can't necessarily say that it came from the daughter
16 because I admitted to being in a sexual relationship with
17 the mother. I never denied that. What I was denying was
18 never, ever having sexual intercourse with the daughter.
19 So, here you go. You come with me with some panties that
20 supposedly was worn by the daughter.

21 On top of this, when I was arrested for this charge,
22 it was a female officer that responded to the crime scene,
23 along with another male officer. According to protocol,
24 you know you're coming to respond to a CSC case with a
25 minor, with the minor being a female. Investigator

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1 Richards testified that he asked Detective Marlow to go
2 into the residence and receive these panties that was worn
3 by the minor . The female officer never went inside to
4 escort this young girl to make sure that she gave them the
5 panties that was supposedly worn after the assault.

6 Q. Well, what, what do you think your lawyer should have
7 done with regard to that?

8 A. I mean, I just think he should have just tried harder .
9 to, to prove against the secondary transfer.

10 Q. Okay. Other, other than that, was there anything else
11 you feel like your lawyer failed to do to prepare for your
12 case with you or investigate it?

13 A. I mean, I also think that he should have retained
14 another expert witness to discuss the lack of physical
15 evidence of sexual abuse, whereas the only evidence of the
16 sexual battery was the minor 's testimony.

17 Q. Okay, that's where you're talking about Dr. Keith,
18 right?

19 A. Dr. Keith or just any forensic expert period because
20 even the panties didn't prove sex with the minor , and
21 there was no corroborating physical evidence of penetration
22 or any forensic evidence of sexual assault.

23 Q. Anything else?

24 A. The directed verdict motion was ---

25 Q. We talked about that.

1 A. You know, I just, you know, I, I think it was most
2 serious with that.

3 Q. Okay.

4 MR. BOOZER: Your Honor, at this time I don't have any
5 further questions. Thank you.

6 THE COURT: Cross-examination.

7 CROSS-EXAMINATION BY MR. GOURLEY:

8 Q. So, Mr. Belser, Mr. Robinson represented you for an
9 amount of time prior to Mr. Barr representing you?

10 A. Yes, sir.

11 Q. He showed up at your bond hearings and stuff like
12 that?

13 A. Yes, sir.

14 Q. Okay, and during that time, did y'all have any kind of
15 meetings or discuss any evidence or anything like that?

16 A. No, sir.

17 Q. Okay, and then you retained Mr. Barr about a week
18 prior to your general sessions term?

19 A. Yes, sir.

20 Q. And then Mr. Barr just did not show up?

21 A. No, sir.

22 Q. And then Mr. Robinson was put back on your case?

23 A. Yes, sir.

24 Q. Okay. Now during the course of the trial, you had an
25 opportunity to kind of go through the state's evidence with

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25

1 Mr. Robinson?

2 A. Yes, sir.

3 Q. And let me back up, backtrack just a little bit. You
4 were out on bond?

5 A. Yes, sir, I was.

6 Q. When did you get out on bond?

7 A. I believe I was bonded out, believe it was September
8 2012.

9 Q. When did you get picked up on these charges?

10 A. It was August 2011.

11 Q. Okay. So, you sat in county for about a year? Okay.

12 A. Yes, sir.

13 Q. And then you went to trial on, on January 2013?

14 A. Yes, sir.

15 Q. Okay, and then of course during trial, y'all had the
16 opportunity to go through the state's evidence and
17 everything like that?

18 A. Yes, sir.

19 Q. Okay. Did y'all discuss any kind of witnesses or
20 anything? No?

21 A. No, sir, not on the defense part.

22 Q. Okay, and the main defense that you wanted to discuss
23 in your trial was the secondary transfer?

24 A. Yes, sir.

25 Q. That was the only plausible explanation as to how your

1 semen ended up in this girl's underwear, correct?

2 A. That, and the fact that it could have belonged to the
3 mother. The panties is what I'm ---

4 Q. Right.

5 A. --- speaking of, yes, sir.

6 Q. Okay, and you recall your attorney cross-examining the
7 state's expert on the possibility of secondary transfer?

8 A. Yes, sir.

9 MR. GOURLEY: And, Your Honor, that's on page 206
10 through 208 of the record.

11 BY MR. GOURLEY:

12 Q. So, your attorney cross-examined the state's expert to
13 try to elicit some kind of testimony that, hey, secondary
14 transfer is a possibility, right?

15 A. Yes, sir, he did.

16 Q. Okay, and then he also elicited testimony about the
17 fact that -- did -- minor 's DNA could not be matched to
18 these underwear, right?

19 A. Yes, sir.

20 Q. Okay. So, all that was before the jury, correct?

21 A. Yes, sir.

22 Q. Okay, and you told us just a moment ago that you
23 wanted Dr. Keith to come in and testify that your DNA
24 wasn't found on the vaginal, anal, or any other test on
25 this minor, correct?

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1 A. Yes, sir.

2 Q. And actually do you recall Dr. Hornsby -- or, I
3 apologize, Haffney testified that she did those
4 examinations, tested the minor's DNA or -- and tested your
5 DNA and found none of your DNA on any of those tests? Do
6 you recall that?

7 A. Yes, sir.

8 MR. GOURLEY: And, Your Honor, that's on page 195 of
9 the record.

10 BY MR. GOURLEY:

11 Q. So, those tests and the fact that your DNA did not
12 come back as a hit on any of those tests was before the
13 jury, right?

14 A. Yes, sir.

15 Q. Okay, and your other allegation is you didn't receive
16 Rule 5 in a timely fashion. Is that what you were saying?

17 A. Yes, sir.

18 Q. Okay, and what about that? You just felt like you
19 should have gotten it further in advance and had an
20 opportunity to review it with Mr. Robinson prior to your
21 trial?

22 A. Not necessarily just to review with Mr. Robinson, but
23 just to have the facts at hand altogether.

24 Q. Okay, so you could have a -- more understanding and
25 knowledge of your case prior to trial?

1 A. Yes, sir.

2 Q. Do you remember when he mailed your Rule 5 to you?

3 A. No, sir, but I, I do know when I received it, I was
4 out on bond. So, it had to been during the course of time
5 when I was out.

6 Q. Okay, and with the directed verdict motion, I'm trying
7 to understand your argument here. You, you felt like Mr.
8 Robinson should have immediately moved for a directed
9 verdict after the state rested, right?

10 A. Yes, sir.

11 Q. Okay, and obviously the state made a motion to reopen
12 the record; your attorney objected to that. The judge
13 denied his objection or overruled his objection, at which
14 point the state was allowed to reopen the record, correct?

15 A. Yes, sir.

16 Q. And they presented your age. At that point they
17 rested, and then your attorney made the directed verdict
18 motion, right?

19 A. I believe so.

20 Q. But your argument here today is immediately following
21 the state's resting of the case, he should have then made a
22 directed verdict motion the first time the state rested?

23 A. Yes, sir.

24 Q. Okay.

25 MR. GOURLEY: Thank you, Mr. Belser. I have no

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1 further questions, Mr. Belser.

2 Thank you, Judge.

3 THE COURT: Any redirect?

4 MR. BOOZER: No redirect, Your Honor.

5 THE COURT: Thank you. You may step down.

6 WITNESS: Thanks.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Call your next witness.

9 MR. BOOZER: Thank you, Your Honor. We call Mr. Scott
10 Robinson to the stand, please.

11 SCOTT L. ROBINSON, BEING DULY

12 SWORN DULY, TESTIFIES AS FOLLOWS:

13 BAILIFF: State your full name. Spell your last name
14 for the record.

15 WITNESS: Scott Robinson, R-O-B-I-N-S-O-N.

16 DIRECT EXAMINATION BY MR. BOOZER:

17 Q. Good morning -- or afternoon, Mr. Robinson. How are
18 you doing?

19 A. Good afternoon. Fine.

20 Q. Were you appointed to represent Mr. Belser in this
21 case?

22 A. I was.

23 Q. Okay. When were you appointed to represent him?

24 A. I really don't recall. Shortly after his arrest or
25 shortly after whenever he applied for a public defender.

1 Q. Do you know how many times you met with him prior to
2 the, the trial date?

3 A. Not exactly. I do recall -- I would say six to eight
4 at least. He had -- can't remember whether his bond was
5 initially denied or set very high. So, we had several
6 because, as he told you, he was incarcerated for over a
7 year on these charges because of something related to the
8 bond, whether it was denied or he couldn't make it. So, we
9 had several bond reconsideration hearings during that time,
10 and I went to visit him at the detention center and then,
11 you know, obviously talked to him when he was brought up,
12 as well as I had a number of conversations with his mother
13 about the, the case, getting him out on bond and things of
14 that nature.

15 Q. Would those be conversations more geared to the bond
16 issue?

17 A. The ones with the mother certainly would be, although
18 she did offer her opinion and, and information that she had
19 about the case and why Charlie had been charged, but I did
20 not reciprocate with any information to her.

21 Q. Now, eventually did you make -- you appeared for him
22 at -- or with him at trial. Is that right?

23 A. Correct.

24 Q. And you made a motion for a continuance on his behalf.
25 You recall doing that?

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1 A. I imagined I would. I don't specifically recall that,
2 but if he said he hired somebody else and wanted another
3 lawyer there, I certainly would have made a motion for a
4 continuance.

5 MR. BOOZER: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 MR. BOOZER: Thank you.

8 BY MR. BOOZER:

9 Q. Mr. Robinson, I'm going to hand you a copy of the
10 record on appeal. Do you need some glasses or ---

11 A. I might. I'm all right for right now. I left mine in
12 Manning. We'll get through it.

13 Q. Okay. If, if you would, could you take just a moment
14 and look at specifically page 8?

15 (A PAUSE.)

16 A. All right.

17 Q. I'm going to grab that back from you and ask you a few
18 questions about it. Were you able to see that okay?

19 A. Yes, I was.

20 Q. Okay. In your, in your motion, your oral motion, you
21 stated to the court:

22 I think we spent some time discussing -- I think
23 he spent some time discussing this matter with
24 Mr. Barr perhaps but, quite frankly, he and I
25 have not sat down and properly prepared this

1 matter because he told me his family had retained
2 Mr. Barr.

3 Had you had any conversations with either Mr. Belser
4 or his mother about him retaining Mr. Barr to represent
5 him?

6 A. The best of my recollection, I would have. Typically
7 what happens when the they -- the solicitor's office
8 notifies us that a -- on an upcoming term of court, they
9 give us a trial list, a list of names. We then -- or the
10 secretary does, sends out a letter and says your case is up
11 for trial. You need to contact us right away. Didn't hear
12 from Mr. Belser. So, talked with solicitor, as I usually
13 do. We have a number of trials, and the reality is there's
14 no way possible to get to all of them. So, we always kind
15 of have a little conversation about, you know, what's
16 realistically on the trial list.

17 When it came to my attention Mr. Belser was on the
18 trial list, I, I called -- I don't remember whether it was
19 his mother or -- it was probably his mother's number
20 because I'm not sure I had one. Anyway, prior to the, the
21 day of trial, my assertion was we need to sit down and talk
22 about this. You're on the trial list and they are serious
23 about calling your case, and I was told don't worry about
24 it. We've hired Mr. Barr.

25 Q. Okay. At that point, did you think then that you were

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1 no longer going to be his lawyer and Mr. Barr was going to
2 then ---

3 A. Well.

4 Q. --- step in?

5 A. That wouldn't be the first time that somebody has
6 thought that and not been correct, but if, if that's their
7 position, you know, I certainly didn't go any further
8 trying to make them come in because I didn't want to talk
9 to another attorney's client without his permission at that
10 point. So, I, I left it alone.

11 Q. Let me ask you this. Did you have any personal
12 discussions with Mr. Barr about him representing Mr.
13 Belser?

14 A. Not prior to the day of trial. Now, I was privy to --
15 and I don't remember whether I spoke with Mr. Barr or was
16 in the room when a conference call was made trying to
17 ascertain where he was and what he was doing, but no, not
18 prior to that. I don't think I talked with Mr. Barr about
19 this case, that I can recall.

20 Q. Did y'all have some sort of conversation that day with
21 regard to where Mr. Barr was or...

22 A. Again, I don't remember whether I got it directly from
23 Mr. Barr or was told what his secretary said, but it was my
24 understanding that day that he was in court in another
25 jurisdiction at the time we were getting ready to go

1 forward with Mr. Belser's case.

2 Q. In looking back at the -- your motion for continuance
3 on page 8, you go on to say that:

4 Quite frankly, he and I have not sat down and
5 properly prepared for this matter because he told
6 me his family had retained Mr. Barr. He was
7 under the assumption that Mr. Barr would be here
8 to represent him today. So, I'm familiar with
9 the case but, quite frankly, as far as given --
10 being -- being given the opportunity to talk with
11 Mr. Belser, that has not occurred.

12 Skip down a few lines to line 19:

13 So, he and I have not had a chance to prepare
14 together for this case.

15 Had you -- tell me a little bit about sort of what was
16 going on and what conversations or preparation you had made
17 with, I guess, Mr. Belser.

18 A. And it's honestly my -- and I certainly could be
19 wrong, but my recollection was that he had discovery prior
20 to his release from the detention center, and that on a
21 couple of occasions I went down there to communicate an
22 offer to him that the solicitor's office had made of, of
23 ten years. And we even discussed perhaps that it may have
24 worked out if we could do it as an assault and battery
25 charge as opposed to a CSC so the 85 percent parole thing

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1 would not have been activated so it wouldn't necessarily --
2 he wouldn't have to register as a sex offender.

3 I, I talked with him about that on several occasions.
4 I talked with the solicitor about that on several
5 occasions, and he and I did have substantive conversation
6 about, you know, the -- I remember specifically talking
7 about the forensic interview and that information and, and
8 just conversations about things that he thought would be
9 helpful that I didn't think necessarily we would be able to
10 get into court that weren't admissible because of hearsay
11 or the rape shield or, or things of that nature. So, we
12 had talked about it.

13 But in my motion, what we had not done -- no matter
14 how many times I've met with a client, if I know your trial
15 is coming up, the final preparation, sit down. Okay, are
16 you testifying? What are you going to say? Do I have the
17 witnesses? Things like he was talking about, Dr. Keith
18 being mentioned, we had not had those precise -- you know,
19 all right, here's our final prep. Who do you want on the
20 witness list? That kind of stuff versus talking in
21 generalities and answering legal and strategic questions
22 about the trial.

23 Q. And I guess that kind of goes to sort of my next
24 question, or I should have asked this before. Page 9 you
25 go on to tell the court: And that he and I have not

1 prepared. And skipping a couple of lines: I don't want to
2 try someone else's case. Is that what you are referring
3 to?

4 A. Right. I mean, like I said, we had talked about the
5 -- all the facts, all the evidence, but more in -- more in
6 terms of, you know, what plea would be reasonable, if a
7 plea would be reasonable, you know. What steps we should
8 take moving forward if he didn't go forward with a plea,
9 but as far as sitting down and going over the last minute
10 -- you know, go get Dr. Keith, things of that nature we had
11 not done, which I would usually have, like I said, in the
12 couple of weeks immediately leading up to that, just kind
13 of going through the fine details. He and I had not had
14 that last, you know, fine detail prep.

15 Q. Did y'all discuss any sort of trial strategy, kind of
16 what you were alluding to with witnesses and whatnot?

17 A. Well, it's, it's funny. Again, we talked about things
18 like the forensic interview and the, the fact that -- you
19 know, we looked over the SLED report where DNA was found
20 and, and more particularly not found. Didn't really get
21 into discussion about the need for additional experts
22 because, you know, our discussions were that clearly their
23 experts had noted this, and they would certainly have to
24 testify. If they didn't come testify, none of that
25 evidence came in. If they came and testified, they would

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1 certainly have to admit that, you know, his DN -- or her
2 DNA wasn't in her own panties and, you know, there were no,
3 no -- none of his DNA found in any of the swabs or things
4 of that nature. So, you know, we did, we did discuss that.

5 Q. Did you do any sort of independent investigation into
6 the case prior to trial?

7 A. I did. I talked with -- I don't remember the
8 gentleman's name, but I talked with a DNA expert. I called
9 the Sumter office and got a number for somebody that we had
10 used in the past to discuss the secondary transfer issue
11 and actually got him to, to help me, you know, come up with
12 some questions that he thought would be appropriate that
13 the -- basically the expert would have to answer, you know,
14 only a certain way because they were, you know, universally
15 true and, and did that, yes.

16 Q. Okay. Are you fairly familiar with the transcript if
17 I ask ---

18 A. I honestly haven't read it but, I mean, I've kind of
19 glanced at portions of it, but I -- I'll do whatever you,
20 you, you want me to do.

21 MR. BOOZER: May I approach, Your Honor?

22 THE COURT: You may.

23 MR. BOOZER: Thank you.

24 BY MR. BOOZER:

25 Q. All right, Mr. Robinson, if you would take a look at

1 -- that's page 208 of the record.

2 A. 208?

3 Q. 209 of the record on appeal. Just take a moment and
4 take a look at that, and I'll just point you in the
5 direction. That's where the state rested.

6 A. The first time?

7 Q. Yes, sir.

8 A. Okay. I, I did glance over that part of it.

9 Q. Okay. If you would, kind of take us back to that
10 moment at the time that the state rests.

11 A. Okay.

12 Q. At that time, is there any evidence, is there anything
13 in evidence that would indicate Mr. Belser is older than
14 the minor?

15 A. No, and, and Mr. Belser's testimony is, is very
16 accurate. I don't remember exactly what I told him, but I
17 -- he and I -- I remember writing on my, my note, my trial
18 notepad and having some discussion with him as they were
19 preparing to rest. I don't know if I said you might be
20 going home, but I said we might have an answer or a chance
21 or something, or I may have said you might be going home
22 because they had not put in any evidence -- basically they
23 had proved half of what was statutorily required but had no
24 evidence of the, the other half, and that particular part
25 was what was alleged in the indictment. There was no other

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1 allegation in the indictment.

2 Q. And, and what, what was that allegation?

3 A. That he had had sex with somebody under the age of
4 sixteen and he was over the age of eighteen.

5 Q. So, it wasn't based on, I guess -- is there another
6 part of the CSC second statute where you can be in a
7 custodial ---

8 A. Right. It's, it's an either/or. Either you have to
9 be that age, or you're in a position where you're kind of
10 using that position to coerce, you know. It's not
11 necessarily a forcible rape kind of situation, but you've
12 used your position improperly.

13 Q. And is that what you were on notice for as far as the
14 trial was concerned? That's what the state was alleging?
15 Not that he had this custodial relationship ---

16 A. Right, that it ---

17 Q. --- but he was older?

18 A. That it was because he was older, correct.

19 Q. So his age, was that an essential element ---

20 A. In my ---

21 Q. --- that they would have to prove?

22 A. In my opinion, it was.

23 Q. Okay. Now, obviously the record reflects that the
24 state rests, and at that point no motion for directed
25 verdict is, is made, and then I'm not sure. You'll have to

1 fill us in. How much sort of time is elapsing before the
2 state decides that they want to try and reopen ---

3 A. Well, what happened was ---

4 Q. --- the case?

5 A. The state rested and then before we did the directed
6 verdict motions, the judge decided to take a break. I
7 think it was a bathroom break. I think the, the transcript
8 actually said a three to four-minute break. We all know
9 in, in trial terms three or four minutes means about ten or
10 fifteen minutes, but it was a, a brief break literally.
11 And my intention was, as soon as we came back in the
12 courtroom, was to do the directed verdict motion. It, it
13 wasn't that I opted not to do it. It was as the state
14 rested, judge said all right, let's take a little break and
15 then when we came back, he asked to reopen before I could
16 begin the directed verdict motion, but it was my intention
17 to make it at that point.

18 Q. Looking at the transcript and, and what we talked
19 about with, you know, the elements of this crime -- well,
20 let me, let me backtrack. Eventually the state was allowed
21 to reopen the case?

22 A. Eventually, yes.

23 Q. Why did they want to reopen the case?

24 A. Obviously to put in his age.

25 Q. And who did they then call to do that?

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1 A. They call -- and I -- they called Ricky Richards. I
2 don't whether he was the lead investigator or -- he was the
3 one that gathered the buccal swab, and basically what they
4 did, in my opinion, was bootstrap some hearsay in because
5 he had been re-mirandized for the buccal swab, although
6 they didn't have any proof of that. He signed a waiver of
7 rights and voluntary gave the buccal swab, and then at that
8 point during the process, the officer testified that he had
9 affirmed the information on the incident report.

10 The incident report is how they first tried to get it
11 in, and I objected because that -- Officer Richards did not
12 prepare the incident report, and I objected to that as
13 hearsay.

14 Q. Now, it'd be fair to say you made some pretty
15 strenuous objections to them reopening the case, right?

16 A. It took them about an hour and a half to get Mr.
17 Belser's birthday into the record, yes.

18 Q. But eventually -- and this is on page 256 with, with
19 Investigator Richards. He actually testifies that Mr.
20 Belser gave him the date of birth, which was [REDACTED]/82, and
21 that satisfied the age requirement?

22 A. According to the judge it did, yes.

23 Q. Okay.

24 A. He ruled that it did.

25 Q. Okay. Going back to when the state rested, had you

1 been able to -- or had you made the motion for directed
2 verdict at that moment or any time before the state went to
3 reopen the case, however long that timeframe may have been,
4 do you think the judge would have had to have granted the
5 motion for directed verdict?

6 A. Well, certainly I don't think he would have had to.
7 That's always in his discretion. I think that we had a
8 very valid argument for the granting of a, of a directed
9 verdict.

10 You know, if the state had not made the motion to
11 reopen now, if, if I had stood up and said Your Honor, at
12 this time I'm ready to go forward with the directed verdict
13 before he decided -- if -- in other words, if he had
14 decided not to take a break, I don't know when it would
15 have triggered in the state's mind -- you know, obviously
16 some time between when they rested and when we came back in
17 the courtroom, they had an epiphany that they needed to
18 recall this witness because they did not have any
19 discussions with me. And I don't know whether they
20 overheard me talking to Mr. Belser or, you know, if they
21 just realized in preparing for a directed verdict that they
22 hadn't done something. I really don't know.

23 Q. That's what I was going to ask you. Do you have any
24 idea how sort of this epiphany came about?

25 A. I really do not know.

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1 Q. Were you, were you chatting with Mr. Belser about,
2 hey, I'm about to make this motion? I think ---

3 A. Yeah.

4 Q. --- we got a good chance?

5 A. As you said, we had that conversation. I didn't think
6 we had had it long -- loud enough for the opposing -- for
7 the solicitor to hear us, but I guess that's a possibility.

8 Q. And eventually did you request a motion for directed
9 verdict at the end of the state's case after they reopened?

10 A. I did.

11 Q. And that was, of course, denied at that point?

12 A. Right, because they had kind of cured the major
13 defect.

14 MR. BOOZER: Court's indulgence, Your Honor?

15 THE COURT: All right.

16 (A PAUSE.)

17 BY MR. BOOZER:

18 Q. Mr. Robinson, did you file the notice of appeal for
19 Mr. Belser in this case here?

20 A. I filed the notice of intent.

21 Q. Okay. Did you have any conversation with his
22 appellate lawyer after this case?

23 A. I honestly don't remember. I may have. If I did, it
24 was only one time. Sometimes they'll email me and just
25 say, you know, was there any other things that happened

1 besides these days or was anything of particular note, and
2 I really honestly do not recall in Mr. Belser's case
3 whether that happened or did not happen.

4 Q. Okay. So, you don't have any recollection of any
5 specifics that you would have spoken about with the
6 appellate defender?

7 A. I mean, obviously I was a bit upset about the, the
8 directed verdict motion and the way they were able to get
9 his age in. And there was some concern that I had about
10 the -- not being able to get the forensic interview in or
11 some portion of that because of the -- basically the
12 solicitor's opening statement. And if, if they called me,
13 that's what I would have surely certainly shared with them.

14 Q. Okay.

15 MR. BOOZER: Your Honor, I don't have any other
16 questions at this time.

17 Thank you, Mr. Robinson.

18 WITNESS: Thank you.

19 THE COURT: Cross-examination?

20 MR. GOURLEY: Thank you, Judge. May it please the
21 court?

22 CROSS-EXAMINATION BY MR. GOURLEY:

23 Q. Mr. Robinson, how long have you been practicing law?

24 A. November was twenty years.

25 Q. And you don't recall specifically when you were

1 appointed to this case?

2 A. I have no clue.

3 Q. Fair to say sometime shortly thereafter he was
4 arrested?

5 A. Well, shortly after he applied for a public defender,
6 whenever that would have been. It -- within a month.

7 Q. Okay, and at what point did you come to learn that Mr.
8 Barr had been retained to represent Mr. Belser?

9 A. A week or two before the trial.

10 Q. Okay. So, leading up to a week or two prior to the
11 trial, you had met with Mr. Belser and gone over some of
12 the evidence, so on and so forth?

13 A. Yes.

14 Q. Okay, and if I understood your testimony correct, had
15 Mr. Belser not notified you that he had retained Mr. Barr,
16 you'd have kind of done, like, a final get together?

17 A. Right. Well, that's why I was calling. That's how I
18 found out. I was calling to get him to together to ---

19 Q. Okay.

20 A. --- get the final preparations done, and he said I've
21 got Mr. Barr.

22 Q. Okay, and so based off of him telling you he's got Mr.
23 Barr, you kind of put it off to the side at that point?

24 A. Well, I couldn't make him talk to me.

25 Q. Yes, sir, and when did you come to learn -- or how,

1 how did it happen to be that you were present during Mr.
2 Belser's start of the trial?

3 A. Because there are two public defenders in Clarendon
4 County and we, we better be there when court starts. We're
5 expected to be there. I was there and I knew if, if
6 something happened, if Mr. Belser pled out or Mr. Barr got
7 a continuance, I probably was next on the list with another
8 case, quite frankly.

9 Q. Okay.

10 A. So, we're there every term of court unless we have a
11 PCR hearing or something that we ---

12 Q. Yes, sir.

13 A. --- are called away for.

14 Q. Yes, sir, and at that point in time, the judge
15 reappointed you, I guess?

16 A. Well, he never unappointed -- I mean, it basically --
17 when, when Mr. Belser got there alone, I tried to go talk
18 to him and he said I don't need to talk to you. Mr. Barr
19 is my lawyer, and I explained to him they are calling your
20 case first right away.

21 Q. Right.

22 A. He basically refused to talk to me. At that point I
23 went and advised the judge what was going on, and he said
24 get in touch with Mr. Barr and things transpired from
25 there. But I, I never made a motion to be relieved.

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1 Q. Okay.

2 A. Because without some letter from Mr. Barr or some
3 assertion on his part, I'm not getting out of it. I've
4 been doing it long enough to understand that.

5 Q. I understand. At that point in time, you requested a
6 continuance?

7 A. I did.

8 Q. Okay, and you stated your basis for that. I think Mr.
9 Boozer's been over that, but basically asserting that you
10 had not had an opportunity to do a final preparation with
11 Mr. Belser?

12 A. Correct.

13 Q. Okay. Do you recall at what point in time you had
14 sent Mr. Belser the Rule 5 information?

15 A. I, I don't. I don't usually send it out, like I said.
16 Typically what happens -- and it may have been a little bit
17 later because of the volume of Mr. Belser's discovery, but
18 typically when the secretary gets it in ---

19 Q. Yes, sir.

20 A. --- she scans it in and, and makes a copy and, and
21 sends it out. And like I said, his may have been delayed
22 somewhat, and I want to say honestly I hand delivered it,
23 but I'm, I'm not 100 percent positive about that.

24 Q. Okay, and when your -- your direct testimony, you
25 talked about that you had contacted an expert to discuss

1 the possibility of a secondary transfer?

2 A. That's correct.

3 Q. Okay, and is there a particular reason why you did not
4 have that expert come in and testify?

5 A. Basically the, the conversation I had is I didn't need
6 it.

7 Q. Okay.

8 A. That I could have, could have gotten and did get, in
9 fact, the state's expert to admit everything that he could
10 have testified to, in my opinion. I mean, he certainly
11 would have come had I needed him to, but it -- you know,
12 when you don't have the battle of the experts, it looks
13 better. If you can get the state's expert to say what you
14 want them to say, then, you know, I, I think that's better
15 for our case.

16 And, you know, one of the things that I do is, is --
17 unless there is a -- an overbearing reason to have an
18 expert or to put on somebody, I try not to put up any
19 witnesses so we always get the last argument.

20 Q. Okay, and is that kind of the same thought process
21 going on with why Dr. Keith did not come in and testify?

22 A. I, I honestly don't know what Dr. Keith would have
23 said that the other doctor didn't say. I mean, on the form
24 or the report it just said, you know, these swabs were done
25 and nothing was found. And for Dr. Keith just to repeat

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1 that and us to lose -- I mean, he couldn't have opined
2 anything from that beyond what the SLED expert did. So, I,
3 I just didn't see any need for it. Plus, Mr. Belser didn't
4 ever mention Dr. Keith to me, as I think he said in his
5 direct.

6 Q. What was y'all's overall trial strategy in this case?

7 A. Well, it was interesting because, you know, secondary
8 transfer was obviously a big thing to him and that he and I
9 had previously discussed, and I guess that was kind of the
10 main thing. And at trial, obviously the age thing became a
11 factor more so for the directed verdict than the quote
12 unquote trial strategy. But I guess the, the secondary
13 transfer was about it.

14 Now, Mr. Belser's mother had advised me of some, some
15 information that, that she thought might be explanatory,
16 but I honestly don't think it would have been admissible
17 that the mother of the minor , Mr. Belser's girlfriend, was
18 seeing men other than Mr. Belser and they were being
19 allowed to do things with the girl, but that ---

20 Q. Okay.

21 A. --- would not have explained his semen in her panties.
22 So, I didn't really do a lot with that.

23 Q. Okay. Regarding the directed verdict motion, it
24 wasn't a situation where you opted not to make your motion,
25 correct?

1 A. No. I mean, I, I hadn't forgotten. I knew it's --
2 just like I said, the state rested and judge said let's
3 take a break. And so, you know, there's nothing unusual
4 about that if we had been in there for a while prior to the
5 state resting. And based on the time given, I'm assuming
6 it was a bathroom break for somebody specific, whether it
7 was the judge or the court reporter, because he said three
8 or four minutes, but...

9 Q. And, and you objected to the state being allowed to
10 reopen the argument?

11 A. Correct.

12 Q. And it's within the judge's discretion of whether or
13 not he's going to allow the state to reopen their case,
14 correct?

15 A. I would certainly assume so.

16 Q. Just one final question, Mr. Robinson. Did you feel
17 you were prepared to try this case?

18 A. Oh, yeah. I mean, other, like I said, than the, the
19 particular details that Mr. Belser is complaining about ---

20 Q. Right.

21 A. --- today, the overall framework of the case, yes.
22 Trying it to his satisfaction with his witnesses and things
23 like that, perhaps not because I didn't know who they were,
24 but as far as being able to try the case, yes, certainly.

25 MR. GOURLEY: All right. Thank you, Mr. Robinson.

1 Thank you, Judge.

2 MR. BOOZER: No, no further questions, Your Honor.

3 THE COURT: Thank you. You may step down.

4 WITNESS: Thank you, Your Honor.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: You may call your next witness.

7 MR. BOOZER: No witnesses, Your Honor.

8 THE COURT: Applicant rests.

9 MR. GOURLEY: No witnesses from the state, Judge. No
10 witnesses from the state.

11 THE COURT: All right. Be glad to hear arguments.

12 MR. BOOZER: Thank you, Your Honor. If it pleases the
13 court? Judge, I think he's got -- Mr. Belser does have an
14 interesting case with regard to the first issue of him
15 testifying that he retained Mr. Barr, and he thought that
16 that's who was going to represent him.

17 Now, I, I do understand that there's some issues with
18 timing and whatnot and what was being communicated back and
19 forth. But the record clearly reflects that Mr. Robinson
20 made a motion for continuance on his behalf and basically
21 stated to the court, as the record indicates, that he
22 hasn't had the time to prepare with his client the way that
23 he'd like and didn't want to try someone else's case.

24 Additionally, Your Honor, I, I think that in a case
25 like this, he should have the opportunity to have that

1 final preparation and have that final meeting with your
2 lawyer to, to know what your trial strategy is going to be
3 and to know what witnesses are going to be called and know
4 if you're going to testify or not, or at least that you
5 have an option to do that and not do so while you're
6 sitting there in the, in the moment of trial trying to
7 review all -- trying to review evidence and, and your trial
8 strategy.

9 Judge, additionally and most importantly, I think, is
10 the issue of the directed verdict. I believe based on
11 what, what the indictment was alleging, as well as the
12 evidence that was being presented at trial, had that motion
13 been made at that time -- and I understand that there was
14 some time that elapsed between the state resting and then
15 them reopening the case. I'm not quite clear on how much
16 time elapsed, but had it been made, it may have been very
17 well that the judge would have granted that motion for a
18 directed verdict, especially where one of those essential
19 elements is, is lacking, and the state went so far as to
20 have to reopen the case to get that in there. And without
21 that, I don't know that this would have ever gone to a
22 jury.

23 So, I think that you could certainly show, one, the
24 ineffectiveness or failing to timely make that motion.
25 But, two, the prejudice prong would certainly be there

1 where there is an opportunity that the case could be
2 absolutely dismissed at that point. And, and he did not
3 have that opportunity because the motion for directed
4 verdict wasn't made until after the state reopened the case
5 and had this testimony where this essential element came
6 in. For these reasons, I believe that -- or Mr. Belser
7 should be entitled to a new trial.

8 THE COURT: Thank you, sir.

9 MR. GOURLEY: Thank you, Your Honor. In regards to
10 the first couple of allegations, the failure to investigate
11 and failure to raise defense, I believe it was Mr. Belser's
12 testimony that Mr. Robinson was ineffective for failing to
13 secure a couple of experts to elicit various testimony. I
14 would submit to the court that all the testimony that Mr.
15 Belser wanted elicited came from the trial. I believe that
16 Mr. Robinson thoroughly cross-examined the state's expert
17 and was able to elicit anything and everything that a
18 potential expert could, could provide.

19 And regarding the failure to timely move for a
20 directed verdict, as Mr. Robinson stated, the state rested.
21 Judge -- a break was taken, at which point the state then
22 made a motion to reopen the record. Of course that's
23 within the judge's discretion at that point in time, and I
24 would submit to the court that any allegation that that,
25 you know, was an abuse of discretion or anything like that,

1 that's certainly a direct appeal issue that could have been
2 raised on appeal.

3 I certainly don't think Mr. Robinson was ineffective
4 in any way whatsoever for making a directed verdict motion
5 at the appropriate time, regardless of when that may have
6 been. He certainly made the appropriate directed verdict
7 motion, and going back to that, he objected. He made a
8 strenuous argument against it, preserved that argument for
9 appeal, and that's certain that -- certain -- something
10 that could certainly be raised on direct appeal.

11 In regards to Mr. Barr failing to appear, Your Honor,
12 Mr. Robinson had represented Mr. Belser for a certain
13 amount of time prior to Mr. Barr being retained a week
14 before trial. I would submit to the court that Mr. Belser
15 and Mr. Belser alone was the only person that put himself
16 in that position, retaining an attorney the week before
17 trial. Thankfully Mr. Robinson was there to be present and
18 had met with Mr. Belser prior to. But certainly Mr.
19 Robinson can't be faulted for Mr. Belser's actions of
20 retaining an attorney at the last moment. And for those
21 reasons, Your Honor, I would submit to the court that this
22 PCR application should be denied.

23 RULING OF THE COURT:

24 THE COURT: You know, at first blush you understand
25 why the applicant feels as though he, he should have a new

1 trial. But once you hear all the specifics of how things
2 occurred -- in other words, I guess things aren't always as
3 they seem, not at first blush, because I ultimately do
4 agree with the argument and the position taken by the state
5 in this case, and for those reasons am required to deny
6 application for post-conviction relief.

7 Mr. Gourley, would you please prepare an order?

8 MR. GOURLEY: Yes, Your Honor.

9 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE PROVIDED TO ME BY MARYANN S. NEVERS AND INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CLARENDON COUNTY, SOUTH CAROLINA, ON THE 14TH DAY OF MARCH, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

DECEMBER 14TH, 2016

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Charlie Belser, #331210,

2015-CP-14-0156

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

DEULAY P. ROBERTS
CLERK OF COURT
CLARENDON COUNTY, SC
2016 APR -8 AM 11:05

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 30, 2015. Respondent made its return on May 1, 2015. An evidentiary hearing in to the matter was convened on March 14, 2016, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

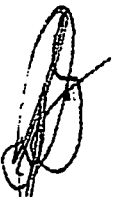
PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clarendon County Clerk of Court. The Applicant was true bill indicted at the October 2011 term of the Clarendon County Grand Jury for criminal sexual conduct with a minor – second degree (2011-GS-14-0480). Scott Robinson, Esquire represented Applicant. Applicant proceeded to a jury trial and was convicted as indicted on January 30, 2013. The Honorable R. Ferrell Cothran, Jr., sentenced Applicant to fifteen year term of imprisonment.

**CERTIFIED COPY
OF ORIGINAL FILED IN THIS OFFICE**

DATE 8/8/2016

Deulay P. Roberts
CLERK OF COURT
CLARENDON COUNTY, SC



A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Belser, 2014-UP-335 (Ct. App. filed September 24, 2014). The Remittitur was issued on October, 10, 2014.

ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate
2. Due Process Violation
 - a. No substantial proof of allegation of charge.

Applicant filed an amended application on September 30, 2016, alleging he was being held unlawfully based on the following allegations:

1. Ineffective assistance of counsel.
 - a. Failing to timely move for directed verdict.
 - b. Failing to review defense strategies, evidence, and trial strategy with Applicant prior to trial.
 - c. Ineffective assistance of prior retained counsel, Charles Barr, for failing to enter an appearance on Applicant's behalf.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Scott Robinson, Esquire. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Clarendon County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he filed a post-conviction relief application seeking a new trial. Applicant stated that he was out on bond for approximately a year and half prior to his trial. Applicant stated he was initially represented by Trial Counsel.

During the course of Trial Counsel's representation, Applicant stated he retained Charles Barr, Esquire. Applicant stated that he retained Mr. Barr approximately one week before trial. Applicant stated that Mr. Barr failed to appear for the start of his trial. Applicant stated that he learned Mr. Barr was in another circuit and would not be appearing for his case. Applicant stated that he never discussed his case with Mr. Barr.

Applicant stated that Trial Counsel was in the court room and continued his representation of Applicant. Applicant stated that Trial Counsel requested a continuance because they had not met the week leading up to trial. Applicant stated that Trial Counsel told the court that they had not had a chance to properly prepare for trial. Applicant stated that the trial judge denied Applicant's motion for a continuance. Applicant stated that he never had an opportunity to talk about potential witnesses, the state's evidence against him, or possible defense against the charges. Applicant stated that they reviewed the evidence as it came up during trial.

Applicant claimed Trial Counsel was ineffective for failing to make a timely motion for a directed verdict motion. Applicant stated that Trial Counsel informed him that they had a shot at getting him acquitted because the State failed to present any evidence about his age in their case in chief. Applicant stated that the State moved to reopen the record to recall a witness to attempt to introduce evidence of his age. Applicant stated Trial Counsel strenuously objected to the judge reopening the record. Applicant stated that the Judge ultimately reopened the record and allowed the State to recall their witness. Applicant argued that Trial Counsel should have moved for a direct verdict prior to the State making their motion to reopen the record.

Applicant stated that Trial Counsel was ineffective for failing to call an expert witness to discuss the possibility of secondary transfer. Applicant explained that he was dating the minor's mother and had unprotected sex with her. Applicant explained that he would regularly use a



towel to wipe his semen off. Applicant claimed that the semen from the towel must have transferred over to the minor's underwear. Applicant further claimed Trial Counsel was ineffective for failing to call Dr. Keith. Applicant claimed that Dr. Keith would have testified that the rape trauma test did not come back as a positive for Applicant's DNA. Applicant further argues that Trial Counsel should have called a witness to discuss the fact that the DNA found on the underwear did not conclusively match the minor's DNA. Applicant argued that it was possible that the underwear where his semen was located was not the minor's underwear.

Trial Counsel stated that he was appointed to represent Applicant shortly after Applicant's arrest. Trial Counsel stated that he met with Applicant at least six to eight times prior to trial. Trial Counsel stated that Applicant informed him that he had retained Charles Barr about two weeks prior to Applicant's scheduled trial date. Trial Counsel stated that based on his past experience that it may not always be the case that retained counsel show up for the trial date. Trial Counsel stated that he was present on the day of Applicant's trial. Trial Counsel stated Mr. Barr did not appear because he was in another jurisdiction. Trial Counsel stated that he continued to represent Applicant during his trial. Trial Counsel stated that he moved for a continuance because he had not had his typical week of trial prep with Applicant. Trial Counsel stated that he had not prepared the case with Applicant the week leading up to Trial because Applicant refused to talk to him. Trial Counsel stated Applicant would not return calls and refused to meet after he had allegedly retained Mr. Barr. Trial Counsel stated that his continuance motion was denied.

Trial Counsel stated that he had given Applicant a copy of all discovery material before Applicant was released on bond. Trial Counsel stated that he and the applicant had an opportunity to review the State's evidence against Applicant prior to trial. Trial Counsel stated



that their strategy was to argue secondary transfer. Trial Counsel stated that he had discussions with an expert in the field of secondary transfer and got various questions to pose to the State's expert. Trial Counsel stated that he was able to elicit beneficial testimony from the State's expert about the possibility of secondary transfer. Trial Counsel stated that in his opinion eliciting favorable testimony from a State's expert is more powerful than presenting an expert in defense. Trial Counsel stated that any expert testimony they elicited during in defense would have been cumulative to what he was already able to elicit from the State's expert. Trial Counsel stated the benefit of cumulative testimony from a defense expert did not outweigh the benefit of having last closing argument.

Trial Counsel stated that he realized the State had not presented any evidence of Applicant's age prior to initially resting. Trial Counsel stated that he may have advised Applicant that they had a shot at getting the case dismissed based on the State's failure to present evidence on an element of the offense. However, Trial Counsel stated the trial judge gave a bathroom break prior to his opportunity to make his directed verdict motion. Trial Counsel stated immediately following the break, the State requested to reopen the record to recall a witness to introduce evidence of Applicant's age. Trial Counsel stated he strenuously objected to the State being allowed to reopen their case, however his objection was overruled. Trial Counsel stated that it was not a situation where he failed to make the appropriate directed verdict motion, but instead the State made the timely motion to reopen the record. Trial Counsel stated that he filed a notice of appeal and had not had any discussions with Applicant's appellate attorney.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

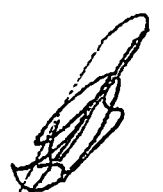
This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms."



Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

1. Ineffective assistance of counsel for failing to investigate, review defense strategies, evidence and trial strategy with Applicant prior to trial.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to investigate, review defense strategies, evidence and trial strategy with Applicant prior to trial is meritless. This Court finds Trial Counsel's action fell well within the reasonable professional norms. Trial Counsel stated that he met with Applicant at least six to eight times prior to trial. Trial Counsel stated that he provided and reviewed the State's evidence with Applicant prior to trial. Trial Counsel stated that he conferred with an expert on secondary transfer prior to trial. Trial Counsel further stated that Applicant refused to speak with him during the week leading up to trial because Applicant thought he had retained Charles Barr. A brief review of the record reveals that Trial Counsel thoroughly cross examined the State's witnesses, presented sound opening and closing arguments, argued vigorously on Applicant's behalf at all appropriate stages at trial. Furthermore, it appears to this Court that Trial Counsel was well versed on the intricacies of the case based on his testimony during the PCR hearing. This Court finds Trial Counsel was in no way deficient in his representation of Applicant.

Furthermore, Applicant failed to produce any credible evidence or arguments to Trial Counsel's failure to investigate, prepare, defend, or prepare Applicant for trial. To the contrary, Applicant merely echoes everything that was done by Trial Counsel and claims there simply should have been more done on his behalf. However, this Court must deny this allegation with



prejudice, because Applicant failed to present any credible evidence or arguments as to "what more" Trial Counsel could have done to investigate, defend, or represent Applicant.

2. Ineffective assistance of counsel for failing to make a timely directed verdict motion.

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to make a timely directed verdict motion is meritless. This Court finds Trial Counsel's actions fell well within the reasonable professional norms. Applicant simply argues that Trial Counsel should have made his directed verdict motion prior to the State moving to reopen the record. To the contrary, Trial Counsel credibly testified that the State simply made the motion to reopen the record following the short break taken by the trial judge. Trial Counsel stated and the record reflects, his strenuous objection to the State being allowed to reopen the record. Nothing about Trial Counsel's handling of the directed verdict motion was deficient. Furthermore, this Court notes Applicant failed to provide this Court with any credible evidence or arguments as to what Trial Counsel could have done other than objecting to the State's motion to reopen the record. As a result, this Court finds that this allegation must be denied and dismissed with prejudice.

3. Ineffective assistance of counsel of prior retained counsel, Charles Barr, for failing to enter an appearance on Applicant's behalf.

This Court finds Applicant's allegation that prior retained counsel, Charles Barr, was ineffective for failing to enter an appearance on Applicant's behalf meritless. Applicant presented no credible evidence or arguments that Charles Barr was retained, was prepared to try the case, or even willing to represent Applicant. To the contrary, Applicant merely presents his own self-serving non-credible testimony that he had retained Charles Barr. Notably, Applicant claimed that he retained Charles Barr a week prior to trial. This Court will not speculate as to the representation that Mr. Barr could have provided had he appeared on Applicant's behalf.



Regardless, Applicant received an effective representation by Trial Counsel. Trial Counsel's representation was neither deficient nor prejudicial. It was clear from this Court that Trial Counsel was well prepared to take this case to trial. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

[Signature to follow]

CONCLUSION

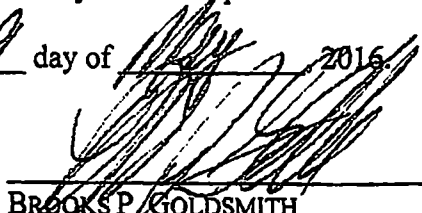
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 29 day of March, 2016.



 BROOKS P. GOLDSMITH
 Presiding Judge
 Third Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CLARENDON

CHARLIE BELSER,
Plaintiff(s),
-vs-

STATE OF SOUTH CAROLINA,
Defendant(s).

) IN THE COURT OF (Select one.)
) ☒ COMMON PLEAS ☐ FAMILY COURT
) THIRD JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-14-0156
) APPOINTMENT OF COUNSEL OR GAL
) (Select one.)
) ☐ ORDER
) ☒ AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

☒ Post-Conviction Relief (PCR)/habeas case	☐ Adoption	☐ Juvenile
☐ SVP case	☐ Custody and/or Visitation	☐ Abuse and Neglect
☐ Minor Name Change	☐ Other:	

It appears that CHARLIE BELSER, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- ☐ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- ☒ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
- ☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- ☐ court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- ☐ Other: _____

Therefore, it is ordered that LANCE BOOZER, hereby is appointed as (Select one.)

☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 21ST DAY OF APRIL, 2015.

Beverly B. Roberts
☐ Circuit Judge ☒ Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED IN THIS OFFICE
 DATE 4/21/2015
Beverly B. Roberts
 CLERK OF COURT
 CLARENDON COUNTY, SC