

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

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S.C. Supreme Court

GILES BELCHER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213072

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Giles Belcher,) 2007-GS-42-1673
7 Defendant.) May 7 - 8, 2007
8 Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13

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1 (Proceedings May 7, 2007)

2 THE COURT: All right. This is in Case No.
3 2007-42-1673, the State vs. Giles Belcher.

4 Mr. Belcher has been indicted by the grand jury on the
5 crime of first degree criminal sexual conduct with a minor.

6 You are Giles Belcher?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Ms. Hodges is your lawyer?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Belcher, you have been indicted by the
11 grand jury for the offense of criminal sexual conduct with
12 a minor in the first degree.

13 The state alleges that between May the 1st of 2001 and
14 August the 31st of 2002 that you did commit the offense of
15 criminal sexual conduct with a minor in the first degree in
16 that you did commit a sexual battery upon the person of
17 MINOR she being under the age of 11 years at the
18 time of the incident.

19 If convicted of criminal sexual conduct with a minor
20 in the first degree you could be sentenced to a period of
21 incarceration not to exceed 30 years. Do you understand
22 what you're charged with?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand the potential sentence
25 that might be imposed upon a conviction?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you've discussed that with your
3 lawyer?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Ms. Hodges, does your client wish to enter
6 a plea of guilty or not guilty as to the charge?

7 MS. HODGES: He informs me that he wishes to enter a
8 plea of not guilty, Your Honor, and to proceed with the
9 jury trial this week.

10 THE COURT: All right. Are y'all ready to proceed
11 with that trial?

12 MS. HODGES: Yes, sir, we are.

13 THE COURT: Okay. Any matters we need to address?

14 Thank you. Mr. Belcher, you can have a seat.

15 Any matters we need to address before we bring the
16 panel around?

17 MS. HODGES: None in terms of addressing it for the
18 purposes of jury selection, no, sir.

19 THE COURT: Okay.

20 MS. HODGES: Your Honor, I don't know that we
21 necessarily need to approach, but I know that there has
22 been a request by the state to sequester the witnesses. I
23 have no grave objection to that.

24 THE COURT: Okay. Well, of course I don't know how
25 many witnesses are here in the courtroom. I don't see too

1 many it could be. But I will have to leave that to
2 individual lawyers to advise each of the witnesses that
3 they are under a sequestration order and that they are not
4 to discuss the case with any other person who is a witness
5 or a potential witness in the case.

6 MS. REESE: Your Honor, our witnesses are upstairs at
7 the time.

8 MS. HODGES: There is only one witness potentially for
9 the defense, Your Honor.

10 (Pause.)

11 THE COURT: All right. Y'all tell me where the acts
12 that are alleged to constitute this offense -- occurred
13 where?

14 MS. REESE: Stephens Grove Road, Your Honor, in Una.
15 Is that the way you say that? In Spartanburg County.

16 THE COURT: Stephens Grove Road in Una?

17 MS. REESE: Yes, sir. I believe the address, I don't
18 have it written right in front of me, I think it's 1121.

19 THE COURT: All right. Are we ready for the panel?

20 MS. REESE: Yes, Your Honor.

21 MS. HODGES: Yes, sir.

22 THE COURT: Okay. Bring them around, please.

23 MS. REESE: Your Honor, on our witness list we have
24 listed Todd Wilson. We are striking him from the witness
25 list. He is from the 7th Circuit Solicitor's Office.

Jury qualification

1 THE COURT: Yeah. I know. And all the others remain
2 as potential witnesses?

3 MS. REESE: Yes, sir, Your Honor.

4 THE COURT: Okay. How long do y'all anticipate this
5 case to take?

6 MS. HODGES: A day and a half.

7 MS. REESE: A day and a half to two days. Two days on
8 the outside, Your Honor.

9 (The following takes place in the presence of the jury
10 venire.)

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, we are ready to begin with jury selection in the
13 first case that's going to require some of your
14 participation. The title of that case is the State vs.
15 Giles Belcher.

16 Mr. Belcher has been accused by the prosecutor by way
17 of an indictment, and an indictment is the document that
18 sets forth the charge that's brought against any defendant.

19 In this case the state alleges that Giles Belcher
20 committed the crime of criminal sexual conduct with a minor
21 in the first degree. The state alleges in the indictment
22 that Mr. Belcher did here in Spartanburg County between the
23 dates of May the 1st of 2001 and August the 31st of 2002,
24 did commit the crime of criminal sexual conduct with a
25 minor in that Mr. Belcher did commit a sexual battery upon

Jury qualification

1 the victim, being MINOR who the indictment
2 alleges was under the age of 11 years at the time that the
3 incident did occur.

4 Now, as to those allegations and as to that charge the
5 defendant has entered a plea of not guilty. And, as I told
6 you, that plea of not guilty therefore places upon the
7 state the burden of proving the allegations that they have
8 set forth in the indictment, the burden of proving each of
9 the essential elements that make up the offense that they
10 have alleged against this defendant in this case, criminal
11 sexual conduct with a minor in the first degree; and
12 therefore the burden is upon the state to establish the
13 defendant's guilt to the satisfaction of 12 jurors beyond a
14 reasonable doubt before any verdict of guilty could be
15 returned.

16 And so we are going to be selecting 13 of you, 12
17 primary jurors and one alternate juror, to participate in
18 the case. By way of your participation you're going to be
19 called upon to listen to witnesses that will testify from
20 the witness stand under oath, to consider any other
21 evidence that might be introduced during the trial of the
22 case.

23 After all of the evidence has been received I'll
24 instruct you on the law that's applicable in a case like
25 this. And then the jury will begin deliberations. And

Jury qualification

1 through that process you're going to be called upon to
2 examine all of that evidence. From that evidence you'll
3 decide what you believe to be the true facts as they relate
4 to these allegations.

5 Once you decide those facts you will apply the law
6 that I will have provided, and you will determine and tell
7 us whether or not the defendant has been proven guilty
8 beyond a reasonable doubt. If he has your verdict would be
9 guilty; if he has not your verdict would be not guilty.

10 Now, before we begin with jury selection in the case
11 I've got some questions that I'm going to be asking you as
12 a group. The purpose of those questions is to determine
13 whether or not there is some reason why any one or more of
14 you jurors should not be selected to participate in the
15 trial of this particular case.

16 So as these questions are asked if you need to respond
17 to them, I'm going to ask that you please stand. I'll
18 address those matters with you individually in the event
19 that should become necessary.

20 Now, also, as was the case during the course of your
21 qualification, when a question is asked, if it applies to
22 you and you need to provide me with that information and
23 response, but it's a question that you think obligates you
24 to provide personal information that you don't want to
25 provide in front of an audience, then under those

Jury qualification

1 circumstances you can come down here. And I'll discuss it
2 with you here at the bench and the audience won't be aware
3 of what information you're providing. But you must provide
4 the information in response to a question in the event that
5 question applies to you. And you must do that before we
6 can begin with jury selection in this particular case.

7 Now, first of all, as I told you, the person who is
8 accused of this crime, the person the state alleges
9 committed the offense of criminal sexual conduct with a
10 minor in the first degree, is Giles Belcher.

11 Mr. Belcher, if you will, stand and face the jury
12 panel so that they may see who you are.

13 (Whereupon, the defendant and Ms. Hodges stood.)

14 THE COURT: Of course Mr. Belcher is the person
15 standing to your left. The person standing to your right
16 is Kathleen Hodges. She is Mr. Belcher's lawyer. She'll
17 be assisting him during the course of the trial.

18 All right. Thank you. You may be seated.

19 In this case the person who is alleged to have been
20 the victim of this offense is MINOR who is not
21 present in the courtroom, but she is present in the
22 courthouse.

23 And if any juror -- during the -- I'm going to be
24 identifying witnesses for you. And if during the course of
25 the process I state the name of a witness and you think,

Jury qualification

1 well, I know somebody by that name but I'm not sure if
2 that's the same person or not, I want you to raise your
3 hand. And we'll either try to identify that person more
4 narrowly, or we can even go and get the witness and bring
5 that witness into court. There's just not a room --
6 there's not room in the courtroom for all the witnesses to
7 be present because the jury panel takes up most of the
8 seating.

9 But we need to know if you have any connection or know
10 any of these people. So if you think you might, you let me
11 know. And we'll make arrangements to more narrowly
12 identify the particular witness.

13 But, as I've stated, in this case the person who is
14 alleged to have been the victim is MINOR

15 This incident is alleged to have occurred at a
16 residence which is located on Stephens Grove Road in the
17 Una community of Spartanburg County.

18 Now, is there any member of this jury panel who is
19 connected in any way or has any knowledge of either of the
20 persons that I identified as being the alleged victim, as
21 well as the defendant, those being MINOR and Giles
22 Belcher? Does any juror know either of those individuals
23 or any member of their respective family? If so, please
24 stand.

25 (No response.)

Jury qualification

1 THE COURT: Does any member of the jury panel know any
2 of the lawyers that I have identified for your benefit,
3 those being Kathleen Hodges representing the defendant,
4 Susan Reese and Jennifer Jordan representing the state in
5 this matter? They will be presenting the case on behalf of
6 the state. They may not have stood yet, so I'll ask y'all
7 to stand. They can see who you are.

8 (Whereupon, Ms. Reese and Ms. Jordan stood.)

9 THE COURT: Anybody know any of the lawyers?

10 (No response.)

11 THE COURT: Okay. Now I'm going to recite a list of
12 potential witnesses for you. Again, the reason I'm
13 reciting this list is because I want to know if you have
14 any relationship or knowledge of any of these potential
15 witnesses.

16 So if you have a personal connection, a family
17 connection, a business connection or a professional
18 connection, or you've met them, you know them in some
19 fashion, just stand as that person's name is called. And
20 then I'll talk with you about what that connection is.

21 So in addition to MINOR and Giles Belcher we
22 also have Charity Gencarelli with the sheriff's department.
23 If you will, stand, please. If you're present stand.

24 (Whereupon, the witness stood.)

25 THE COURT: We also have Wiley Garrett from the

Jury qualification

1 Children's Advocacy Center; Tabitha Webber with the
2 Children's Advocacy Center; Martin Eldredge with the
3 sheriff's department; Nicole Roof Mason who was formerly
4 employed with the Spartanburg County Department of Social
5 Services; Meredith Thompson Loftis who was previously
6 employed with Affiliated Counseling Services; Michael
7 Woodcock with the sheriff's department; Nancy Henderson
8 with the Greenville County Hospital System; Kathy Perry;
9 Jamie Belcher; Scot Belcher; Gary Long; Robbie Bishop;
10 Richie McSwain with the sheriff's department; Angela
11 Robinson with the Department of Social Services; George
12 Balderama with the sheriff's department; Tonya Aldridge
13 with the sheriff's department; Mike Jones with the
14 Spartanburg County Detention Facility; Sandra Clark with
15 the McCarthy Tezner School; Crystal Saar with the
16 solicitor's office; Scott Howell with the solicitor's
17 office; Tammy Armstrong; and Wendy Alley, an investigator
18 for Ms. Hodges' office.

19 Any juror know any of those persons who have just been
20 identified for your benefit? If so, please stand. All
21 right. I have got three jurors standing. Anybody else?

22 All right. I'll start with the first one. If you
23 will, give me your name and juror number, please, and then
24 tell me how that question relates to you.

25 JUROR NO. 35: Jennifer Farmer, 35. I know a Jamie

Jury qualification

1 Belcher.

2 THE COURT: Your juror number was 35, you said?

3 JUROR NO. 35: Uh-huh.

4 THE COURT: All right. You know a Jamie Belcher. And
5 how do you know Jamie Belcher?

6 JUROR NO. 35: Exhusband.

7 THE COURT: It's your exhusband?

8 JUROR NO. 35: If it's the same one.

9 THE COURT: Right. Well, do you know either -- do you
10 know the defendant here? Do you know MINOR the
11 person who is alleged to be the victim in the case?

12 JUROR NO. 35: No.

13 THE COURT: All right. And Jamie Belcher is what
14 connection to this case?

15 MS. REESE: He is the brother of the defendant.

16 THE COURT: All right. He would be the brother. So
17 that's not the same person.

18 JUROR NO. 35: No.

19 THE COURT: Okay. Thank you, ma'am. You may be
20 seated.

21 Yes, sir.

22 JUROR NO. 21: Clearance Stokes, Juror 121. And I
23 have known a Martin Eldredge. I believe he was one of the
24 names.

25 THE COURT: Martin Eldredge with the sheriff's

Jury qualification

1 department?

2 JUROR NO. 21: I don't know that. And this goes back
3 a number of years ago.

4 THE COURT: All right. You are Juror 121. But you
5 don't know if the one -- how did you know Martin Eldredge?

6 JUROR NO. 21: Just church acquaintance.

7 THE COURT: What church is that?

8 JUROR NO. 21: It is the Church of the Advent.

9 THE COURT: Do y'all have any idea about Officer
10 Eldredge?

11 JUROR NO. 21: This person would be a young, probably
12 in late 20's or early 30's.

13 MS. REESE: The officer who worked on this case, Your
14 Honor, is much older than that.

15 THE COURT: Much older than 20's. Okay. Not the same
16 individual. Thank you for standing though.

17 Yes, sir.

18 JUROR NO. 178: Brian F. Reese, Juror No. 178. I am a
19 former Spartanburg County deputy familiar with the officer
20 involved in the case.

21 THE COURT: All right, sir. And is there anything
22 about that connection that you have had that would in any
23 way interfere with your ability to be fair and impartial in
24 this case if you were called upon to serve as a juror?

25 JUROR NO. 178: No, Your Honor.

Jury qualification

1 THE COURT: All right. Thank you. You may be seated.

2 Has any member of the jury panel or any member of your
3 immediate family -- and for the purpose of these questions
4 I'm going to define an immediate family member as a parent
5 or a spouse or a child or a sibling -- a parent, a spouse,
6 a child or a sibling. I need to know if you as a juror or
7 any member of your immediate family has ever been involved
8 with the Department of Social Services in any way during
9 the course of them conducting any type of an investigation.
10 If that's the case, I would ask that you please stand.

11 Yes, ma'am.

12 JUROR NO. 172: My daughter is a therapist and was
13 with Spartanburg County.

14 THE COURT: All right. Tell me your name.

15 JUROR NO. 172: She is now in Florida.

16 THE COURT: All right. Tell me your name, please,
17 ma'am.

18 JUROR NO. 172: Atha McBride.

19 THE COURT: And your juror number?

20 JUROR NO. 172: 172.

21 THE COURT: 172. And your daughter used to be
22 employed at the Department of Social Services?

23 JUROR NO. 172: She used to be in Spartanburg. She's
24 now in Florida. She's a therapist. She was with the
25 Department of Social Services in Spartanburg.

Jury qualification

1 THE COURT: Okay. Do you think there is any
2 reasonable possibility that that connection would have any
3 affect in any way upon your judgment in this case if you
4 were selected as a juror?

5 JUROR NO. 172: I hope not.

6 THE COURT: Well, I certainly do too. But what I am
7 trying to find out is do you think there is any reasonable
8 possibility that it would.

9 In other words, the fact that your daughter works for
10 the Department of Social Services in Florida and used to
11 work for the Department of Social Services in Spartanburg,
12 is that going to cause you to take one side or the other in
13 this case?

14 JUROR NO. 172: I don't think so.

15 THE COURT: Well, are you reasonably certain that it
16 could not interfere with your ability to be fair?

17 JUROR NO. 172: I don't think so. I'm reasonably
18 sure.

19 THE COURT: Well, my question is are you reasonably
20 certain that that connection would in no way impair your
21 ability to be fair in this case.

22 JUROR NO. 172: Yes, sir.

23 THE COURT: Okay. Thank you. You may be seated.
24 Yes, ma'am.

25 JUROR NO. 92: 92. I used to work for Management

Jury qualification

1 Treatment Services in Spartanburg County.

2 THE COURT: Used to work for who?

3 JUROR NO. 92: Management Treatment Services, a
4 special division of D. S. S.

5 THE COURT: Oh, okay. And your number was 92?

6 JUROR NO. 92: Yes, sir.

7 THE COURT: Would that previous connection have any
8 bearing upon your decision in this case?

9 JUROR NO. 92: No, sir.

10 THE COURT: All right. Thank you. You may be seated.
11 Yes, ma'am.

12 JUROR NO. 108: I'm Martha Ruehl, 108. I may have
13 misunderstood the question, but I have protective custody
14 through D. S. S. for my grandchildren.

15 THE COURT: All right. Well, I think you've answered
16 the question. You have been involved in a matter that the
17 Department of Social Services did investigate and has been
18 concluded.

19 JUROR NO. 108: Yes, sir.

20 THE COURT: And is there anything about that
21 experience or that relationship that you've had with the
22 Department of Social Services that would in any way
23 interfere with your ability to be fair and impartial in
24 this case to both sides?

25 JUROR NO. 108: No, sir.

Jury qualification

1 THE COURT: Okay. Thank you. You may be seated.

2 Anyone else need to respond to that question?

3 Yes, ma'am.

4 JUROR NO. 173: A was children's counselor in New
5 York, and also a children's probation officer.

6 THE COURT: All right. Would either of those facts
7 have any bearing upon your decision in this case?

8 JUROR NO. 173: Yes.

9 THE COURT: Okay. You think that you would be unable
10 to be fair and impartial?

11 JUROR NO. 173: Yes.

12 THE COURT: All right. And your number was what?

13 JUROR NO. 173: 173.

14 THE COURT: 173. All right. We will excuse you from
15 service in the case. But don't leave yet.

16 Anyone else need to respond to the question of having
17 any connection with the Department of Social Services in
18 any way?

19 (No response.)

20 THE COURT: All right. Next question is does any
21 member of the jury panel or any member of your immediate
22 family attend the First Wesleyan Church in Spartanburg.
23 Where is that located?

24 THE OFFICER: Upper Valley Falls Road, sir.

25 THE COURT: Off the Valley Falls Road, the First

Jury qualification

1 Wesleyan Church of Spartanburg. If so, please stand.

2 (No response.)

3 THE COURT: All right. Has any member of the jury
4 panel or any member of your immediate family as I've
5 defined that term for you ever been accused of having
6 committed any type of crime involving sexual abuse
7 allegations, or have you or any member of your immediate
8 family ever been the victim of any type of crime that
9 involved sexual abuse allegations? If so, whether you or a
10 family member was accused of or have been a victim of such
11 an offense, I'm going to ask that you please stand.

12 (No response.)

13 THE COURT: None stood.

14 Has any member of the jury panel ever been involved in
15 an individualized education program through any of the
16 school districts here in Spartanburg County? If so, please
17 stand.

18 (No response.)

19 THE COURT: Is there any member of the jury panel who
20 you or an immediate family member is presently being
21 prosecuted by the 7th Judicial Circuit Solicitor's Office?
22 That is you or a family member has a case that's pending
23 and that is being brought against you or that family member
24 by the circuit solicitor's office. If so, please stand.

25 (No response.)

Jury qualification

1 THE COURT: Is there any member of the jury panel who
2 is related by blood or marriage or connected in any way to
3 any law enforcement officer? And law enforcement officers,
4 that group of persons would include sheriff's deputies,
5 city, state or municipal law enforcement officers.

6 It would also include those employed at any detention
7 facility, jail or corrections institution; it would also
8 include those employed by the F. B. I., the state law
9 enforcement division, a military police officer or any
10 other type of law enforcement officer. If you are
11 connected by blood or marriage to any, I ask that you
12 please stand.

13 Now, let me also include those who are now or ever
14 have been employed as a law enforcement officer. I am
15 going to ask that you please stand also.

16 All right. I'll start right here on the front row.
17 If you will, give me your name and your number, please.
18 And then tell me how that question relates to you.

19 JUROR NO. 78: It's Rocky Morrow, Juror 78. My
20 brother's brother-in-law is a Spartanburg County sheriff's
21 deputy.

22 THE COURT: Do you know what that person, his name is?

23 JUROR NO. 78: Jim Rhodes.

24 THE COURT: Okay. Would that have any bearing upon
25 your decision in the case?

Jury qualification

1 JUROR NO. 78: No, sir.

2 THE COURT: Thank you. Be seated.

3 Yes, ma'am.

4 JUROR NO. 59: Sandra Johnson, No. 59. My nephew is a
5 state highway patrolman.

6 THE COURT: In Spartanburg?

7 JUROR NO. 59: Yes, sir.

8 THE COURT: Would that have any bearing upon your
9 decision in this case?

10 JUROR NO. 59: No, sir.

11 THE COURT: Thank you. Be seated.

12 Yes, ma'am.

13 JUROR NO. 7: Ashley Wyatt, No. 7. My father was
14 employed for Spartanburg County and is now with the
15 Spartanburg Water System. Jimmy Bobo.

16 THE COURT: Would that have any bearing upon your
17 decision in this case?

18 JUROR NO. 7: No, sir.

19 THE COURT: Thank you. Be seated.

20 Lady in the back.

21 JUROR NO. 150: My aunt, Catrina Hudgins, for the
22 Inman Police Department.

23 THE COURT: All right. And your name and number,
24 please?

25 JUROR NO. 150: Lisa Wood, 150.

Jury qualification

1 THE COURT: Would that have any bearing upon your
2 decision in this case?

3 JUROR NO. 150: Uh-uh.

4 THE COURT: Thank you. Be seated.
5 Yes, ma'am.

6 JUROR NO. 169: Jane Reihl, 169. My son-in-law was a
7 county sheriff's officer.

8 THE COURT: His name is what?

9 JUROR NO. 169: Eric McKelvey.

10 THE COURT: Would that have any bearing upon your
11 decision in this case?

12 JUROR NO. 169: No.

13 THE COURT: Thank you. Be seated.
14 Yes, sir. No. 76.

15 JUROR NO. 17: Kelly Caldwell, No. 117. My brother
16 was a state trooper for Newberry and my nephew is a
17 military police in Savannah.

18 THE COURT: Would that have any bearing upon your
19 decision in this case?

20 JUROR NO. 17: No, sir. I don't think so.

21 THE COURT: Well, now, when you say you don't think
22 so, do you think there is some reasonable possibility that
23 it could?

24 JUROR NO. 17: No, sir.

25 THE COURT: All right. Thank you. You may be seated.

Jury qualification

1 Yes, ma'am.

2 JUROR NO. 46: Stephoni Gist, Juror 46. My cousin is
3 Raymond Gist.

4 THE COURT: You say 26?

5 JUROR NO. 46: 46.

6 THE COURT: 46. And is there anything about that
7 connection that would in any way impair your ability to be
8 fair in this case?

9 JUROR NO. 46: No.

10 THE COURT: Thank you. You may be seated.

11 Yes, sir.

12 JUROR NO. 178: Bryan Reece, Juror 178. Spartanburg
13 County deputy 2000 and 2003.

14 THE COURT: Would that have any bearing upon your
15 decision?

16 JUROR NO. 178: No, Your Honor.

17 THE COURT: Thank you. Be seated.

18 Anyone else related to a law enforcement officer? If
19 so, please stand.

20 (No response.)

21 THE COURT: Is there any member of the jury panel who
22 is a member of or you contribute time or money to any types
23 of organizations that might be classified as law
24 enforcement support types of organizations or victims'
25 rights or victims' advocates organizations? And those

Jury qualification

1 might include the Mothers Against Drunk Drivers, Citizens
2 Against Violent Crime, the honorary sheriffs' association,
3 the troopers' association, the fraternal order of police,
4 the Children's Advocacy Center, Safe Homes of South
5 Carolina or any other similar type of organization.

6 I need to know if you belong to any such organizations
7 or you contribute your time to such or you donate money to
8 any of those types of organizations. If so, please stand.

9 All right. I'll start over here. And please give me
10 your number again.

11 JUROR NO. 172: 172. Children's shelter.

12 THE COURT: The children's shelter. Okay. Would that
13 have any bearing upon your decision in the case?

14 JUROR NO. 172: No, sir.

15 THE COURT: Okay. Thank you.

16 Yes, sir.

17 JUROR NO. 121: Juror 121. Safe Homes, Mothers
18 Against Drunk Driving.

19 THE COURT: Would it have any bearing upon your
20 decision?

21 JUROR NO. 121: No, sir.

22 THE COURT: Thank you. Be seated.

23 Yes, sir.

24 JUROR NO. 85: Juror 85. Mothers Against Drunk
25 Driving.

Jury qualification

1 THE COURT: Would it have any bearing upon your
2 decision?

3 JUROR NO. 85: No, sir.

4 THE COURT: Thank you. Be seated.

5 Yes, sir.

6 JUROR NO. 17: No. 117.

7 THE COURT: All right.

8 JUROR NO. 17: Support the state troopers.

9 THE COURT: Would it have any bearing upon your
10 decision?

11 JUROR NO. 17: No, sir.

12 THE COURT: Thank you. Be seated.

13 Yes, ma'am, 46.

14 JUROR NO. 46: Yes, sir. The sexual association.

15 THE COURT: Would that have any bearing upon your
16 decision?

17 JUROR NO. 46: No, sir.

18 THE COURT: Thank you. Be seated.

19 Yes, ma'am.

20 JUROR NO. 57: 57. State troopers.

21 THE COURT: Would that have any bearing upon your
22 decision?

23 JUROR NO. 57: No, sir.

24 THE COURT: Thank you. Be seated.

25 Yes, ma'am.

Jury qualification

1 JUROR NO. 82: 82. State troopers.

2 THE COURT: Would that have any bearing upon your
3 decision?

4 JUROR NO. 82: No.

5 THE COURT: Thank you. Be seated.

6 Yes, ma'am.

7 JUROR NO. 168: 168. Friends of the guardian ad
8 litem.

9 THE COURT: And would that have any bearing upon your
10 decision?

11 JUROR NO. 168: No, sir.

12 THE COURT: Thank you. You may be seated.

13 Now, I told you that this case is one that the state
14 alleges occurred back in between May of 2001 and August of
15 2002 at a location on Stephens Grove Road in the Una
16 community of Spartanburg County.

17 Has any member of the jury panel heard anything about
18 the facts or circumstances that relate to this particular
19 case? Do you know anything about the case from any source,
20 whether it be television, radio, newspaper or just some
21 individuals having a discussion about anything? If anyone
22 thinks you've already heard about the case or anything that
23 relates to it, I would ask that you please stand.

24 (No response.)

25 THE COURT: Is there anything about the nature of the

Jury qualification

1 case itself, that is what is alleged in this case? Is
2 there anything about the nature of the case itself that
3 would prevent any juror from being able to be fair and
4 impartial to both sides in this case? If so, please stand.

5 (No response.)

6 THE COURT: Has any member of the jury panel already
7 made up your mind or formed an opinion as to what you think
8 the ultimate decision ought to be based upon what you've
9 heard up until this point or based upon any other
10 consideration? I simply need to know if you have already
11 made up your mind as to the ultimate decision. If so,
12 please stand.

13 Yes, ma'am. Your juror number was what?

14 JUROR NO. 150: 150.

15 THE COURT: 150. And in response to that question
16 you're stating that you've already made up your mind in
17 this case?

18 JUROR NO. 150: Yes, sir.

19 THE COURT: All right. Then we will excuse you from
20 service in the case. But don't leave yet.

21 Has anyone else already made up your mind not really
22 knowing anything about the case?

23 (No response.)

24 THE COURT: Good.

25 Does any member of the jury panel know of any reason

Jury qualification

1 whatsoever why you think you could not be fair and
2 impartial as a juror if you were selected to participate in
3 the trial of this particular case? If you have any reason
4 whatsoever why you think you could not be fair to both
5 sides, I would ask that you please stand.

6 (No response.)

7 THE COURT: Any other questions requested by the
8 state?

9 MS. REESE: None from the state.

10 THE COURT: By the defendant?

11 MS. HODGES: None from the defense Your Honor.

12 THE COURT: All right. We will begin that selection.

13 Now, ladies and gentlemen, as I told you, we're going
14 to select 13 of you.

15 The way that selection is conducted is that your names
16 are typed on a slip of paper. They're in the juror drum.
17 And the clerk is going to draw a name out individually and
18 randomly.

19 When that name is called you're going to be asked to
20 come forward. And if you're towards the middle of the
21 courtroom, you just come up the center aisle. If you're
22 towards the outside wall, you can come around the tables
23 where the lawyers are seated.

24 But I need for you to come up when your name is
25 called. And just take about two steps towards me from the

Jury qualification

1 desks where the lawyers are seated.

2 And each side is going to have an opportunity to have
3 you excused from service in the case or have you seated for
4 service in the case. If either side asks that you be
5 excused from service, you can simply go back and have a
6 seat where you are now. If both sides agree to have you
7 seated for service in the case, then you'll be having a
8 seat over in the jury box to your right and my left.

9 So if you'll please simply come forward as your name
10 is called, you'll be instructed if you're to be seated for
11 participation in the case or excused from service in the
12 case.

13 (Whereupon, a jury was impanelled.)

14 THE COURT: Those jurors who have been selected, I'll
15 ask you to please go with a bailiff to a jury room, and I
16 will bring you back in just a few minutes.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: Any matters that need to be addressed
20 regarding jury selection by the state?

21 MS. REESE: None from the state, Your Honor.

22 THE COURT: By the defendant?

23 MS. HODGES: Your Honor, if we can approach the bench
24 just briefly.

25 THE COURT: Okay.

Motion

1 (Bench conference held off the record.)

2 MS. HODGES: There are none from the defense, Your
3 Honor.

4 (Whereupon, the remaining members of the jury venire
5 were excused.)

6 THE COURT: All right. As I understand it, we have
7 got a few motions to have resolved.

8 One is the state's motion to exclude certain evidence
9 pursuant to State vs. Boyter.

10 Another is the state's motion to exclude any evidence
11 relating to third-party guilt; and also state's motion to
12 determine compliance with Section 16-3-659, the rape shield
13 statute; and the defense's motion to admit evidence
14 pursuant to Section 16-3-659.1; and a hearing has been
15 requested for the purpose of determining the voluntariness
16 of any statement made by the defendant to law enforcement
17 while in custody.

18 Are there any other motions or matters to address?

19 MS. REESE: None that I am aware of.

20 MS. HODGES: None from the defense, Your Honor.

21 THE COURT: Y'all anticipate those to take about how
22 long, about 30 minutes? Could it be more or less?

23 MS. HODGES: Maybe 45 at the very outside, Your Honor.

24 THE COURT: Okay. Well, I'll have the jury excused
25 and ask them to report back at 3:00 o'clock this afternoon.

1 And we will address it at that time.

2 Okay. Bring the jury in, please.

3 (The following takes place in the presence of the
4 jury.)

5 THE COURT: All right. Ladies and gentlemen, as you
6 know, we are about to begin with the trial of the case of
7 the State vs. Giles Belcher for which you were selected.

8 I've got some matters that I need to address with the
9 lawyers relating to the case before we can actually begin
10 with the trial, and it's just about lunchtime anyway.

11 So we are going to excuse you for the present time so
12 you can have lunch. And I'll address those matters that
13 need to be addressed. And I believe we'll be in a position
14 to actually begin with the trial of this case at
15 3:00 o'clock this afternoon, at 3:00 o'clock this
16 afternoon.

17 So you are going to be excused for the present, and
18 you're going to be asked to report back to that jury room
19 that you have just been introduced to not later than
20 3:00 o'clock this afternoon.

21 Now, in the meantime and throughout the course of this
22 trial keep in mind certain instructions that you are to
23 follow.

24 Number one, you're not to discuss the case in any
25 fashion with any person whatsoever. So during the lunch

1 recess and during the overnight recess, or at any time, you
2 can't talk about this case. You're only permitted to
3 discuss the case when the time comes for jury
4 deliberations, and that's after all of the evidence has
5 been received and I've instructed you on the law that's
6 applicable.

7 Now, after you reach a decision in the case you can
8 talk about it to anybody as much or as little as you want
9 to, but before you reach a decision you're not permitted to
10 discuss this case in any way among yourselves or with any
11 other person. So be certain that you follow that
12 instruction.

13 Also, you're never permitted to allow yourselves to be
14 exposed to any type of media coverage that might relate to
15 the case. I don't know that there will be any media
16 coverage in this case. But in the event that there is,
17 understand you are not permitted to allow yourselves to be
18 exposed to media coverage relating to the case while the
19 trial is in progress.

20 So you can't look at anything about it on the
21 television or listen to anything about it on the radio or
22 read anything about it in the newspaper. And of course you
23 can't discuss it or allow anyone to try to discuss it with
24 you during the course of the trial.

25 And, thirdly, you're not permitted to conduct your own

1 research or do your own investigation into any issue that
2 might arise during the course of the trial. You have to
3 base your decision in any case upon the evidence received
4 during the trial, and you can't supplement that evidence by
5 conducting your own research or doing your own outside
6 investigation.

7 So during the trial don't talk about the case, don't
8 allow yourselves to be exposed to any type of media
9 coverage. Don't conduct any research or do any
10 investigation.

11 With that, you are excused for lunch. Do please
12 report back to your jury room not later than 3:00 o'clock
13 this afternoon.

14 Now, when you come back I'm going to ask that -- as
15 you leave the courthouse, leave the courthouse property
16 directly. And when you come back go directly to the jury
17 room, because there could be spectators or witnesses or
18 lawyers or court personnel or anybody standing in the hall
19 or on the steps talking about this case or some other case
20 that you might think relate to this case.

21 In order to avoid that possibility of occurring I'm
22 going to ask that you not stand on the steps and don't
23 loiter in the hall. Just when you leave, please leave the
24 courthouse property directly. And when you come back,
25 please go directly to your jury room. That way we will

Motion

1 avoid any potential possibility that you could be exposed
2 to discussions about the case.

3 Okay. Have a good lunch. I will see you at
4 3:00 o'clock this afternoon.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: All right. Have we got one of these
8 motions we can resolve, or maybe more, within the next five
9 or ten minutes?

10 MS. HODGES: Judge, I think some of these motions can
11 be combined.

12 I think we talked in chambers a little bit about the
13 motion dealing with the rape shield, 16-3-659.1.

14 THE COURT: Well, we did, but, now, understand while
15 we did discuss it, anything that needs to be placed on the
16 record will have to be placed on the record.

17 MS. HODGES: Yes, sir.

18 I had moved to allow, to be allowed to cross-examine
19 the state's witnesses as to essentially three persons that
20 it's my understanding that during the time that the
21 incidents alleged in the indictment occurred, that there
22 was an Issac Stewart that lived in the residence with the
23 minor child, as well as the defendant at that time.

24 To be candid with the Court, there is nothing that has
25 been provided in the discovery that indicates the child had

Motion

1 ever made any allegations or outcry against Mr. Issac
2 Stewart, but that he was a person that was living in the
3 residence at the same time as the minor child, along with
4 the child and her parents.

5 We would also request to be able to cross-examine, as
6 well as present testimony if necessary, regarding alleged
7 inappropriate sexual conduct with the victim by Darryl
8 Riddle who --

9 THE COURT: Let's take one at a time. Let's do it.
10 All right. Issac Stewart. You say that you want to be
11 permitted to introduce evidence through direct or
12 cross-examination as it relates to just the fact that Issac
13 Stewart did live in the residence at the same time that the
14 minor child was in the residence during the time that this
15 incident is alleged to have occurred?

16 MS. HODGES: That and the fact that D. S. S. was of
17 such a concern that in the initial safety plan that they
18 conducted with the family, was that Issac Stewart was to
19 have no contact with the child at all. Issac Stewart is
20 the mother's brother.

21 THE COURT: Well, when was it that, when was it that
22 they were concerned that he not have any contact?

23 MS. HODGES: During the time period of when the
24 incident was initially reported to D. S. S. in August of
25 2005.

Motion

1 THE COURT: After this incident that we are trying
2 here today was reported to the Department of Social
3 Services.

4 MS. HODGES: During, I mean at the time of the report,
5 yes, sir.

6 THE COURT: Well, I assume that they requested that
7 any person, any male person, in the residence not have
8 contact with the child.

9 MS. REESE: That's correct, Your Honor.

10 THE COURT: Okay. All right. But as you say,
11 Ms. Hodges, there is no allegation made by MINOR
12 or anybody else that Issac Stewart had any unlawful conduct
13 with the, conduct or contact with the child.

14 MS. HODGES: To my knowledge the child has not made
15 any outcry that Issac Stewart had any unlawful contact with
16 her. That's correct, Judge.

17 THE COURT: Well, would your purpose in introducing
18 such evidence just to perhaps create a speculation that
19 because somebody else was in the residence that person
20 might have been the person that committed the offenses that
21 are alleged against your client?

22 MS. HODGES: Judge, I don't think that that would
23 be -- I mean, I'm certainly not trying to raise it on the
24 idea of speculation. It's just that, you know --

25 THE COURT: What other evidence is there?

Motion

1 MS. HODGES: If I could have just a moment, Your
2 Honor.

3 THE COURT: Okay.

4 (Pause.)

5 MS. HODGES: My understanding is that the mother,
6 Joann Belcher, Your Honor, actually named Issac Stewart as
7 a potential perpetrator in front of Scotty Belcher who is
8 Mr. Belcher's brother, one of Mr. Belcher's brothers.

9 THE COURT: You mean an opinion that she thought
10 perhaps somebody else might have been the perpetrator.

11 MS. HODGES: She said that she thought that Isaac was
12 the perpetrator initially when the report was first made to
13 D. S. S. and --

14 THE COURT: And that was based upon what fact?

15 MS. HODGES: I don't know that D. S. S. ever
16 investigated it.

17 THE COURT: The child never made any such allegations.

18 MS. HODGES: Not to my knowledge.

19 THE COURT: Okay. All right. Ms. Reese.

20 MS. REESE: Your Honor, at the time of this allegation
21 the child did not disclose.

22 What happened, she began to act out. The child is not
23 very verbal. She is developmentally delayed.

24 At that time the Department of Social Services kept
25 the mother, the father and Issac Stewart away by a safety

Motion

1 claim simply because they didn't know what was going on in
2 the house.

3 The child -- I have made available to Ms. Hodges all
4 of the child's counseling records back from 2002. She has
5 gone to Affiliated Counseling, Carolina Counseling and to
6 CAC. And never any time has she alleged that Issac
7 inappropriately (sic), inappropriately touched here. It's our
8 position that this information is only being used to raise
9 a mere suspicion that he might be a perpetrator, and we
10 think that would be unfair in this case.

11 THE COURT: All right. Anything further, Ms. Hodges?

12 MS. HODGES: Your Honor, essentially my understanding
13 is that -- I mean, nothing further in terms of specific
14 allegations, I mean, that Mr. Stewart did live in the home
15 at the time that these allegations are alleged to have
16 happened and Joann Belcher was the one that initially
17 accused Mr. Stewart of being the person that perpetrated
18 it.

19 THE COURT: Well, I notice Mr. Stewart's not -- I
20 don't think he has been identified as a potential witness
21 by anybody, has he?

22 MS. HODGES: He has not.

23 THE COURT: So the relevance of him being in the home
24 I don't understand. And there's been no allegation against
25 him by this purported victim, and so it seems to me that

Motion

1 evidence relating to him being in the residence would serve
2 no useful purpose. It would not be probative on any point,
3 and it might result in allowing some juror or a number of
4 jurors to speculate as to any contact he may have had.

5 That being inappropriate, I'm going to deny your
6 motion to admit such evidence and grant the state's motion
7 to exclude it.

8 All right. What about the testimony of Darryl Riddle?

9 MS. HODGES: Darryl Riddle, Your Honor, is Joann
10 Belcher's boyfriend.

11 My understanding is that the child has been in
12 counseling essentially since 2002, well, through 2005,
13 until the time that the arrest warrant for this case was
14 issued and Mr. Belcher was arrested. During the course of
15 that counseling in 2005 --

16 THE COURT: Excuse me just a minute. Let me ask you.

17 Would you make the same argument for Darryl Riddle and
18 Jerry Riddle?

19 MS. HODGES: And Jerry, yes, sir.

20 THE COURT: Okay.

21 MS. HODGES: It essentially is the same argument for
22 both of them, that the Riddles were in the home.

23 Mr. Belcher was no longer in the home. He had been removed
24 from the home, was removed by D. S. S. order and was not
25 allowed to have any contact with the child at all.

Motion

1 During the course of her being in therapy her ability
2 to articulate and to speak and to be understood greatly
3 increased, and the child also started disclosing sexual
4 abuse by Darryl Riddle as well as Jerry Riddle.

5 Based on the Grovenstein case and, I think, it's
6 Finley our argument would be that the child's ability to
7 articulate the sexual knowledge that she has, that this is
8 an alternate explanation and provides -- to be able to
9 provide a full and fair defense for Mr. Belcher we ought to
10 be allowed to introduce testimony regarding those
11 disclosures for the jury to consider that a child of such
12 young years but for the alleged contact by Mr. Belcher,
13 that she has an other font of knowledge that she would be
14 able to describe, you know, because of the activities of
15 Darryl Riddle, and Jerry Riddle as well.

16 THE COURT: Ms. Reese.

17 MS. REESE: Your Honor, this child first acted out in
18 August of 2002.

19 At that time she was placed into counseling with
20 Meredith Loftis. She began to disclose, Your Honor, right
21 away. She began to act out and disclose.

22 In October she spoke to a person at the Department of
23 Social Services. During that time period she disclosed
24 oral sex, anal penetration and vaginal penetration by the
25 defendant.

Motion

1 She made all of these disclosures repeatedly up until
2 2005, March of 2005. In March of 2005 she was placed back
3 in her mother's home. At that time she was introduced to
4 these people.

5 All of the disclosures that we are going to discuss in
6 this case about the defendant were made prior to her being
7 put back in the mother's mom. It was only after she was
8 placed back in the mother's home her mother moved her
9 boyfriend and his brother in and these allegations came
10 about.

11 These men were not part of MINOR life when she made
12 the initial allegations, and they are three years removed
13 from any allegation regarding this defendant.

14 THE COURT: Do you agree with that, Ms. Hodges, so far
15 as the fact that this child had no connection with Darryl
16 Riddle or Jerry Riddle until three years after the report
17 was made in this case we're dealing with today?

18 MS. HODGES: Yes, sir, these -- yes, sir.

19 THE COURT: In other words, she --

20 MS. HODGES: The initial report.

21 THE COURT: In other words, she had already made a
22 report of sexual abuse by your client and she was in
23 treatment and removed from the home. And it was only three
24 years later after she was placed back in the home that she
25 had contact with the Riddles.

Motion

1 MS. HODGES: Judge, I can agree, and the only reason,
2 and it is not to quibble with the Court. The only thing is
3 that it's unclear to me from the records that that have
4 been provided to me as to when the child actually
5 intangibly disclosed in terms of words the actual abuse
6 that she claims was perpetrated by the defendant.

7 I will agree with the Court and am in absolute
8 agreement that she did not have any exposure or -- to the
9 either Darryl Riddle or Jerry Riddle until three years
10 after D. S. S. first became involved in the case and the
11 child was placed into therapy originally.

12 THE COURT: All right. And your foundation for the
13 admission of that testimony is that that would serve as the
14 source for the victim's knowledge about sexual matters or
15 abuse or contact?

16 MS. HODGES: That it is an alternate source, yes, sir,
17 and that the client is not the only person. Because of the
18 child's young years, she would be presumed not to have any
19 knowledge whatsoever of any sexual matter.

20 THE COURT: Right.

21 MS. HODGES: And then the argument would be, and then
22 our understanding of the state's perspective that, you
23 know, but for the allegations against Mr. Belcher, that
24 would be the only source that she has to be able to
25 articulate that clearly to the therapist and clearly in her

Motion

1 disclosure.

2 Our argument is that she actually has an alternate
3 source of knowledge, being the Riddles, and that about the
4 same time, that's when it was decided that she is
5 articulating her sexual abuse by her father enough to be
6 able to get an arrest warrant, and my client is arrested.

7 MS. REESE: Your Honor, if I might, I have counseling
8 notes from Meredith Loftis that defense counsel has been
9 provided.

10 In October, September, August, September, October of
11 2003 the child alleges that the defendant took his penis
12 out and began hitting her on the side of the face with it.
13 She talks about that in detail. She talks about him making
14 her suck what she calls his weeny.

15 THE COURT: This is actual communication?

16 MS. REESE: Actual communication in 2003 with the
17 counselor.

18 She talks about him putting his penis, she calls it
19 his thing, in her butt. She talks about him putting his
20 thing in her, she says between her legs or in her cooly is
21 what she calls it. In May of 2004, "Les touched my cooly."
22 He put his weeny in my butt."

23 THE COURT: This was related when?

24 MS. REESE: This one is in May of 2004, Your Honor.
25 These are all the counseling notes from Meredith Loftis.

Motion

1 THE COURT: This is prior to --

2 MS. REESE: Prior to.

3 THE COURT: -- Darryl and Jerry Riddle's contact with
4 the mother?

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

6 THE COURT: Okay. All right. Anything further?

7 MS. HODGES: No, sir.

8 THE COURT: All right. Well, it appears to me, I mean
9 those facts being correct, that would preclude. Those
10 reports having already been made, that would preclude any
11 contact by the Riddles with this child to be the source of
12 her information or knowledge. So if there's no other
13 relevance or probative value to it, I would exclude it.

14 Is there anything else that you believe that should
15 come in under some other theory?

16 MS. HODGES: No, sir. Should I find anything I'll --

17 THE COURT: Well, of course, yeah. These are all
18 preliminary rulings.

19 MS. HODGES: Yes, sir.

20 THE COURT: But presently it appears that they should
21 be excluded, and I so rule.

22 All right. And the last thing is -- well, that has
23 already been addressed.

24 All right. Well, that takes care of one of them. We
25 will address the others beginning at 2:30 this afternoon.

Michael Gregory Woodcock (In-camera)
Direct examination by Ms. Reese

1 Court is in recess until 2:30.

2 (Whereupon, a recess was taken.)

3 (Pre-interrogation wavier form marked State's Exhibit
4 No. 1 for Identification; voluntary statement marked
5 State's Exhibit No. 2 for Identification; rights and waiver
6 of rights marked State's Exhibit No. 3 for Identification;
7 voluntary statement marked State's Exhibit No. 4 for
8 Identification.)

9 THE COURT: All right. Which motion would y'all like
10 to address next?

11 MS. HODGES: I think the only thing left is really
12 the -- Judge, I think the Court's rulings on the other
13 dealt with the rest of the state's motions.

14 MS. REESE: Yes, Your Honor.

15 THE COURT: Then we will begin with the testimony with
16 regard to the voluntariness of any statement.

17 MS. REESE: Your Honor, I will call Mike Woodcock.

18 MICHAEL GREGORY WOODCOCK,
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. REESE

21 Q State your name for the record, please.

22 A Michael Gregory Woodcock.

23 Q And where are you employed?

24 A Spartanburg County Sheriff's Office.

25 Q And how long have you been employed there?

Michael Gregory Woodcock (In-camera)
Direct examination by Ms. Reese

1 A I have been employed there since August of 2001.

2 Q And what are your duties as an employee of that
3 department?

4 A I am currently the lieutenant of the crime analysis
5 unit. I also conduct interviews and polygraphs.

6 Q And did you have an occasion to speak with the
7 defendant, Giles Belcher, regarding the current charge of
8 criminal sexual conduct?

9 A Yes, I did.

10 Q And do you remember when that was?

11 A That was May the 26th of 2005.

12 Q And where did you meet with him?

13 A That was at the old sheriff's office on South Church
14 Street.

15 Q Was there anyone else in the room with you?

16 A No.

17 Q Did he speak with you?

18 A No. That was the first time in.

19 Q But did he agree to speak with you that day?

20 A Oh, yes.

21 Q And did you advise him of his constitutional rights?

22 A Yes.

23 Q I'm going to show you what's been marked as State's
24 Exhibit 3 for identification. Can you tell me what that
25 is?

Michael Gregory Woodcock (In-camera)
Direct examination by Ms. Reese

1 A That's the standard rights advisory I give everyone
2 that I interview, specifically the one I gave him that day.

3 Q And how do you know it's the one?

4 A Because it has his signature and my signature, the
5 date and time it was done.

6 Q Okay. Did you read the defendant his rights?

7 A Yes. I read them out loud to everyone.

8 Q And did he sign for himself?

9 A Yes, he did.

10 Q Is this form in the same condition that it was when
11 you turned it in?

12 A Yes.

13 Q Has it been changed or altered in any way?

14 A No.

15 Q Can you demonstrate for the judge the manner in which
16 you read him his rights?

17 A I told him I have to read them their rights, standard
18 procedure. And I tell them, "These are your rights.
19 Before we ask you any questions you must understand your
20 rights. You have the right to remain silent. Anything you
21 say can and will be used against you in a court of law.
22 You have the right to talk to a lawyer for advice before we
23 ask you any questions and to have him or her present with
24 you during questioning. If you have no money for lawyers
25 fees the Court will appoint one to represent you without

Michael Gregory Woodcock (In-camera)
Direct examination by Ms. Reese

1 cost to you if you wish. If you decide to answer questions
2 now without a lawyer present you still have the right to
3 stop answering questions at any time. You also have the
4 right to stop answering questions at any time until you
5 talk to a lawyer."

6 And I ask him if he understands his rights. And when
7 they say yes, I go on to tell them a waiver, and I read that
8 out loud as well. And it states, "I am willing to make a
9 statement and answer questions without a lawyer at this
10 time. I understand and know what I am doing. No threats or
11 promises have been used, have been made to me and no
12 pressure or coercion of any kind has been used against me."

13 And I ask if they understand that. And if they say
14 they do, I have them sign in both places.

15 Q And did the defendant, in fact, sign in both places?

16 A Yes.

17 Q And what was his physical appearance that day?

18 A He was, appeared to be okay. He complained a little
19 bit of some nausea and some diarrhea.

20 Q And have you ever dealt with people in your work under
21 the influence of drugs or alcohol?

22 A Yes.

23 Q Did he appear to be intoxicated in any way?

24 A No.

25 Q Did he respond to your questions when you asked them?

Michael Gregory Woodcock (In-camera)
Direct examination by Ms. Reese

- 1 A Yes.
- 2 Q Did he appear to understand your questions regarding
3 his rights?
- 4 A Yes.
- 5 Q Was his speech coherent?
- 6 A Yes.
- 7 Q Did the defendant respond when you asked whether he
8 wanted an attorney?
- 9 A Yes.
- 10 Q And what did he say?
- 11 A No.
- 12 Q Did he at any time invoke his right to remain silent?
- 13 A No.
- 14 Q Did he agree to answer your questions without an
15 attorney being present?
- 16 A Yes.
- 17 Q Did you promise him anything during the time that you
18 spoke with him in return for making a statement?
- 19 A No.
- 20 Q Did you coerce him in any way?
- 21 A No.
- 22 Q To the best of your knowledge was the statement freely
23 and voluntarily given?
- 24 A Yes. He didn't give me a statement, not a written
25 statement.

Michael Gregory Woodcock (In-camera)
Direct examination by Ms. Reese

1 Q Not a written statement.

2 A No.

3 Q Right? Did the defendant ever refuse to answer any
4 further questions?

5 A Not when I was speaking to him, no.

6 Q Did he ever ask for a break?

7 A We took two bathroom breaks.

8 Q And tell me about that.

9 A I say he had complained a little bit of some nausea
10 and diarrhea. He asked for one break fairly early in the
11 interview, and I went with him to the bathroom. He used
12 the restroom.

13 We came back. And then near the end of the interview
14 he asked it again. At that time I gave him a little bit of
15 physical assistance. He felt he was a little bit weak and
16 shaking. I went to the bathroom with him. He was fine.

17 I brought him back. After that he seemed okay.

18 Q So he didn't appear to be shaky when he came back?

19 A After that he seemed to be okay. In fact, when the
20 interview was over he got up under his own power and left
21 and didn't seem to have any problems.

22 Q Have you ever dealt with people who were under any
23 problems with a mental disability?

24 A Yes.

25 Q And did he appear to have any of those problems?

Michael Gregory Woodcock (In-camera)
Cross-examination by Ms. Hodges

1 A No.

2 Q After he spoke with you, what did you then do with
3 him?

4 A I turned him back over to Detective Gencarelli.

5 Q And that was the end of your, your interview with him?

6 A Yes.

7 MS. REESE: That's all the state would have of this
8 witness.

9 CROSS-EXAMINATION

10 BY MS. HODGES

11 Q Lieutenant Woodcock -- is that right?

12 A That's correct.

13 Q You said there was nobody else in the room with you?

14 A Just he and I in the actual polygraph test room,
15 right.

16 Q Did you read him his rights there in the polygraph
17 test room?

18 A Yes, I did. That's standard.

19 Q And you didn't have anybody witness you reading his
20 rights or his waiver of rights?

21 A There's an observation area, but I can't tell if there
22 is anybody out there or not. So I can't say.

23 Q And on the, is it State's Exhibit 3, I believe that
24 you have in front of you?

25 A Yes.

Michael Gregory Woodcock (In-camera)
Cross-examination by Ms. Hodges

1 Q The signature, his signature, was left off the second
2 one, that's signed underneath the paragraph, waiver of
3 rights. Is that your signature?

4 A That's my signature in the witness place, yes.

5 Q So there wasn't anybody else that actually signed it
6 as a witness.

7 A Other than myself.

8 Q Other than you. I'm assuming that the time 1830 is
9 the time that you began reading the rights to him.

10 A Right.

11 Q Do you know how long he had been at the sheriff's
12 office prior to your interview?

13 A I don't know how long. I think he had been there a
14 little while. I am not sure how long.

15 Q You didn't have any contact with him until you started
16 reading him his Miranda rights or shortly before that?

17 A Correct.

18 Q And how long did the actual interview itself last?

19 A About two and a half to three hours.

20 Q Okay. And how -- you said there were two breaks in
21 between.

22 A There were two breaks in the interview, yes.

23 Q Had you actually started the polygraph exam before the
24 first break in terms of actually having him hook up to
25 monitors and things like that?

Michael Gregory Woodcock (In-camera)
Cross-examination by Ms. Hodges

1 A No. We had the first break well before that, and the
2 second break was near the end of taking physical data.

3 Q Did you do any sort of pretest interview with him?

4 A Yes.

5 Q How long did the pretest interview last?

6 A In this case I think the pretest interview lasted a
7 little over an hour and a half.

8 Q Okay. And how long did the actual exam last?

9 A I think it lasted about 30 minutes.

10 Q And then there's a post interview after, after the
11 exam?

12 A Yes. There was.

13 Q And how long was that?

14 A Probably about, if I recall about, 45 minutes maybe.

15 Q During the break that you said -- the second break was
16 actually taken towards the end of you actually recording
17 physical responses.

18 A Right.

19 Q That, is that standard protocol to break during the
20 middle or during an exam like that?

21 A No, usually not, but it is not a problem if you have
22 to.

23 Q Okay. Did you establish a baseline prior to beginning
24 your questions with him?

25 A In what way?

Michael Gregory Woodcock (In-camera)
Cross-examination by Ms. Hodges

1 Q In terms of establishing a baseline response for his
2 physical responses.

3 A Did I have -- his physical responses were normal as
4 far as I could tell.

5 Q Okay. Would there be any sort of change in his
6 responses from having gotten up, moved and gone to the
7 bathroom and then coming back and resuming the test?

8 A I didn't see anything different or significant.

9 Q Nothing different in his responses?

10 A No.

11 Q Do you know if he had anything to eat that day?

12 A I'm sure I asked him, but I do not recall what his
13 answer was.

14 Q Would you have recorded that in any of your notes if
15 you had asked him that question?

16 A It is not a standard question, no.

17 Q Okay. Did you ask him if he was taking any sort of
18 medication?

19 A Oh, yes.

20 Q And what medication did he tell you he was taking?

21 A That's in my notes. I don't recall.

22 Q Do you have your notes with you?

23 A They are in the courtroom.

24 Q Can you get them to refresh your recollection? I hand
25 you what appears to be a Manila envelope. It has some

Michael Gregory Woodcock (In-camera)
Cross-examination by Ms. Hodges

1 handwriting on it indicating Giles Belcher and a case
2 number. Are those your notes?

3 A Yes, ma'am.

4 Q Okay.

5 A According to him he had taken Aleve and a medication
6 for -- he had taken medication, Aleve, that day earlier,
7 and also he had taken some medication for gout. I think
8 that's what he told me.

9 Q Anything else that he told you that he had taken?

10 A No. That's all I have.

11 Q Okay. And you said he was experiencing some nausea
12 and diarrhea.

13 A He said that's what he was experiencing, and he burped
14 a lot.

15 Q Okay. Which would indicate to you perhaps some sort
16 of gastrointestinal upset?

17 A Possibly.

18 Q When you escorted him, did you actually escort him
19 into the bathroom or just to the restroom?

20 A Both times in the bathroom.

21 Q Okay. To your knowledge there wasn't anything else
22 that he had -- did he tell you -- do your notes indicate
23 how much he had had to eat that day?

24 A Let me check my notes just in case, however I do not,
25 I don't see that indicated any place about how much he had

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

1 to eat.

2 Q If you had asked him and if he had had something you
3 would have recorded it?

4 A Yes.

5 Q That's all the questions I have. Thank you.

6 MS. REESE: Nothing from us, Your Honor.

7 THE COURT: You may step down.

8 MS. REESE: Our second witness, Your Honor, is Charity
9 Gencarelli.

10 CHARITY GENCARELLI, having
11 been first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. REESE

13 Q State your name, please, for the record.

14 A Charity Gencarelli.

15 Q And you are a detective.

16 A Yes, ma'am, I am.

17 Q And what was your occupation or what were your duties
18 as a detective with the sheriff's department back on the
19 26th of May of 2005?

20 A I was a sexual assault investigator, detective.

21 Q And how long have you been with the sheriff's
22 department?

23 A Since January of 1998.

24 Q And what do you do now?

25 A I am still an investigator. I work with the major

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

1 crimes unit.

2 Q Did you investigate the case regarding MINOR

3 A Yes, ma'am.

4 Q And did you have occasion to speak with the defendant
5 on May 26th of 2005?

6 A Yes, ma'am.

7 Q How many times did you speak to him on that day?

8 A I had an initial interview with him. He agreed to
9 take a polygraph. And then after the polygraph was
10 completed I interviewed him again.

11 Q Where did you first interview him that day?

12 A Both times was in an interview room at the sheriff's
13 office.

14 Q And did he come voluntarily or did you go pick him up?
15 How did that work?

16 A Well, he did come voluntarily, but he didn't have a
17 ride. And I asked if I could come and pick him up, and he
18 agreed. And I went and picked him up and brought him to
19 the sheriff's office.

20 Q And at that point did you, in fact, read him his
21 rights?

22 A Yes, ma'am, I did.

23 Q And I am going to show you what's been marked as
24 State's Exhibit 1 for Identification. Could you identify
25 this for me?

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

1 A Yes, ma'am. This is the preinterrogation waiver form
2 that I filled out and Mr. Belcher signed during our first
3 interview.

4 Q And did you read him his rights?

5 A Yes, ma'am, I did.

6 Q And what did he do on that form to indicate that he
7 understood those?

8 A He signed his name twice.

9 Q Did he -- I notice there is some checkmarks there.

10 A Yes, ma'am.

11 Q Whose are those?

12 A Those are my checkmarks. After I read each line I
13 check it. I have it facing them so the checkmarks are
14 backwards. I just have always done that. So I just check
15 it as I read each line.

16 Q And you, in fact, did read each line to him?

17 A Yes, ma'am.

18 Q And did he indicate he understood those rights?

19 A Yes, ma'am.

20 Q Did he sign the form?

21 A Yes, he did.

22 Q And is that form in substantially the same condition
23 as when you turned it in?

24 A Yes, ma'am.

25 Q And has it been changed or altered in any way?

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

1 A No, ma'am.

2 Q Was there anyone else present when you read him his
3 rights that day?

4 A I know that Detective Aldridge notarized it. I
5 witnessed it and Detective Aldridge witnessed it. I don't
6 know if she was actually in the room when I read the right
7 or not. I do know I went and got her and she notarized the
8 form.

9 Q And what was the defendant's appearance on that day?

10 A Normal. There was nothing remarkable or substantial
11 that I remember. It was just normal.

12 Q Have you ever dealt with people in your work under the
13 influence of drugs or alcohol?

14 A Yes, ma'am.

15 Q And did he appear to be under the influence of drugs
16 or alcohol?

17 A No, ma'am.

18 Q Did he respond to those questions when you read those?
19 Well, first of all, did he respond as you read him his
20 rights?

21 A Yes, ma'am.

22 Q And did he respond as you asked him the questions?

23 A Yeah, he did.

24 Q And was his speech coherent?

25 A Yes.

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

- 1 Q And did he appear to know where he was?
- 2 A Yes.
- 3 Q And have you ever dealt with people suffering from
- 4 mental disability?
- 5 A Yes, ma'am.
- 6 Q And did he indicate he didn't know where he was or was
- 7 suffering from some mental disability?
- 8 A No, ma'am, at no time.
- 9 Q And did he say whether or not he wanted an attorney?
- 10 A No. He never requested an attorney.
- 11 Q Did he invoke his right to remain silent?
- 12 A No. He never invoked any of his rights.
- 13 Q Did you promise him anything in return for him giving
- 14 you a statement?
- 15 A No, ma'am.
- 16 Q Did you coerce him in any way?
- 17 A No, ma'am.
- 18 Q To the best of your knowledge was that statement
- 19 freely and voluntarily given?
- 20 A Yes, ma'am.
- 21 Q Did he ever refuse to answer any questions?
- 22 A No.
- 23 Q Did he ever ask for a break?
- 24 A No.
- 25 Q And was there actually a record of his statement, his

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

1 first statement, made?

2 A Yes. He wrote a voluntary statement.

3 Q And I'm going to show you this. I think it has been
4 marked as State's Exhibit 2 for Identification. Can you
5 identify that?

6 A Okay. Yes. This is the statement that he wrote
7 following, during this first interview.

8 Q And were you present when he wrote the statement?

9 A Yes, ma'am, I was. I witnessed it.

10 Q And were you present when he signed it?

11 A Yes, ma'am.

12 Q Now, was there any discussion about how much he had
13 eaten that day?

14 A From what I remember I asked him if he was hungry, if
15 he needed anything to eat, and he said that he was hungry.
16 So Investigator Belk gave him some money. Investigator
17 Belk went to Burger King and got him something to eat.
18 This was prior to the polygraph.

19 Q So you had already interviewed him?

20 A Yes. I had interviewed him.

21 Q And what did he do between the time? Was there a
22 delay between the time you interviewed him and the time the
23 polygraph began?

24 A Yes, there was. He finished his voluntary statement
25 at 5:56. I don't remember exactly when the polygraph

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

1 began, but during that time he did eat something from
2 Burger King in the interview room waiting for Investigator
3 Woodcock.

4 Q That's all the questions we have.

5 MS. REESE: Well, do you want to do the first
6 statement or go ahead and do the second?

7 MS. HODGES: You can go ahead and do them both.

8 Q Was there another time you spoke to the defendant that
9 evening?

10 A Yes, ma'am. It was after he completed his polygraph
11 with Investigator Woodcock. Investigator Woodcock walked
12 him around back to the interview room area, criminal
13 investigation room area, and I sat down with him again and
14 interviewed him.

15 Q Did you watch any of the polygraph that was done by
16 Detective Woodcock?

17 A Yes, I did.

18 Q And were you present for most of that?

19 A Yes, ma'am.

20 Q Do you remember whether you witnessed him being read
21 his rights?

22 A Unfortunately, I don't remember that.

23 Q After his interview with Lieutenant Woodcock he was
24 brought back to you in an interview room, is that right?

25 A Yes, ma'am.

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

1 Q And how did he appear to you at that time?

2 A He was, you know, nothing remarkable. The same.

3 Q Did he appear to be sick or ill?

4 A No, ma'am. He never appeared that way to me.

5 Q Did he ever report to you he was suffering from any
6 illness?

7 A No, ma'am.

8 Q Did he agree to speak with you there?

9 A Yes, he did.

10 Q And I am going to show you what's been marked as
11 State's Exhibit 4 for Identification. Can you identify
12 this?

13 A Yes. This is the second voluntary statement from
14 Mr. Belcher. This was during the second interview.

15 Q And how long did you spend with him in that room?

16 A Probably a few hours.

17 Q And when you came into the room how did he seem?

18 A Again, he just was normal, regular, not sick or
19 anything like that.

20 Q Already spoken to Lieutenant Woodcock about what he
21 had told Lieutenant Woodcock in the interview?

22 A I did know what he had told Lieutenant Woodcock.

23 Q And did you speak to the defendant about that?

24 A I did.

25 Q And at any time during the interview did he become

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

1 emotionally upset?

2 A He did.

3 Q And did he ever ask the interview be stopped?

4 A No, he never asked that.

5 Q Did he ever appear to you to be suffering from any
6 mental illness?

7 A No. He seemed just emotionally upset.

8 Q And when you say upset, what was the indication?

9 A He was crying, you know, he just, I don't know. When
10 someone gets emotional, he was just upset, terrified,
11 things like that.

12 Q Did you ever have any concerns about whether or not he
13 was actually freely and voluntarily at that time?

14 A No.

15 Q Did he, in fact, give you a statement?

16 A He did.

17 Q And was anyone else present in the room when he gave
18 that statement?

19 A Yes, certainly. Balderama was in the room.

20 Q And did he agree to give the statement voluntarily?

21 Who wrote the statement?

22 A I wrote the statement but I asked him -- well, first I
23 agreed to write another statement, but he wanted me to
24 write the statement. So I wrote down verbatim what he had
25 told me.

Charity Gencarelli (In-camera)
Direct examination by Ms. Reese

1 Q And how did you do that? In what order did that
2 happen?

3 A We talked. During the interview we talked, and I
4 asked him for a statement, if he would be willing to write
5 another statement, and he said yes. He had me to write it.
6 And so then as he told me I wrote it.

7 Q Did you write the statement line by line?

8 A Yes.

9 Q As he said --

10 A Every one of these words are what he said to me.

11 Q Did you leave out any parts, anything he said to you?

12 A No, I didn't.

13 Q And that is your, you wrote down exactly what he told
14 you?

15 A I did.

16 Q And did you witness his signature on that paper?

17 A I did.

18 Q And did you remember whether he had any conversation
19 with Officer Balderama at that time?

20 A I don't remember any specific conversation that they
21 had.

22 Q Officer Balderama was also in the room when he signed
23 that statement.

24 A He was.

25 Q Nothing further.

Charity Gencarelli (In-camera)
Cross-examination by Ms. Hodges

1 CROSS-EXAMINATION

2 BY MS. HODGES.

3 Q What time did you pick him up to bring him to the
4 sheriff's office that day?

5 A I think it's in my notes, so I can't, I don't want to
6 misspeak. So I think my notes say about 4:45.

7 Q Okay.

8 A I'm not sure exactly.

9 Q And where did you pick him up from?

10 A His place of business, which I think is the D. O. T.
11 shop on Fairforest if I remember correctly.

12 Q Okay. And how long does it take you to get from the
13 D. O. T. shop at Fairforest to the old sheriff's office?

14 A Ten to 15 minutes, I guess.

15 Q So y'all are getting to the sheriff's office
16 approximately at 5:00 o'clock.

17 A Approximately. I cannot, you know --

18 Q I mean, 5:00 o'clock-ish.

19 A Right.

20 Q Okay. And did you talk about anything in the car?
21 Was anybody in the car with you other than you and
22 Mr. Belcher?

23 A I don't remember if there was or not, but I wouldn't
24 have talked about anything about the case prior to, before
25 reading his rights to him. So I can definitely testify I

Charity Gencarelli (In-camera)
Cross-examination by Ms. Hodges

1 didn't ask him any questions or talk about this case at
2 all.

3 Q Did he know why you were asking to pick him up and
4 bring him to the sheriff's office?

5 A Yes. I'm sure he did.

6 Q Had you had a conversation with him previously about,
7 I mean, talked to you about the allegations involved in the
8 case?

9 A We had talked on the phone.

10 Q And when you get to the sheriff's office, where do
11 y'all first go?

12 A We would walk. We walked back to my office.

13 Q Okay. And is that where you read him his Miranda
14 rights, was in your office?

15 A Was in an interview room.

16 Q And how large is that interview room?

17 A I'm sorry. I am not good with, with size, I mean.

18 Q Is it like the size of the jury box?

19 A No. It's maybe about a third of that, a third or a
20 fourth. I'm just not sure. I mean, it's not a big room,
21 but it's enough for, you know, several chairs and a table.

22 Q Does it have a 2-way mirror?

23 A No, ma'am, it doesn't.

24 Q When you read him the Miranda rights, you know that
25 Officer Aldridge or Detective Aldridge notarized it.

Charity Gencarelli (In-camera)
Cross-examination by Ms. Hodges

1 A Yes, ma'am.

2 Q But you don't remember if somebody actually was in
3 there when you read it to him.

4 A No, I don't. I don't remember that.

5 Q And you read him the Miranda rights. And then did
6 y'all immediately start your interview?

7 A Oh, yeah. I'm sure that after he waived his rights
8 and agreed to talk with me, I'm sure we started talking at
9 that time.

10 Q Okay. Anything that you talked about that's not
11 included in his written, first written, statement during
12 that first interview to your recollection?

13 A Nothing that I can recollect. I'm sure we talked
14 about more than just the small paragraph, but I don't
15 recollect, you know, everything we talked about.

16 Q You don't remember him giving you any sort of
17 admissions or confessions?

18 A No, ma'am.

19 Q Or anything about the allegations?

20 A No.

21 Q And the statement ends about, what, 5:56, is that
22 right?

23 A Yes, ma'am.

24 Q And at that point you'd asked him if he had had
25 anything to eat or if he was hungry.

Charity Gencarelli (In-camera)
Cross-examination by Ms. Hodges

1 A Yes, ma'am.

2 Q Do you remember whether you'd asked him about what he
3 had had to eat prior to taking the statement from him?

4 A I don't remember asking him that. I don't know if I
5 did or not.

6 Q Do you remember asking him about whether he had taken
7 any medication that day?

8 A I don't remember asking him that, no, ma'am.

9 Q Do you remember whether you asked him about how much
10 sleep he had had in the last three days?

11 A No, ma'am. I don't remember asking him that.

12 Q If you had asked him that, something that significant,
13 it would have been in your notes.

14 A Yes, ma'am, I would think that I would. If he had
15 said he had been without sleep for days, I'm sure I would
16 have documented that.

17 Q Okay. But you don't remember asking that.

18 A No, ma'am. I don't remember asking him that.

19 Q Do you know how much he actually ate from Burger King?

20 A No. I really don't remember. I don't know how much
21 he consumed of what, what I bought him.

22 Q And then he goes in and does an interview with
23 Lieutenant Woodcock.

24 A Yes, ma'am.

25 Q Two and a half or three hours sound about right for

Charity Gencarelli (In-camera)
Cross-examination by Ms. Hodges

1 how long he was with Lieutenant Woodcock?

2 A Probably, probably.

3 Q And did you watch all of that interview or just, you
4 know -- I know you said most of it.

5 A I'm sure, I'm sure. I can't sit here and say that I
6 never walked out for any reason. So I would never say I
7 watched all of it, you know, without going to bathroom
8 breaks myself. But, yes, I would have sat in there and
9 watched most if not all of it.

10 Q So you knew at that point that he had left the room at
11 least twice to go to the bathroom himself.

12 A Yeah. I'm sure I did. Right.

13 Q Okay. And when he comes back to your interview room
14 for the second interview did you ask him at that point, you
15 know, how he was feeling having known that he had gone to
16 the bathroom, had some gastrointestinal upset at that
17 point?

18 A No. I don't remember asking that. Any time that --
19 the whole time I talked with him he always seemed normal,
20 presented fine as far as, you know, physically. He never
21 seemed sick or anything or out of sorts per se.

22 Q And do you recall whether, asking him prior to the
23 second interview or during the second interview how much
24 sleep he had had in the last three days or four days?

25 A No. I don't remember asking him that.

Charity Gencarelli (In-camera)
Cross-examination by Ms. Hodges

1 Q And do you remember asking him whether he had had any
2 medication?

3 A I don't remember asking him that as well.

4 Q And then he gives you the second statement that you
5 actually write for him.

6 A Yes, ma'am.

7 Q Approximately how long were you in that interview
8 room, again, the second, for the second interview?

9 A Well, if the, if the polygraph lasted two and a half
10 or three hours, then I guess it started somewhere around
11 6:00. I would say we were in there probably a good two and
12 a half or three hours itself. I mean, again, I'm just
13 estimating. But obviously I see that the voluntary
14 statement was completed at 12:21 a.m. So we were probably
15 in there for at least two or two and a half or so hours.

16 Q And were you, did you talk to him some first and then
17 start writing his statement?

18 A Yes.

19 Q Or?

20 A Yes.

21 Q The actual writing of the statement itself, do you
22 have any estimate as to how long that took?

23 A No, ma'am, I don't. I'm sure it probably didn't take
24 long. Normally when I interview someone we talk for
25 however long. And, and then when they, if they agree to

Charity Gencarelli (In-camera)
Cross-examination by Ms. Hodges

1 write a statement, and then the writing of the statement
2 usually is the shortest amount of time normally. So I'm
3 assuming it was the same here.

4 Q Was there anything in your conversations with him
5 that's not reflected in that written statement?

6 A No, ma'am, nothing that I recollect.

7 Q And you said Sergeant Balderama was there. Was he
8 actually physically present in the room standing at the
9 door?

10 A Yes, ma'am, he was in the room.

11 Q Seated next to you, with you? Do you remember where
12 people were seated?

13 A I think Sergeant Balderama was beside me on my
14 left-hand side.

15 Q Okay. And was he in uniform or in plain clothes?

16 A I'm sure he was probably in uniform, as he wears his
17 uniform all of the time.

18 MS. HODGES: Beg the Court's indulgence just a moment.

19 (Pause.)

20 Q You indicated that Mr. Belcher became emotionally
21 upset. Do you ever remember him telling you that he just
22 wanted to be left alone?

23 A I don't remember him making that statement.

24 Q Okay. Did you record either the first statement or
25 the second statement in any way either by audio or video?

Michael Gregory Woodcock (In-camera)
Direct examination by Ms. Reese

1 A No. That's not -- I never do that.

2 Q You don't ever do that?

3 A I've never done that.

4 Q Those are all the questions I have. Thank you.

5 MS. REESE: Your Honor, if I might have a moment to
6 speak with defense counsel, we just found something in his
7 notes.

8 (Pause.)

9 MS. REESE: I have no questions from this witness.

10 THE COURT: You may step down.

11 MS. REESE: Your Honor, just briefly we would like to
12 recall Mike Woodcock.

13 MICHAEL GREGORY WOODCOCK,
14 having been first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MS. REESE

16 Q Do you, in fact, have some notes in your file that you
17 found regarding whether or not Mr. Belcher had commented on
18 his sleep?

19 A On what, now?

20 Q On whether he had had any sleep.

21 A Yes. There's a standard list of questions here. One
22 of these is how much sleep the subject has had in the last
23 24 hours. And the notes here indicate he had between six
24 and eight hours of sleep in the last 24.

25 Q And also I noticed a notation on there that this was

Michael Gregory Woodcock (In-camera)
Direct examination by Ms. Reese

1 video-taped.

2 A Yes. The, however, you know, standard procedure, we
3 didn't keep video tapes unless there was something
4 evidentiary. And since there wasn't anything the
5 investigator wanted to keep, in this particular instance no
6 admission, confession, such as that, we would normally tape
7 over them.

8 Q What did he say to you in your statement? I mean,
9 when he talked to you at the end, what exactly did he say
10 to you?

11 A The only thing he would say to me is that he didn't
12 know what had happened.

13 Q All right. And that would have been something that
14 you all would not have kept, is that correct?

15 A Correct.

16 Q Okay. And why is that?

17 A Because there's nothing. It didn't have any
18 particular investigative value. There wasn't nothing
19 evidentiary about that.

20 Q So at that point you turned him over to Detective
21 Gencarelli.

22 A Correct.

23 MS. REESE: Nothing further.

24

25

Michael Gregory Woodcock (In-camera)
Cross-examination by Ms. Hodges

1 CROSS-EXAMINATION

2 BY MS. HODGES

3 Q Whose decision, whose, in whose opinion is it
4 determined that that tape has no evidentiary value?

5 A What we do is if there's an admission or a confession,
6 we keep. We put that into evidence. If there's not
7 anything like that on the tape we ask the investigator if
8 we need to keep the tape. If they say no, it is taped
9 over. That was standard procedure.

10 Q So Investigator Gencarelli is the one that told you
11 that there was no evidentiary value to that tape and told
12 you to tape over it.

13 A I don't remember asking her specifically, but if there
14 was anything else on the tape. I'm sure I asked her at
15 some point could it be taped over.

16 Q And we don't know what was on that tape because it was
17 destroyed.

18 A It was taped over, yes.

19 Q So evidence in a criminal investigation was destroyed
20 before the defendant had an opportunity to even review it
21 or his lawyer had an opportunity to review it.

22 A It's standard procedure that if there's nothing on the
23 tape in regards to anything culpable, we just tape over it.
24 This is a polygraph test.

25 Q So it's your standard procedure to tape over

Michael Gregory Woodcock (In-camera)
Cross-examination by Ms. Hodges

1 statements that have been made by somebody who is under
2 criminal investigation when you decide that there's nothing
3 of evidentiary value.

4 A That was our standard procedure.

5 Q Is it still your standard procedure?

6 A We have two systems now, a video-tape system and
7 another system. The video-tape system, we still do that.

8 Q So you still tape over videos.

9 A Of polygraphs, yes.

10 Q Polygraphs.

11 A When there's no statement made.

12 Q When did that, that, that procedure go into, into
13 place?

14 A We always done that. It was a space issue.

15 Q So because of space you chose not to keep a recorded
16 statement by somebody that was under investigation for a
17 crime?

18 A Well, there was no statement given. I mean, he didn't
19 give a statement as such.

20 Q He didn't give a statement that you considered to be a
21 statement.

22 A That's correct.

23 Q Okay. But he spoke to you.

24 A That's correct.

25 Q And revealed information to you.

Michael Gregory Woodcock (In-camera)
Cross-examination by Ms. Hodges

1 A Nothing he hadn't already, not already revealed.

2 Q But we don't have the chance to independently review
3 that, do we?

4 A That's correct.

5 Q Do you have an explanation as to why when a subpoena
6 was served on the sheriff's office that all of your notes
7 regarding the polygraph exam were not provided to my
8 office?

9 A The only thing I was asked for, normally is the, the
10 forms regarding where they're advised of their rights and
11 the actual report of the polygraph. Everything else as
12 regarding polygraphs normally are not admissible. I guess
13 that's why. That's only speculation on my part.

14 Q So, so the determination is made by somebody in your
15 office as to whether it's admissible to determine whether
16 we get a chance to review it?

17 A Standard practice isn't always to provide the
18 solicitor's office with the, if they wish to have it the,
19 rights advisory and the polygraph report. We have never
20 before in the past ever provided anything else.

21 Q And yet there is information today in other
22 documentation that you have in your file that has become an
23 issue in a case, isn't there?

24 A And that's why we keep it on file, just in case. But
25 we never had a problem before.

George Balderama (In-camera)
Direct examination by Ms. Reese

1 Q And this case has been ongoing for two years. And
2 you've never made any of that information available to the
3 solicitor's office until 20 minutes ago.

4 A I had it. We, it never came up.

5 MS. HODGES: I have nothing further of this witness,
6 Your Honor. Thank you.

7 MS. REESE: Nothing further of this witness, Your
8 Honor.

9 THE COURT: You may step down.

10 MS. REESE: Finally, Your Honor, we would call George
11 Balderama to the stand.

12 GEORGE BALDERAMA, having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MS. REESE

15 Q Would you state your name, please?

16 A George Balderama.

17 Q And where are you employed?

18 A With the Spartanburg County Sheriff's Office.

19 Q And where were you employed on the 26th of May of
20 2005?

21 A At the sheriff's office.

22 Q And did you have occasion to actually witness a
23 statement given by the defendant, Giles Belcher?

24 A Yes, I did.

25 Q And can you tell me how that happened?

George Balderama (In-camera)
Direct examination by Ms. Reese

- 1 A Well, at the sheriff's office I'm one of the desk
2 sergeants, and I work from 3:00 o'clock in the afternoon
3 until about midnight every Monday through Friday. And as
4 part of my duties at the sheriff's office I deliver
5 paperwork to different offices that we collect at the front
6 desk. And about the time that I talked to Officer
7 Gencarelli I was back delivering the different messages and
8 faxes and different things like that.
- 9 Q And did she indicate to you that she needed you for
10 something?
- 11 A Yes, she did.
- 12 Q And what was that?
- 13 A She asked me if I would come over. She was
14 interviewing an individual; and if I would come over to the
15 interview room and be with her while she did his statement.
16 And also I'm a notary for the sheriff's office. And a lot
17 of people that have different documentations or documents
18 that have to be notarized, they bring them to me and tell
19 me what they've got. And then, you know, after I ask them
20 certain questions I notarize the document depending on what
21 it is.
- 22 Q And did you, in fact, go into the room and actually
23 see Mr. Belcher?
- 24 A Yes, ma'am, I did. I saw Mr. Belcher.
- 25 Q And how did he appear to you?

George Balderama (In-camera)
Direct examination by Ms. Reese

1 A When I arrived to the interview room, of course the
2 door was open. Officer Gencarelli was outside and motioned
3 me to come over there and explained what she wanted.

4 I looked into the room and Mr. Belcher was -- if you
5 look at this thing here, this would be the entrance of the
6 interview room. This would be the back of the interview
7 room. And there's a table here, a chair here, a chair on
8 the other side of the table and a chair right here by the
9 door. And he was over here in the corner of the interview
10 room.

11 Q And did he appear to be -- well, how did he appear to
12 you?

13 A Well, when I saw him he was crying or sobbing when I
14 walked into the, into the room. I just looked at him. I
15 didn't say anything.

16 Q Have you dealt with individuals in your business as a
17 police officer who are under the influence of drugs and
18 alcohol?

19 A Yes, I have.

20 Q Did he appear to be under the influence of either?

21 A No, ma'am, not at that time.

22 Q Have you dealt with individuals who appear to be
23 suffering from a mental disability?

24 A Yes, ma'am.

25 Q And did he appear to be suffering from a mental

George Balderama (In-camera)
Direct examination by Ms. Reese

1 disability?

2 A Not to me, he didn't.

3 Q So was he doing other things, anything other than just
4 crying?

5 A No. He was just, you know, like sobbing like, just
6 sobbing.

7 Q And were you present when Detective Gencarelli took
8 the statement from the defendant?

9 A Yes, ma'am, I was.

10 Q And were you present when he signed the statement?

11 A Yes, ma'am, I was.

12 Q And did you have a conversation with him regarding
13 that statement?

14 A Usually whenever I deal with any statements that
15 somebody brings to me from a victim and I'm kind of like
16 just coming in there, because at the desk a lot of times we
17 have people that give voluntary statements and I'm not the
18 officer that talked to them. It's an officer that is
19 assigned to work with me.

20 So they hand me the statement to ask me if I will
21 notarize the statement. And what I do is I always ask the
22 people if they did this of their own free will. And then if
23 they say yes, then I sign it.

24 Q And did you ask that of the defendant?

25 A Yes, ma'am, I did.

George Balderama (In-camera)
Cross-examination by Ms. Hodges

1 Q And did he say he was doing that voluntarily?

2 A Yes, ma'am, he did.

3 Q And was that your only part in this investigation?

4 A Yes, ma'am.

5 MS. REESE: Nothing further.

6 CROSS-EXAMINATION

7 BY MS. HODGES

8 Q Sergeant Balderama, do you know what time you started
9 observing the interview between the defendant and
10 Ms. Gencarelli?

11 A In all honesty, ma'am, no, I don't.

12 Q And were you there present for the entire interview or
13 just for the taking of the statement?

14 A Just for the taking of the statement.

15 Q Okay. So you were not present for any of the actual
16 interview, or any of the interviews, I guess. You didn't
17 witness any of the interviews prior to the statement that
18 you actually witnessed.

19 A No, ma'am.

20 Q Or notarized rather.

21 A No, ma'am. I didn't.

22 Q Okay. Thank you, sir.

23 A Yes, ma'am.

24 THE COURT: Step down.

25 MS. REESE: Nothing further, Your Honor, from the

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1 state as to this issue.

2 THE COURT: Ms. Hodges.

3 MS. HODGES: Your Honor, given the fact that there is
4 information that directly influences the questions that I
5 was going to ask my client that was not made available to
6 me until just a few minutes ago, I would like to ask the
7 Court for an opportunity.

8 Well, I would like to ask for at a minimum an
9 opportunity to be able to review that information before
10 putting my client up on the stand regarding the
11 voluntariness of the statement because that information
12 directly conflicts with some things my client has told me.
13 And I would like to be able to have an opportunity to be
14 able to review that.

15 I am concerned about the fact that our defense in this
16 case has been significantly hampered by the destruction of
17 evidence by the sheriff's office that clearly were
18 statements of my client's that they decided didn't have any
19 evidentiary value.

20 At this point, you know, at worst I'd actually move
21 that all of the statements be, well, at least since the
22 polygraph exam, the second statement, be suppressed for
23 failure of us to be able to review all the evidence that
24 the sheriff's office gathered against my client that we
25 don't have the opportunity to examine.

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1 And it's a novel issue that I've never been presented
2 with before, Judge. But I am more than just a little bit
3 stymied about what's come to light during today's hearing.

4 THE COURT: Well, I'm not sure what information it is
5 that's critical to you and your client, but the, and of
6 course I don't know why you take videos and tape over them
7 necessarily. But it was my understanding there was really
8 no dispute as to what had occurred or what had been said in
9 these interviews. I didn't know that that was an issue in
10 the case.

11 MS. HODGES: Well, Judge, not so much an issue in the
12 case, per se, of the, well, I mean, I can't tell you it is
13 an issue in the case because I don't know what was said
14 during the polygraph interview with Lieutenant Woodcock.

15 THE COURT: Well, you know what the state claims was
16 said and you know what your client has told you that was
17 said. So is there a dispute about what occurred in these
18 interviews?

19 MS. HODGES: Not in the first written interview and
20 not in the second written statement, but my concern is,
21 Judge, I don't know what was on that video tape. It very
22 well may be that there very well may have been something
23 else that was mentioned on that video tape that may have
24 made a difference, but I don't know because, you know, my
25 client was not able to tell me what, you know, the

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1 substance of what was said during that, that middle portion
2 of the interview in terms of, you know, the two and a half
3 or three hours that he was in with the lieutenant.

4 THE COURT: He doesn't remember what happened during
5 the time that he was with Lieutenant Woodcock?

6 MS. HODGES: He remembers some basics about what
7 happened during the time that he was in with Lieutenant
8 Woodcock, but he doesn't remember, I mean, the thing is, I
9 mean, what happened was video-taped and it was destroyed.

10 THE COURT: Well, I understand that. But there is no
11 requirement that it be video-taped and there is no
12 requirement that it be preserved if it is. You know, I'm,
13 I'm like you. I'm not certain exactly why something is
14 video-taped and then it's destroyed. Or what's the point
15 of video-taping it to begin with?

16 Nevertheless, I don't know of any requirement that
17 requires, any law, rule or regulation that requires, them
18 to video-tape any interview or prevents them from
19 destroying the video after the interview has taken place.

20 Now, there could arise in a given case an issue if
21 there's a dispute or a disagreement as to what was said and
22 what was done. And that could easily be resolved through
23 preservation of the video-taped interview. And that issue
24 may arise at some point when videos are taken and
25 destroyed. But in this case I haven't been told of any

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1 disagreement as to what the facts were and what they are, I
2 guess, or as they existed during that interview.

3 The state has presented their evidence as to what
4 occurred, and I assume your client has had a chance to
5 listen to it and you and he have discussed what went on.
6 And so I don't know of any disagreement. I haven't been
7 told of any up to this point.

8 MS. HODGES: Well, I can't tell you what I disagree
9 with that I can't see, but-and I tell the Court that there
10 is no --

11 THE COURT: You misunderstand me. I'm not talking
12 about a disagreement that might be divulged from looking at
13 a video. I'm talking about Lieutenant Woodcock has
14 testified what went on during the time he was with your
15 client.

16 I assume that your client has given you any
17 information that he thought was relevant, important,
18 critical or significant while he was in there with
19 Lieutenant Woodcock. Well, that would establish whether or
20 not there is any disagreement between you and the state as
21 to what occurred.

22 MS. HODGES: There is a --

23 THE COURT: That video tape couldn't, wouldn't help us
24 in that respect.

25 Now, if Lieutenant Woodcock says one thing and your

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1 client says something contrary and opposite and it's
2 material and significant, then clearly the video tape would
3 resolve the issue.

4 We wouldn't have an issue about who said what, who is
5 telling the truth, who is more accurate and who remembers,
6 who has forgotten. The video tape would be there to
7 establish that without a doubt. But we don't have that.
8 So we're relying upon the recollections of individuals.

9 So I guess the question is simply is there a
10 disagreement between you and your client and Lieutenant
11 Woodcock and the state about what happened in that
12 interview room.

13 MS. HODGES: Yes, sir, to the extent of what my client
14 tells me he told Lieutenant Woodcock regarding the amount
15 of sleep that he had had in the last 24 hours and in the
16 last, in the past three days prior to the interview. Yes,
17 sir, there is a disagreement.

18 THE COURT: Okay. All right. Well, then your -- and
19 clearly if any evidence comes into this case that relates
20 to that, you'll be able to tell the jury that, you know,
21 there's a dispute and the state could have, could have
22 easily handled that dispute by simply preserving what they
23 chose to take and then chose to destroy.

24 So there's -- and of course unless there's some
25 indication that that destruction was intentional or for the

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1 purpose of perpetrating a fraud or do prejudice to the
2 defendant, then, as I say, there is no requirement that
3 they video, there is no requirement that they maintain it,
4 unlike a driving under the influence case. There is
5 requirements.

6 In detectives' investigative techniques there is no
7 such requirement unless the sheriff's department has a
8 policy regarding that. But I can't make them preserve a
9 video that they use in an investigative technique if they
10 don't have to do it to start with and they choose not to
11 keep it afterwards.

12 Now, if I think there is some intentional
13 misrepresentation, fraud or intent to deceive or to prevent
14 the defense from having access to certain evidences they've
15 obtained and then destroyed, that's a different issue
16 altogether, but I don't think that's being alleged in this
17 case. And so we are back where we were. They don't have
18 to video-tape it, they don't have to keep it.

19 Now, whether there is some other issues or other
20 matters that you've been notified of, I know, as I
21 understand it, the one thing was the, whether or not he had
22 much sleep or how much he had had.

23 As I understand it, there was a contemporaneous note
24 made. At least that's Lieutenant Woodcock's testimony.
25 And so they've provided you with that information.

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1 MS. HODGES: Well, actually, yeah, yes, sir, during
2 the course of this hearing just for the record.

3 THE COURT: I understand that. Well, I'm going to let
4 you. I'm going to give you a chance to look at it and
5 digest it and talk to your client about it.

6 MS. HODGES: Your Honor, just if I could, just I guess
7 my point, and I may not be articulating it clearly as, and
8 I agree with the Court. There is no, not necessarily a
9 requirement to, for them to record the statements that are
10 made, and I certainly don't mean to be indicating that
11 there is a requirement to do that.

12 I do think though that if law enforcement does choose
13 to record a statement or an interview or anything that
14 somebody who is under investigation for a criminal charge,
15 that if they choose to do that, I think then at that point
16 because that is a statement that has been taken of somebody
17 that they are looking towards criminal prosecution, I think
18 that there is an obligation to preserve that for the
19 defense to be able to determine, you know, is there an
20 issue that's exculpatory in nature, is there an issue
21 that's perhaps inculpatory in nature that would influence
22 our decisions on how to proceed with the case.

23 And just respectfully I think that while there may not
24 be a requirement initially to video-tape it, if they
25 undertake to video-tape it that they certainly ought to

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1 preserve that for review, you know, both by the state, as
2 well as the defense.

3 THE COURT: Well, that's certainly a logical argument,
4 and you may very well be right. And if you've got some law
5 that would assist me in deciding that issue, I'll be happy
6 to consider it but --

7 MS. HODGES: We will have to go look for some for the
8 Court over the course of today.

9 THE COURT: Yeah. But, as I say, whether it's
10 exculpatory or inculpatory, the defendant would have an
11 opportunity to have that information. But, as I understand
12 it, there is no inculpatory evidence that was obtained from
13 the defendant during the course of Lieutenant Woodcock's
14 interview. And the exculpatory nature of it I think has
15 been provided.

16 Or did I, or did I understand correctly or
17 misunderstand that he, he denied any knowledge or he didn't
18 recall it? Which was it?

19 MS. REESE: He denied it. I think Detective
20 Woodcock's testimony is that he denied it and then at the
21 end said I can't remember what happened.

22 THE COURT: But, but both of those positions are also
23 set forth in the written statements that were provided to
24 Detective Gencarelli.

25 MS. REESE: And, Your Honor, also we did provide to

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1 the public defender's office. He does have a written
2 report, polygraph report, where that information was placed
3 in a report. So that was also made available.

4 THE COURT: What information are we talking about?

5 MS. REESE: The information about what the defendant
6 said I can't remember.

7 THE COURT: Oh, okay.

8 MS. REESE: He actually had a written report that he
9 filed with the sheriff's office, and we did make that
10 available to her.

11 THE COURT: Okay. So, in any event, the substance and
12 nature of the information provided by the defendant, as I
13 understand it, has been provided to the defendant.

14 And there's nothing. I mean, it's not a matter of
15 them claiming he confessed and he says that's not so. I
16 mean, it's a matter of, according to the state, he says he
17 didn't, did not commit the offense or did not recall having
18 committed the offense, both, and that that information has
19 been provided. And there's, as I understand it there's, no
20 dispute about that, or the defendant doesn't take a
21 contrary view of what the state has presented.

22 But, now, I've not heard from the defendant. I don't
23 know if he'll testify. So I don't know what he might
24 testify to.

25 MS. HODGES: Yes, sir.

Giles Belcher (In-camera)
Direct examination by Ms. Hodges

1 THE COURT: So do you want to take a break and talk to
2 your client?

3 MS. HODGES: Yes, sir, if I may.

4 THE COURT: All right. We'll take, well, we'll take
5 15 minutes to begin with, and then you let me know if you
6 need more.

7 MS. HODGES: Yes, sir.

8 THE COURT: All right. Court's in recess for 15
9 minutes.

10 (Whereupon, a recess was taken.)

11 THE COURT: All right. We ready to proceed?

12 MS. HODGES: Yes, sir, Your Honor.

13 THE COURT: Ms. Hodges.

14 MS. HODGES: Your Honor, I would call Giles Belcher to
15 the stand for the purposes of the Jackson vs. Denno
16 hearing.

17 THE COURT: Okay.

18 GILES BELCHER, having been
19 first duly sworn, testified as follows:

20 MS. HODGES: May it please the Court.

21 THE COURT: Yes, ma'am.

22 MS. HODGES: Thank you, Your Honor.

23 DIRECT EXAMINATION BY MS. HODGES

24 Q Mr. Belcher, you've got several pieces of paper in
25 front of you. I'm going to start with, I guess, State's

Giles Belcher (In-camera)
Direct examination by Ms. Hodges

1 Exhibit No. 1.

2 Your name is Giles Belcher. Do you also have a
3 nickname that you go by?

4 A Yes, ma'am.

5 Q And what is that?

6 A Les.

7 Q Okay. And on State's Exhibit No. 1, is that your
8 signature where you've signed, I guess, there at the top
9 next to Ms. Gencarelli's signature?

10 A Yes, ma'am.

11 Q Is that your signature there at the bottom on the
12 waiver of your rights to talk to her?

13 A Yes, ma'am.

14 Q Okay. State's Exhibit No. 2, is that your
15 handwriting?

16 A Yes, ma'am.

17 Q And is that your signature?

18 A Yes, ma'am.

19 Q State's Exhibit No. 3, is that your signature on the
20 polygraph waiver of rights for advising you of your rights
21 and also the waiver of your rights?

22 A Yes, ma'am.

23 Q And State's Exhibit No. 4 is not in your handwriting,
24 is that correct, the actual statement itself?

25 A Yes, ma'am.

Giles Belcher (In-camera)
Direct examination by Ms. Hodges

1 Q And-but is that your signature on the bottom of
2 State's No. 4?

3 A Yes, ma'am.

4 Q And is that your signature on the bottom of the second
5 page of State's No. 4?

6 A Yes, ma'am.

7 Q When Detective Gencarelli talked to you did you know
8 why you were going to the sheriff's office that day?

9 A Yes, ma'am.

10 Q Tell me what kind of medication you had taken that
11 day.

12 A I had previously that morning, I had taken three of my
13 gout pills.

14 Q Okay. Three of your gout pills?

15 A Yes, ma'am.

16 Q All right. How long had you been on medication for
17 gout?

18 A I've been on it since 2002.

19 Q Okay. And how long has your gout been bothering you
20 at that particular time, that particular episode of gout?

21 A It had been bothering me for the last three days.

22 Q Do you remember what the name of your gout medication
23 is?

24 A Starts with a "C". It would be hard to spell.

25 Q Okay.

Giles Belcher (In-camera)
Direct examination by Ms. Hodges

1 A I don't have the bottle. The Spartanburg County
2 Detention Facility has the bottle.

3 Q Okay. So you're taking the same. You're prescribed
4 the same medication for your gout today that you were
5 taking back in 2005.

6 A I don't know about that.

7 Q Okay. All right. Had you taken any other medication
8 that day other than the three gout pills?

9 A Later on that afternoon I had taken three Aleve
10 packets, or Advil.

11 Q And how many Aleve or Advil are in those packets?

12 A Two each.

13 Q And had you taken all, all two? Had you taken all of
14 the three Aleve packets?

15 A Yes, ma'am.

16 Q How much had you had to eat that day?

17 A Just a pack of crackers right then and then two large
18 Power Aid fountain drinks.

19 Q And the Power Aid fountain drinks, were those like
20 Gatorade, Power Aid?

21 A Yes, ma'am.

22 Q The, had you had any, anything to eat when you took
23 your gout medication?

24 A No, ma'am.

25 Q How does that gout medication affect you?

Giles Belcher (In-camera)
Direct examination by Ms. Hodges

1 A What it does, you know, I get weak and get sick, and
2 then I have to go immediately to the bathroom.

3 Q All right. And you say you get sick and have to go to
4 the bathroom. What does it physically do to you?

5 A I get queazy. My stomach gets upset and I get
6 irritable.

7 Q You get irritable?

8 A Yes, ma'am.

9 Q Do you have any problem with your bowel movements?

10 A Previously before taking the gout medicine, no.

11 Q All right. Does the gout medicine affect, give you
12 diarrhea or anything like that?

13 A That's what it's designed to do. It's designed to
14 flush your system out.

15 Q So you do have the effect of diarrhea when you take
16 your gout medicine.

17 A Yes, ma'am.

18 Q Okay. How much sleep had you had the night before you
19 went to talk with Detective Gencarelli?

20 A Maybe two, maybe four hours.

21 Q Okay. You said it had been bothering you for three
22 days?

23 A Yes, ma'am.

24 Q How much sleep had you had in the last three days
25 before you went to see her?

Giles Belcher (In-camera)
Direct examination by Ms. Hodges

1 A Probably total, maybe 24.

2 THE COURT: Let me be sure I understand.

3 Did I understand during the last three days you had a
4 total of 24 hours worth of sleep? Is that your testimony?

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay.

7 Q What day was it that you went to see Detective
8 Gencarelli, what day of the week? Do you remember?

9 A It was a Thursday.

10 Q Okay. And what was your work schedule?

11 A From 8:00 in the morning until 4:30 in the evening.

12 Q And did you work Monday through Friday or --

13 A Worked Monday through Friday. But when bad weather
14 pops up, you're on call. And you stay on call until it's
15 over.

16 Q Okay. Now, over the course of three days if you had
17 24 hours of sleep, that's an average of eight hours a day.
18 Is that what you mean to be testifying to?

19 A Yeah.

20 Q Okay. How much did you actually have to eat of the
21 Burger King meal that Detective Gencarelli had purchased
22 for you?

23 A I had taken maybe two or three bites.

24 Q Okay. What was your emotional condition when you went
25 in for that second interview with Detective Gencarelli?

Giles Belcher (In-camera)
Direct examination by Ms. Hodges

1 A Tired, upset, mad.

2 Q Were you crying?

3 A At that point, no. I was just mad and ill.

4 Q At some point during that interview did you become
5 emotional in terms of crying or sobbing?

6 A Yes, ma'am.

7 Q At any point did you ever ask her to stop the
8 interview?

9 A Not that I can recall or remember.

10 Q Did you ever ask her to leave you alone or anything
11 like that?

12 A I remember saying don't touch me, leave me alone.

13 Q Okay. Did you ever tell her that you didn't want to,
14 to talk to her any more?

15 A No, ma'am.

16 Q Is there anything other than what we've talked about,
17 is there anything that you disagree with from the testimony
18 that Detective Gencarelli or Lieutenant Woodcock have given
19 today?

20 A Other than I was talked to before Gencarelli by Richie
21 McSwain.

22 Q Okay. Tell me about that.

23 A I had come back and Richie was in the room.

24 Q In which room?

25 A The interview room.

Giles Belcher (In-camera)
Direct examination by Ms. Hodges

- 1 Q The one where you and Detective Gencarelli had been?
- 2 A Yes, ma'am.
- 3 Q Okay. And how do you know Richie McSwain?
- 4 A I knowed him from junior high and high school. We
- 5 hung out together.
- 6 Q Okay. Did you talk to him about why you were there at
- 7 the sheriff's office?
- 8 A Yes, ma'am.
- 9 Q Tell me about that conversation.
- 10 A Basically, he asked me, you know, because he said he
- 11 had sat in and was looking through the, looking through the
- 12 window.
- 13 Q Of the polygraph?
- 14 A Yes, ma'am.
- 15 Q Okay.
- 16 A And he -- he basically asked did you do it, and I said
- 17 no.
- 18 Q Okay. Anything else that you remember talking to him
- 19 about?
- 20 A He just asking me, tell the truth, and I said I was
- 21 telling the truth.
- 22 Q Did you do any sort of written statement for him?
- 23 A No, ma'am.
- 24 Q And about how long did you talk with Richie McSwain?
- 25 A Probably maybe five minutes.

Giles Belcher (In-camera)
Direct examination by Ms. Hodges

1 Q And that was in between the time that you left from
2 Lieutenant Woodcock's interview to before you started with
3 Detective Gencarelli's second interview.

4 A Yeah.

5 Q Do you remember what time Detective Gencarelli picked
6 you up at work?

7 A They had called over the radio, and we was about maybe
8 ten, maybe 15 minutes out, I guess.

9 Q Fifteen minutes out away from your office?

10 A From where we was on the road to the D. O. T. office.

11 Q Okay.

12 A And, you know, they called over the radio, and I
13 answered back.

14 Q Okay. And she picked you up there at the D. O. T.
15 office?

16 A Yes, ma'am.

17 Q And brought you to the sheriff's office. Is that the
18 time that she testified to about 4:45 or so, does that
19 sound about right to you as to when she picked you up at D.
20 O. T.?

21 A Yeah.

22 Q And 12:21 in the following morning, does that sound
23 about right in terms of when the whole process ended?

24 A I have no recollection of the time at that point.

25 Q Okay. Do you remember your actual statement to

George Balderama (In-camera)
Cross-examination by Ms. Reese

1 Detective Gencarelli, what you were telling her?

2 A Bits and pieces.

3 Q Why are you only able to remember bits and pieces?

4 A Basically, I was having flashbacks.

5 Q Flashbacks to what?

6 A Where I was molested years ago.

7 Q Did you know what you were telling Detective
8 Gencarelli when you were talking to her?

9 A I was half confused. I just, I was just telling what
10 I was feeling. And I just didn't want to be bothered. I
11 didn't.

12 Q Were you giving your, was what you were telling
13 Detective Gencarelli, was it free, was it voluntary? Were
14 you knowing what you were telling? Was it voluntary?

15 A She was asking questions and I answered back.

16 Q Did you have any appreciation? Did you understand
17 what you were telling her?

18 A At the time I was confused and just didn't want to, I
19 didn't want to keep going.

20 Q Those are all the questions I have. Answer any
21 questions that the state might have for you.

22 CROSS-EXAMINATION

23 BY MS. REESE

24 Q Now, on that day that you talked to Detective
25 Gencarelli, had you worked all day?

George Balderama (In-camera).
Cross-examination by Ms. Reese

1 A Yes, ma'am.

2 Q And what were you doing at that time? What type of
3 work were you doing?

4 A It varied from day to day. One minute I could be
5 taking trees down, or the next day, you know, I could be on
6 a road crew picking things up or running traffic.

7 Q Do you remember what you specifically did that day?

8 A Pretty much running traffic all day long.

9 Q And what do you do when you run traffic?

10 A We, we have several people posted on one side of the
11 road and then another one, and then everybody else is in
12 the center cutting trees and moving them out of the way.

13 Q Okay. And what was your job?

14 A I was at the front of the truck, and I was the lead
15 flagman.

16 Q Okay. Did they mean you were directing traffic?

17 A Yes, ma'am.

18 Q And were you able to do that without any accidents
19 that day?

20 A They were several cars that come by. But other than
21 that, it was pretty much clear just standing out there and
22 keeping an eye on things.

23 Q Where were you working that day?

24 A I don't remember the location, but I know it was a
25 wooded area. There was a highway. And they was a

George Balderama (In-camera)
Cross-examination by Ms. Reese

1 community down below it. But that place, I couldn't take
2 you to it.

3 Q But your job was to direct traffic and make sure that
4 it made it safely around the construction.

5 A Yeah. Make sure they made it around the construction,
6 plus watching out for the workers, you know, watching their
7 backs. And they're watching mine.

8 Q Did you have any problems with that that day?

9 A Other than having to go from one foot to the other
10 one, just getting restless because of my ankle.

11 Q But, I mean, there weren't any wrecks caused, or
12 nobody was hurt as a result of something that you did wrong
13 that day, is that right?

14 A Everything was just a normal day.

15 MS. REESE: Nothing further, Your Honor.

16 MS. HODGES: Your Honor, that's all we have.

17 THE COURT: You can step down.

18 Anything else on behalf of the defendant?

19 MS. HODGES: No, sir. Thank you.

20 THE COURT: The state?

21 MS. REESE: Nothing, Your Honor.

22 THE COURT: Okay. I find based upon the testimony and
23 evidence presented and after a consideration of the
24 totality of the circumstances relating to any statements
25 made by the defendant to law enforcement while he was in

Motion

1 their custody were freely and voluntarily made, and
2 therefore they shall be admitted if otherwise relevant and
3 probative over any objection that their taking was not
4 voluntarily done.

5 Do you have any other objection to the admission of
6 those statements, Ms. Hodges?

7 MS. HODGES: No, sir.

8 THE COURT: Okay. All right. Anything further before
9 the jury is brought in?

10 MS. REESE: Nothing further, Your Honor.

11 THE COURT: All right. Bring the jury in. And ask
12 Ms. Hawkins, Ms. Hawkins, to take the foreperson's seat.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: Good afternoon, ladies and gentlemen.

16 I apologize for the delay in having you wait back
17 there, but there were several matters, as I told you, that
18 I had to address before we could begin with the trial of
19 the case. And those things took a little bit longer than I
20 had anticipated. Otherwise, I would have had you come back
21 a little bit later. So I do apologize for that
22 inconvenience.

23 We are now ready to begin with the trial of the case
24 for which you were selected.

25 And, Ms. Hawkins, I'm going to ask you to serve as the

1 foreperson of the jury. And as the foreperson of this jury
2 you're going to have three specific duties that none of the
3 other jurors will have.

4 Number one, you're going to be asked to serve as the
5 spokesperson for the jury. And so if during the trial of
6 the case something arises that needs to be brought to my
7 attention, that is you or a fellow juror has some
8 difficulty or problem or question, if you'll let one of the
9 bailiffs know, they will let me know, and I'll address any
10 question or issue that you might have that needs my
11 attention.

12 Secondly, you're going to be asked to preside over the
13 jury deliberations when the time comes at the trial's
14 conclusion after the evidence has been received and I have
15 instructed you on the law. And when you are to go back to
16 begin your deliberations at the end of the case, you're
17 going to be asked to preside over that process in the jury
18 room simply to ensure that those deliberations are carried
19 out in some orderly fashion.

20 And, thirdly, you'll be asked to actually write the
21 verdict or the decision of the jury. You'll do that on a
22 verdict form that I'll provide you when you go back to
23 deliberate. And on that verdict form you will indicate the
24 jury's unanimous decision in this case.

25 Now, the foreperson has those specific duties that I

1 have just indicated, but because she is the foreperson, it
2 doesn't mean that she is any more important than any of you
3 other jurors, because the decision of a jury, the verdict
4 of a jury, is the unanimous consensus opinion of all 12
5 jurors. And so all of you are going to have an equal say
6 and an equal voice and an equal vote in what the ultimate
7 decision in this case will be.

8 Someone simply has to be delegated those
9 responsibilities that I have just indicated, and I have
10 delegated those to Ms. Hawkins in appointing her as the
11 foreperson in this case.

12 But all of you jurors are equally important so far as
13 the ultimate decision in the case is concerned, because, as
14 I've stated, your decision has to be unanimous. All 12 of
15 you must be in agreement before any decision may be
16 returned.

17 Now, Mr. Rowe, you've been selected as an alternate
18 juror. And your function is to take the place of one of
19 the original 12 jurors if during this trial one of these
20 original 12 cannot continue to serve for some reason.

21 If one is called away because of an emergency or some
22 other circumstance that prevents them from continuing to
23 serve as a juror, then in that event you would take that
24 person's place. In that event you would become the
25 12th juror. And that being the case, you would participate

Jury sworn

1 not just through the trial, but also you would participate
2 in those deliberations at the trial's conclusion.

3 If however when the time comes for jury deliberations,
4 if the original 12 are able to participate in that role,
5 then your service ends. And you don't participate any
6 further, because the decision of the jury is that of 12,
7 and no more than 12 can participate in the deliberation
8 process.

9 But it is important that you pay just as careful
10 attention as we ask of all of the jurors in this case
11 because it does occur from time to time for one reason or
12 another one of these original 12 may be unable to continue.
13 In that event you become the 12th.

14 So we do appreciate your participation as an alternate
15 juror, just as we appreciate the participation of all of
16 you jurors who have been selected for the purpose of
17 deciding the verdict in this particular case.

18 You may swear the panel.

19 (Whereupon, the jury was duly sworn.)

20 THE COURT: All right. Ladies and gentlemen, as you
21 are well aware, you have been selected to decide the
22 verdict in the case of the State vs. Giles Belcher.

23 Mr. Belcher, as you know, has been accused by the
24 prosecutor with having committed the crime of criminal
25 sexual conduct with a minor in the first degree.

1 Every case that's brought into this court is brought
2 by way of a document called an indictment. The indictment
3 is that document that I referred to prior to your selection
4 from which I read the allegations that the state has
5 brought against this defendant.

6 The allegations in this indictment allege that he
7 committed the crime of criminal sexual conduct with a minor
8 in the first degree, which the state alleges occurred
9 between May of 2001 and August of 2002. And, as I told
10 you, they claim that the defendant committed a sexual
11 battery upon a child by the name of MINOR and that
12 she was under the age of 11 years at the time that that
13 sexual battery was committed.

14 Now, as you also are aware, as to those allegations
15 and as to that charge the defendant has entered a plea of
16 not guilty. And, as you know, when a defendant enters a
17 plea of not guilty the burden is upon the state to
18 establish that person's guilt to the satisfaction of you 12
19 jurors beyond a reasonable doubt before any verdict of
20 guilty could be returned.

21 The indictment brings that person into court, but the
22 indictment is not evidence of anything. It's not proof of
23 anything. It's simply the document that brings a person
24 into court. And it also notifies them as to what crime the
25 state is claiming that they have committed. But it serves

1 no purpose so far as you jurors are concerned. It is not
2 proof of any fact or allegation that is set forth in it.

3 The state has the burden of proving a defendant's
4 guilt by the introduction of evidence, testimony and
5 otherwise, going towards that proof.

6 Now, any time a person is accused of a crime, and it
7 doesn't matter how serious the crime might be, every person
8 under the Constitution of the United States and of the
9 State of South Carolina is presumed under the law to be
10 innocent.

11 That presumption of innocence remains with any
12 defendant, as it does with this defendant, from the time
13 that he is placed under arrest and even throughout the
14 course of the criminal process and even throughout the
15 course of the actual trial in the case.

16 That presumption of innocence will be with Mr. Belcher
17 even when you go back into that jury room to begin with
18 your deliberations at this trial's conclusion. And that
19 presumption of innocence will be with him in that jury
20 room, and it will remain with him forever unless you 12
21 jurors determine that he is no longer entitled to that
22 presumption of innocence.

23 That is if after you've carefully considered all the
24 evidence in the case, from that evidence you've decided the
25 facts, and after deciding those facts you apply the law

1 that I'll provide you, if you 12 jurors unanimously
2 determine that his guilt has been proven beyond a
3 reasonable doubt, then he would no longer be entitled to
4 that presumption of innocence. But it's only if, unless
5 and until you are satisfied of his guilt beyond a
6 reasonable doubt that the defendant would no longer be
7 entitled to that presumption of innocence.

8 Now, the way the trial will proceed is that in just a
9 moment the lawyers are going to address you in what are
10 called opening statements. There are two occasions in the
11 trial of a case where lawyers are permitted to address the
12 jury. The first time is at the beginning of the trial
13 before any evidence has been introduced, and then the
14 second time is at the conclusion of the trial after all of
15 the evidence has been received.

16 Now, keep in mind, as I've stated, those statements
17 occur before the evidence and after the evidence. And
18 those statements themselves are not evidence, because the
19 lawyers aren't witnesses to anything. They're not going to
20 be telling you anything that they know of their own
21 personal knowledge or experience about this case. They're
22 not going to take the witness stand and testify under oath
23 and be subjected to direct and cross-examination as each of
24 the witnesses will be.

25 So what they tell you in those statements is not

1 evidence upon which you will base any decision. But you
2 should listen to what the lawyers have to say because those
3 statements do serve a purpose.

4 The opening statements serve to provide you with a
5 basic understanding as to what this case is about from the
6 perspective of the state and the defendant so that you will
7 have some context in which to place the evidence that we
8 will be receiving shortly thereafter.

9 After all of the evidence has been received the
10 lawyers will again address you, and again those statements
11 aren't evidence, but it does permit the lawyers an
12 opportunity to discuss with you the evidence that you have
13 seen and heard during the trial of the case. And through
14 that discussion each will have that opportunity to try to
15 persuade you or to convince you that that evidence does or
16 does not support a particular decision. And, as I told
17 you, it's between the opening and the closing statements of
18 the lawyers that we actually receive the evidence upon
19 which you will base your decision in the case.

20 As you know, the state has the burden of proof, so the
21 state is required to present evidence, because right now if
22 you were asked to go back into the jury room and make a
23 decision, your verdict would have to be not guilty because
24 there is no evidence that has been introduced to convince
25 you that he's guilty beyond a reasonable doubt. So the

1 state has an obligation and the burden to present evidence.
2 They go forward first in that presentation.

3 After the state has concluded with their presentation
4 of evidence a defendant has the same opportunity to present
5 evidence by way of testimony or otherwise. But a defendant
6 in a criminal case is not obligated to testify or to
7 present any evidence, because the burden is never upon a
8 person accused of a crime to prove that they are not guilty
9 because in many cases that might not even be possible.

10 The burden is always upon the state in bringing a
11 charge against another to establish that person's guilt
12 beyond a reasonable doubt.

13 So while the state does have the burden of proof, a
14 defendant still is afforded an opportunity to testify or
15 present evidence if that defendant wishes to. But just
16 understand that they're under no obligation to.

17 Where a defendant chooses not to testify or to call
18 any witnesses or to produce any evidence, that's not
19 something that you may consider or take into account when
20 you arrive at your decision in the case.

21 You cannot hold that against a defendant or allow it
22 to weigh in the slightest degree in your determination as
23 to whether or not the evidence in the case establishes his
24 guilt beyond a reasonable doubt. But, as I say, he is
25 afforded that opportunity.

1 In any event, after all of the evidence has been
2 received and after you've heard from the lawyers in their
3 final summation, I will then instruct you fully on the law
4 as it relates to a case of this nature.

5 Then you'll be asked to go back and begin with your
6 deliberations in the case. Through that process you 12
7 jurors are simply called upon through the exercise of good
8 judgment and common sense conscientiously applied to the
9 testimony and the evidence in the case to decide from that
10 evidence what you believe to be the true facts as they
11 relate to these allegations.

12 Once you decide those facts you'll then apply the law
13 and you will arrive at your decision in the case. In order
14 to find a defendant guilty you must be convinced of that
15 guilt beyond a reasonable doubt. And if you have a
16 reasonable doubt as to whether or not the state has proven
17 him guilty, you must resolve that doubt in his favor and
18 find him not guilty. But you will make that decision based
19 upon your own consideration of the evidence and your
20 application of the law.

21 Now, it is important that you give every witness the
22 same degree of attention as they testify because oftentimes
23 there are conflicts in testimony.

24 Now, sometimes those conflicts don't make any
25 difference, they're not material to anything and they're

1 not important to your decision in a given case. But
2 sometimes there is conflicting testimony and sometimes it
3 is material to an issue that you must decide and that must
4 be proven before you could make a particular finding in a
5 case.

6 So it is important that you give every witness the
7 same degree of attention as they testify from the witness
8 stand. But that, of course, does not mean that you will
9 give the same degree of weight to one witness' testimony as
10 opposed to another.

11 You simply are going to be able to make that
12 determination. In other words, you get to decide what is
13 the most credible and believable evidence, and that's the
14 testimony and evidence you will accept. And you are to
15 reject any testimony or evidence that you find not to be
16 credible or believable.

17 But it is important that you give every witness the
18 same degree of attention when they do testify so that when
19 you go back to begin your deliberations you'll be in a
20 proper position to be able to fairly evaluate and assess
21 each witness' credibility not only in light of that
22 particular witness' testimony but in light of all of the
23 other testimony and the other evidence received during the
24 trial of the case.

25 It's also important that you keep an open mind.

Opening statements

1 throughout the course of the trial. And by that I simply
2 mean that you are not to begin making up your minds or
3 formulating your opinions as to what you think the ultimate
4 decision in this case ought to be until you've heard and
5 seen all of the evidence in case, until I have instructed
6 you on the law that's applicable in the case and until
7 you've been asked to go back and begin with your
8 deliberations in the case. That is the process that has
9 been designed for you 12 jurors to arrive at a fair and
10 just decision in this case.

11 So I do want to thank you in advance for your
12 participation, as well as your careful attention. I would
13 ask that you please give the lawyers your attention now as
14 they give you their opening statements. Ms. Reese.

15 MS. REESE: May it please the Court.

16 Good afternoon. In August of 2002 MINOR Marie
17 Belcher was four years old. Her father, the defendant, and
18 her mother were moving out of the home that they had on
19 Stephens Grove Road in Una, South Carolina, in Spartanburg
20 County.

21 Jamie Belcher, the defendant's brother, and his
22 girlfriend, Kathy Perry, decided to come over to the house
23 and see if they could help with the move.

24 Kathy volunteered to take the two little girls, MINOR
25 who was four and Heather who was one. There was some

Opening statements

1 discussion, and it was finally decided that Kathy could
2 take MINOR And it was her plan that she would keep
3 MINOR for a few days until the Belchers had found another
4 place to live.

5 Kathy went home, and later Jamie, the defendant's
6 brother, came home too.

7 And over the next few days they saw things with MINOR
8 that concerned them. But there was one incident that you
9 will hear about that led them to call the Department of
10 Social Services. MINOR was taken out of the home, and she
11 began to tell her story.

12 My name is Susan Reese and I'm an assistant solicitor
13 with the 7th Circuit Solicitor's Office. And my job is to
14 prosecute child abuse cases, child sexual abuse cases.

15 The defendant has been charged with criminal sexual
16 conduct with a minor in the first degree. And we have to
17 prove to you that he committed a sexual battery on his
18 daughter. MINOR as I said, was four at the time.

19 The first thing I always tell jurors when they come
20 into a case like this is the things that you are going to
21 have to hear over the next few days are things that you
22 don't want to know happened. It would be so much better if
23 we could believe that these kind of things really don't
24 happen. I ask you to accept that they happen and judge
25 this case on its merits.

Opening statements

1 Because child sexual abuse does not occur in front of
2 witnesses and because there is rarely any evidence of
3 physical abuse, any physical evidence that the child has
4 been abused, your evidence, the information you have to
5 decide on, will be from this witness stand.

6 I ask you, ladies and gentlemen, to listen closely to
7 the witnesses and to use your common sense. It's probably
8 the best tool that you have to determine what happened to
9 MINOR

10 You will hear from MINOR She is now eight years
11 old. MINOR is developmentally delayed. She's been
12 sitting upstairs most of the day, and I'm a little
13 concerned to see how she is going to do this afternoon.
14 But she is going to talk to you. She is going to try to
15 tell you her story today. I ask that you be patient and
16 understand that she does have some delays.

17 You will also hear from other people in this case who
18 have spent the last few years working with MINOR
19 investigating this case.

20 At the table with me is Jennifer Jordan. She also
21 works with the 7th Circuit Solicitor's Office as an
22 assistant solicitor. And Charity Gencarelli who is the
23 detective that worked this case.

24 We ask that you give the defendant a fair trial. We
25 ask that you give the state a fair trial. That's all we're

Opening statements

1 asking. This is an important day for the defendant. It's
2 also an important day for MINOR

3 We ask you, ladies and gentlemen, to listen closely
4 and keep your mind involved and use your common sense. We
5 ask you to seek the truth.

6 It is your job to return a verdict that speaks the
7 truth, and we have every confidence that once you hear the
8 evidence you'll be able to do that and you'll be able to
9 find this defendant is guilty of committing sexual battery.
10 Thank you.

11 THE COURT: Ms. Hodges.

12 MS. HODGES: Thank you. May it please the Court.

13 Ladies and gentlemen, this is Les Belcher. You know
14 him throughout the course of today, and you will see on the
15 indictment that his given name is Giles. His family and
16 friends call him Les.

17 And you're here today and tomorrow to determine
18 whether the state can prove the allegations that they've
19 brought against Les of criminal sexual conduct with a minor
20 in the first degree.

21 If the state and the defense agreed on everything in
22 this case we wouldn't need you. But, unfortunately, we
23 don't agree on everything in this particular case. And
24 that's why you're here, because you're here to listen to
25 the facts as you hear them from the witness stand. Each

Opening statements

1 individual witness will come up and be sworn and all give
2 you their testimony.

3 Look at any physical evidence that's involved in the
4 case in terms of exhibits, photographs, anything like that.
5 And then go back and render your verdict after the judge
6 has told you what the law is to be applied to this case.

7 And as Judge Cole told you already, and as I expect
8 he'll tell you at the end of the case, you're the sole
9 determiners, if you will, of the facts of this case. It is
10 your job as the jury to determine what the facts are and
11 what actually happened back in 2001 and 2002 here in
12 Spartanburg County. The judge will tell you the law that
13 you apply to those facts, but it is your job to determine
14 what the facts are.

15 In order to do that it's extraordinarily important
16 that you be able to hear everything that goes on in this
17 courtroom. Now, this is one of our smaller courtrooms in
18 general sessions, and you're relatively close to the
19 witness stand.

20 It should be relatively easy for you to be able to
21 hear what people are saying from the witness stand. But if
22 you can't hear something, please get the Court's attention.
23 Raise your hand, signal the bailiff. Do something so that
24 we know that you're having a problem hearing what's going
25 on.

Opening statements

1 This is a very important case, important to the state
2 because they brought serious allegations. And at no point
3 during the course of this trial does Mr. Belcher, nor do I,
4 tend to try and intimate that we don't consider these
5 allegations serious. They are serious. Child sexual abuse
6 is in our society is a serious, serious issue.

7 Equally serious, however, ladies and gentlemen, is the
8 man that stands accused of this crime based upon what I
9 submit to you is going to be a lack of evidence that the
10 state brings against him.

11 These allegations first came out in August of 2002.
12 You will hear throughout the course of the testimony that
13 the child was involved in therapy intensively for several
14 years before he was actually brought into a position to be
15 brought into court.

16 I submit to you, ladies and gentlemen, as you listen
17 to the evidence that you hear from the witness stand, that
18 you see from the exhibits, that there's not going to be
19 little else, more, added to what was initially said in 2002
20 to what you hear today in 2007.

21 I submit that to you because I think that's critical
22 in this case, because you're not going to have a doctor
23 coming in to testify about physical findings. You're not
24 going to have things like D. N. A. or scientific evidence.
25 You're not going to have photographs or eye witnesses.

MINOR

Direct examination by Ms. Reese

1 You're not going to have those things that you normally
2 expect to find in cases. And the reason why is because
3 they don't exist in this case.

4 And that, ladies and gentlemen, is part of the reason
5 why when you hear all of the evidence, when you determine
6 what the facts are, when you apply the law as Judge Cole
7 instructs you, that's why, ladies and gentlemen, the proof
8 in this case, the only fair verdict in this case is that of
9 not guilty.

10 I'm Kathleen Hodges. I represent Les Belcher. I
11 thank you for your service. This is a tough case for all
12 of us. It's going to be tough to hear testimony. But you
13 people, 12 people, are the ones that are now sworn to
14 listen and to render a fair verdict. And that's all that
15 we ask for you to do. Thank you.

16 THE COURT: Ms. Reese.

17 MS. REESE: Your Honor, the state calls MINOR
18 Belcher.

19 MINOR having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. REESE

22 Q Can you state your name for the jury, MINOR

23 A Yes, ma'am.

24 Q Say it loud for me.

25 A Yes, ma'am.

MINOR

Direct examination by Ms. Reese

1 Q What's your name?

2 A MINOR

3 Q MINOR how old are you?

4 A Eight.

5 Q MINOR what's the name of your school?

6 A (Inaudible.)

7 Q And what grade are you in?

8 A Third.

9 THE COURT: MINOR just a minute.

10 Do you see that microphone right in front of you? I
11 want you to get just a little bit closer to it because if
12 you'll speak into that we'll all be able to hear you a lot
13 better. Okay. You look at Ms. Reese, but just speak into
14 that microphone.

15 Q What grade are you in?

16 A Third.

17 Q And who are your teachers?

18 A Ms. Mac and Ms. Coats.

19 Q And what's your favorite subject?

20 A Math.

21 Q Is telling the truth good or bad?

22 A Good.

23 Q Is telling a lie good or bad?

24 A Bad.

25 Q If I said I have on a red dress today, would that be

MINOR

Direct examination by Ms. Reese

1 the truth or would that be a lie?

2 A A lie.

3 Q If I said you had on a dress with flowers, would that
4 be the truth or would that be a lie?

5 A A lie.

6 Q If I said you had on a dress with flowers, would that
7 be the truth or a lie?

8 A The truth.

9 Q If I said it was raining in the courtroom, would that
10 be the truth or a lie?

11 A The truth.

12 Q Is it raining in the courtroom?

13 A No.

14 Q All right. Sweetie, can you tell me what's your
15 favorite color?

16 A Red.

17 Q Red. Okay. Is your dress red?

18 A No.

19 Q If I said it was red, would that be the truth or a
20 lie? If I said your dress is red.

21 A A lie.

22 Q Very good. And if I said my dress was red, is that
23 the truth or a lie?

24 A A lie.

25 Q If you tell a lie at school, what happens?

MINOR

Direct examination by Ms. Reese

- 1 A I get in trouble.
- 2 Q And if you tell a lie to the judge or in the
- 3 courtroom, what happens?
- 4 A I go to jail.
- 5 Q MINOR can you promise to only tell the truth?
- 6 A Yes, ma'am.
- 7 Q MINOR can you tell me who Les is?
- 8 A My old daddy.
- 9 Q And did you used to live with Les?
- 10 A Yes.
- 11 Q And can you tell me who Joann is?
- 12 A My mama.
- 13 Q And did you ever live with Les and Joann together?
- 14 A Yes.
- 15 Q And where did you live?
- 16 A In the spider house.
- 17 Q In the what house?
- 18 A The spider house.
- 19 Q The spider house. Do you know what color the spider
- 20 house was?
- 21 A Yellow.
- 22 Q And why do you call it the spider house?
- 23 A Because it had spiders.
- 24 Q Did you like living with Les?
- 25 A No.

MINOR

Direct examination by Ms. Reese

1 Q Can you tell me why?

2 A ~~Because he did bad touches.~~

3 Q He did bad touches. Can you tell what bad touches he
4 did?

5 A ~~He stick his weeny in my butt.~~

6 Q Can you say that loud, sweetie? I couldn't hear you.

7 A ~~He stick his weeny in my butt.~~

8 Q Is that the only thing he did? Okay.

9 THE COURT: Let me ask you. Excuse me. Let me ask
10 you to be sure to speak into that microphone. You'll hear
11 it when it comes over the system. Okay? Just be sure you
12 speak into that so we can be certain to hear you. And this
13 lady has to hear everything that you say because she's
14 taking it down. Okay?

15 All right. Ask your next question.

16 And speak closer to the microphone.

17 Q What else did he do?

18 A ~~He stuck his weeny in between my legs.~~

19 Q In your what, honey?

20 A ~~In my, in between my legs.~~

21 Q And was there anything else?

22 A Yes, ma'am.

23 Q What was it?

24 A ~~Stuck his weeny in my mouth.~~

25 Q And did anything happen when he would stick his weeny

MINOR

Direct examination by Ms. Reese

1 in his mouth, in your mouth?

2 A Yes, ma'am.

3 Q What would happen?

4 A ~~He had to pee.~~

5 Q He had to pee. Where would the pee go?

6 A Into my throat.

7 Q Into your throat. Did you ever see the pee?

8 A No.

9 Q Do you know what color it was?

10 A ~~White.~~

11 Q How do you know that?

12 A Because.

13 Q What did you do with the pee when it came into your
14 mouth?

15 A I spit it out.

16 Q Where were you in the spider house when this would
17 happen, MINOR

18 A Somebody would go to jail.

19 Q I'm sorry? You said somebody would go to jail? In
20 what room in this spider house did Les do this?

21 A In my room.

22 Q What were you wearing, do you remember?

23 A A nightgown.

24 Q MINOR have you told the truth today?

25 A Yes.

MINOR

Cross-examination by Ms. Hodges

1 CROSS-EXAMINATION

2 BY MS. HODGES

3 Q MINOR my name is Ms. Kathy Hodges. We haven't met
4 before, have we? Have you and I met before?

5 A Yes.

6 Q We have? Are you sure about that? Okay. I'm just
7 going to ask you a few questions. If I ask you a question
8 that you can't understand, do you promise that you'll tell
9 me and let me ask you a different way? Is that fair?

10 A Yes.

11 Q Okay.

12 THE COURT: Let me ask you to push that chair up a
13 little bit closer so we can hear. He will get it for you.

14 All right. Now adjust that microphone for her,
15 please.

16 Q If I promise to ask you a question a different way so
17 you understand it, will you promise to speak up loud enough
18 so that I can hear you all the way back here?

19 A Yes.

20 Q Okay. Thank you.

21 Do you know, did this happen to you one time, two
22 times, or do you, or lots of times? Do you know how many
23 times it happened to you?

24 A Three times.

25 Q It happened to you three times. And did it, was it

MINOR

Cross-examination by Ms. Hodges

1 always in the spider house?

2 A Yes.

3 Q Who else lived in the spider house with you?

4 A My mama and me and Les.

5 Q And Les. Do you have any -- do you have a sister?

6 A Yes.

7 Q Did -- what's your sister's name?

8 A Heather.

9 Q Did Heather live with you at the time?

10 A Yes.

11 Q Is Heather a lot younger than you are?

12 A Yes.

13 Q And do you remember who the first person was that you
14 told that this happened?

15 A Les.

16 Q You told Les that this happened. Who else? Did you
17 tell anybody else that Les was doing this to you?

18 A Ms. Meredith.

19 Q Ms. Meredith.

20 A And Ms. Bronson.

21 Q And?

22 A Ms. Bronson.

23 Q Ms. Bronson. Who is Ms. Bronson?

24 A Ms. Bronson.

25 Q Is she sitting back there?

MINOR

Cross-examination by Ms. Hodges

1 A In the front.

2 MS. REESE: I think she is pointing to me.

3 Q This lady with the yellow hair, pretty yellow hair.

4 Okay. And you said that you're good and your favorite
5 subject is math, is that right?

6 A Yes.

7 Q Okay. You said that this happened to you three times.

8 Did each of the things that you told us happen three times?

9 A Yes.

10 Q And do you know -- how old are you now?

11 A Eight.

12 Q Do you know how old you were when you lived in the
13 spider house?

14 A I don't know.

15 Q Okay. And was anybody else in the room with you when
16 it happened other than you and Les?

17 A No.

18 Q No. Did you ever tell your mom it was happening?

19 A Yes.

20 Q Did you tell -- do you call your mom mom or do you
21 call her Joann?

22 A Mom.

23 Q Did you tell your mom before you told Meredith or
24 after?

25 A Before.

MINOR

Redirect examination by Ms. Reese

1 Q Okay. Will you wait just a minute to see if I have
2 any more questions for you? Okay.

3 (Pause.)

4 Q Thank you, MINOR. That's all the questions I have
5 for you.

6 REDIRECT EXAMINATION

7 BY MS. REESE

8 Q MINOR do you remember when we were in the courthouse
9 last week, you and me?

10 A Yes.

11 Q And do you remember when I pointed at Ms. Kathy?

12 A Yes.

13 Q Is that when you were talking about you met her?

14 A Yes.

15 Q But do you remember when I pointed to Ms. Kathy?

16 A Yes.

17 MS. REESE: Nothing further.

18 MS. HODGES: I have nothing further, Your Honor.

19 THE COURT: Okay. Thank you, MINOR. You can step
20 down.

21 MS. REESE: The state calls Kathy Perry.

22 THE COURT: While we are waiting on that witness, let
23 me see y'all just a minute.

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

Kathy Perry
Direct examination by Ms. Reese

1 KATHY PERRY, having been duly
2 first sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. REESE

4 Q Will you state your name for the jury, please?

5 A Kathleen Perry.

6 Q And, Kathy, how do you know the defendant, Giles
7 Belcher?

8 A My ex at the time was his brother.

9 Q And your ex is Jamie?

10 A Correct.

11 Q Were you and Jamie married?

12 A No, ma'am.

13 Q Did you live together?

14 A Yes.

15 Q For how long?

16 A Five and a half years.

17 Q Do you have children together?

18 A Yes.

19 Q How many?

20 A Two.

21 Q And how old are they?

22 A Now they are four, and one was seven months.

23 Q Are you and Jamie together now?

24 A No.

25 Q Were you together at the time when this happened in

Kathy Perry
Direct examination by Ms. Reese

1 2002?

2 A Yes.

3 Q Back in August of 2002 did you have occasion to have
4 MINOR at your house for a few days?

5 A No. They had visited, but at the time they were not
6 staying with us.

7 Q Okay. How about at the time when the defendant and
8 Joann Belcher decided to move? Did you have occasion to
9 see MINOR then?

10 A Yes. At that time she was staying with us.

11 Q Did you, in fact, go over to the house to get MINOR

12 A Yes.

13 Q And can you explain to the jury how that happened?

14 A Joann and Les were moving from their home. At the
15 time they were unable to find a place to move into. I
16 suggested instead of the children being moved around that
17 they just come and stay with us.

18 Q And did the defendant like that idea?

19 A Nobody opposed it at the moment. At the time nobody
20 was opposed to it.

21 Q Did, did he allow you to have both children or just
22 one?

23 A Just one.

24 Q And which child was that?

25 A MINOR

Kathy Perry
Direct examination by Ms. Reese

1 Q Now, on the day that this move was occurring did you
2 actually go over to the house on Stephen Grove Road?

3 A Yes.

4 Q And did you go with anybody that day?

5 A Jamie.

6 Q And what happened when you got to the house?

7 A Well, I was mainly out in the car. Jamie was inside
8 helping move furniture and odd-and-end things. Joann and I
9 stepped out. She came out to the yard. We talked for a
10 little bit and --

11 Q Did you see anything in or around the house that gave
12 you any concern for MINOR

13 A The house and the area was infested with bugs, and
14 it's kind of a run-down neighborhood, but besides that --

15 Q Did you, was there an incident involving a couch that
16 gave you any concern?

17 A When they were moving the furniture out the couch had
18 fallen and had a sea of bugs came cross the yard.

19 Q Was that the same day that you got MINOR

20 A Yes. We took her home that night.

21 Q And when you got her home, what condition was she in?

22 A Well, she was dirty.

23 MS. HODGES: Objection to relevance, Your Honor.

24 MS. REESE: Your Honor, the relevance is that this
25 child calls this house the spider house because there were

Kathy Perry
Direct examination by Ms. Reese

1 spiders and bugs in it. We could show through this witness
2 that there were an infestation of roaches and lice in the
3 house.

4 THE COURT: All right. Overruled presently.

5 Q What kind of condition was she in?

6 A Well, she was dirty. Her hair was tied back. I took
7 her home and gave her a bath. She did have lice. I spent
8 hours picking it out. And she, it was real rough.

9 Q Could MINOR carry on a conversation with you?

10 A Not really.

11 Q What kinds of things could MINOR say?

12 A Well, when she spoke she spoke kind of in a vulgar
13 language. It wasn't, it's kind of hard to describe, but
14 she really didn't talk to her age level. She was delayed a
15 little bit.

16 Q How did MINOR sleep?

17 A Well, to get her to go to sleep, she was not a hard
18 child to get to go to bed. She would be -- she was kind of
19 not really happy, but she wasn't hard to put in the bed.

20 When she would go to sleep, in a couple of hours she'd
21 start kicking and thrashing and throwing her arms and
22 screaming. And it was night, I mean, it was just every
23 couple of hours every night whether it was something that
24 had just went away or because she watched a movie. This
25 child was almost like convulsions.

Kathy Perry
Direct examination by Ms. Reese

1 Q What, if anything, did you do to try to get her to go
2 to sleep and stay asleep?

3 A Everything, anything and everything. If she wanted to
4 be held, I'd hold her. If she wanted to come to bed with
5 me, she came to bed with me. Whatever it took to get her
6 to go to sleep.

7 Q Did anything in particular happen that finally made
8 you make the decision to call the Department of Social
9 Services?

10 A It was. We were in bed one night, and MINOR had
11 reached over and grabbed ahold of Jamie's area and said --
12 I can't remember exactly what it was she said. But she
13 said something that just, I mean, I was in drama, I mean
14 went crazy on Jamie. We flew off the covers and grabbed
15 the girl and went crazy about it. And then that's when I
16 contacted D. S. S.

17 Q Now, MINOR was four at this time, is that right?

18 A Uh-huh.

19 Q And where was Jamie in the bed?

20 A She was in between us. Jamie was towards the
21 left-hand side and I was towards him.

22 Q Was Jamie awake?

23 A No. They were sleeping.

24 Q And when you say she grabbed Jamie's area --

25 A She grabbed his penis.

Kathy Perry
Direct examination by Ms. Reese

1 Q And that was, he had boxer shorts on or something on.

2 A Yes, yes. I mean, we were both dressed.

3 Q Did you give the Department of Social Services a
4 statement in regard to what MINOR said?

5 A Yes.

6 Q And have you looked at that information since this?

7 And what did you tell the Department of Social Services
8 that she said?

9 A That she had grabbed ahold of it and said suck.

10 Q When she grabbed ahold of his penis and said suck,
11 what did you do?

12 A I said -- I came out from under those covers pretty
13 quickly. I was pretty irate. I was, I was enraged at the
14 time. I was pretty upset.

15 A couple of days before we had brought the child home,
16 and I was trying to give her a bath. She could hardly even
17 sit down she was so swollen. I mean, I really wasn't sure
18 if it was uncleansing, you know, she's just not being
19 cleaned properly or something. You know, I'm not in the
20 medical field by any means.

21 Q After MINOR did these things what did you decide to
22 do?

23 A Well, her mother had told me that she had suspected
24 something had been done, she didn't know. So that's when
25 we went to D. S. S. And I said, look, I don't know what's

Kathy Perry
Direct examination by Ms. Reese

1 going on, this is what I have been told and this is what I
2 have seen, what all.

3 Q So you actually called the Department of Social
4 Services.

5 A Uh-huh.

6 Q Did you send MINOR back home with her mother?

7 A No. The Department of Social Services told me that I
8 could use what measures I thought were appropriate and that
9 they would have a meeting where the child would be placed.
10 A couple of days later they had the meeting. The mother
11 requested the child go to her aunt.

12 Q So is that the last part you had in this?

13 A Uh-uh.

14 Q Did you, in fact, refuse to send MINOR home when her
15 mother tried to retrieve her?

16 A Yes.

17 Q Had you ever had any problems with the defendant up
18 until this point?

19 A No.

20 Q And do you have -- have you been a member of his
21 family the last five years?

22 A Well, I haven't been a real active member. Since this
23 kind of happened the family distanced themselves from me,
24 but, I mean, I did watch out for the kids.

25 Q Are you aware of where the Belchers were living when

Kathy Perry
Cross-examination by Ms. Hodges

1 they moved out of this house?

2 A I knew that they were unable to find a place and were
3 considering living in a tent behind her sister's apartment.

4 Q But do you know where the location of the actual house
5 they were moving out of was?

6 A Una.

7 Q And is that Spartanburg County to your knowledge?

8 A Yes.

9 MS. REESE: Nothing further.

10 CROSS-EXAMINATION

11 BY MS. HODGES

12 Q Ms. Perry -- is that right?

13 A Yes.

14 Q Ms. Perry, how long was MINOR with you before you
15 contacted D. S. S.?

16 A Was there a couple of days.

17 Q Do you remember what day it was that you actually --

18 A No, ma'am.

19 Q What day of the week it was when you actually got

20 MINOR

21 A No, ma'am.

22 Q And you said that when you first got her that parts of
23 her bottom area were swollen.

24 A Were swollen.

25 Q Did you take her to the hospital at that point?

Kathy Perry
Cross-examination by Ms. Hodges

- 1 A No, ma'am.
- 2 Q What time of night was it when this incident happened
- 3 in the bed with you and Jamie?
- 4 A I'm really not for sure of the exact timeframe, but it
- 5 probably was right after 3:00 a.m.
- 6 Q Okay. And did you go to D. S. S. that morning? I
- 7 mean, as soon as y'all woke up did you contact D. S. S.?
- 8 A I'm really not for sure if it was that morning, if it
- 9 was afternoon. I am not exactly sure what timeframe it
- 10 was.
- 11 Q Was it the same day?
- 12 A If it wasn't the same day, it was the very next day.
- 13 Q After seeing the condition of the home there in Una
- 14 and seeing MINOR physical condition, you didn't call D.
- 15 S. S. right then?
- 16 A No. I didn't see her physical condition until later
- 17 on that evening. I didn't actually go into the whole home.
- 18 I just stepped up on the porch, never entered inside the
- 19 living room. I didn't really want to.
- 20 Q But you saw the couch.
- 21 A But I saw the couch, saw the sea of bugs and all of
- 22 that kind of stuff. I mean, the neighborhood was horrible.
- 23 I mean, it's possible the neighborhood was just infested.
- 24 I don't know. But at the time, you know, I --
- 25 Q Is it fair to say it's a poor neighborhood?

Kathy Perry
Redirect examination by Ms. Reese

1 A Yeah. It was pretty rundown.

2 Q Okay. And you said that you took MINOR home and she
3 was dirty and you gave her a bath that night.

4 A Yes.

5 Q Okay. And-but she was with you for at least a couple
6 of days before you contacted D. S. S.

7 A Yes.

8 Q And you said that -- how long have you and Jamie not
9 been together?

10 A We broke it off in October of last year.

11 Q In October of 2006?

12 A Uh-huh.

13 Q And tell me how old this youngest child is.

14 A Ten months.

15 Q Ten months. Okay.

16 MS. HODGES: I beg the Court's indulgence.

17 (Pause.)

18 Q Thank you, ma'am.

19 REDIRECT EXAMINATION

20 BY MS. REESE

21 Q Just a couple of follow-up questions. Now, your
22 boyfriend is the defendant's brother, is that right?

23 A Correct.

24 Q Now, was, did you go to the Department of Social
25 Services alone, or did he go with you?

Kathy Perry
Redirect examination by Ms. Reese

1 A I contacted them and they came out to the house.

2 Q And was this --

3 A We didn't go down to social services until we brought
4 MINOR back to the session, or I can't remember exactly
5 what they called it, but the meeting where everybody sat
6 down to negotiate about the child.

7 Q And did Jamie also cooperate with the D. S. S.
8 investigation?

9 A Yes.

10 Q Now, you said that Jamie was in bed asleep. Were you
11 awake when this happened?

12 A Well, I was asleep and awakened by her moving around.
13 She was wiggling and all of this kind of stuff. And I woke
14 up. I had a newborn baby too at the time. So sleep wasn't
15 something I was used to.

16 Q So you were awake when she actually did this.

17 A I was droggy. She woke me up while it was going on.

18 Q Was Jamie ever in bed alone with MINOR

19 A Not to my -- I mean, I can't say when I wasn't there.

20 Q But at this time you were in bed --

21 A No.

22 Q -- when this happened.

23 A No. Jamie was long in bed before I even brought
24 MINOR into the room.

25 Q Nothing further.

Kathy Perry
Recross-examination by Ms. Hodges

1 RECROSS-EXAMINATION

2 BY MS. HODGES

3 Q Did you ever contact Les and Joann about the fact that
4 you all had contacted D. S. S.?

5 A Yeah. Joann knew about it. Joann is the one that
6 actually told me to begin with that she believed MINOR had
7 been molested.

8 Q So Joann told you that.

9 A Yes.

10 Q Thank you.

11 MS. HODGES: That's all I have.

12 THE COURT: You may step down.

13 Ladies and gentlemen, we are going to recess for the
14 afternoon.

15 Remember the caution I gave you when you were excused
16 for lunch. During the overnight recess do not discuss the
17 case with anyone whatsoever in any fashion whatsoever. Do
18 not permit yourselves to be exposed to any type of media
19 coverage that might relate to the case. Do not conduct
20 your own research or do any investigation.

21 When you go home you might have a husband or a wife or
22 somebody that, you know, says, well, they know you've got
23 jury duty and they want to know what you're doing. You
24 just tell them you can't talk about it. You can't discuss
25 it in any fashion. You tell them you can't talk about it

1 until it's over and you've reached a decision. After that
2 you can tell them as much as you want to about it. But
3 until you do so, you can't discuss the case. And you can't
4 discuss it even among yourselves. So when you come back in
5 the morning you still can't talk about the case. You can
6 only do that during deliberations.

7 Okay. So do have a good evening. Please report
8 directly to your jury room at 9:30 in the morning, 9:30 in
9 the morning. Have a good evening.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: All right. Any matters to be addressed
13 before we recess?

14 MS. REESE: None that I am aware of, Your Honor.

15 MS. HODGES: None from the defense, Your Honor.

16 THE COURT: Court is in recess until 9:30 in the
17 morning.

18 END OF PROCEEDINGS MAY 7, 2007
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1 (Proceedings May 8, 2007)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Any matters we need to address
5 before the jury is brought in?

6 MS. REESE: None from the state, Your Honor.

7 MS. HODGES: Your Honor, the only thing that I would,
8 like to address just briefly in regards to the statement
9 that was videotaped by the officers, I don't think that I
10 flushed out my argument as clearly in terms of my concerns
11 about what happened during that video-tape session that
12 changed his statement from, statement from the initial
13 denial of the charges to, to the statement that was
14 I-don't-remember-what-I-did-but-if-I-did-anything-I'm-sorry;
15 and that by the law enforcement failing to preserve that
16 statement and failing to preserve that video tape, we
17 basically have been derived of the ability to determine
18 whether anything occurred during that interview session
19 that could have influenced Mr. Belcher in terms of changing
20 his statement, changing his mind, changing his expressions
21 of culpability or lack of culpability to the police.

22 I think that the Riddle case is instructive. Riddle
23 vs. Ozmint is instructive only to the extent that anything
24 that is impeaching is obviously Brady material.

25 It was discovered during the course of the hearing

1 yesterday and obviously, you know, should have become an
2 issue or an opportunity for impeachment. We obviously have
3 that available to us during the course of this trial.
4 However, if there is anything that could have been
5 exculpatory, obviously that opportunity was denied my
6 client to be able to discover that.

7 As I told the Court yesterday and reiterate today, it
8 would be speculation on our part to say that there
9 definitely was something exculpatory. But I just wanted to
10 preserve that as an additional argument as to what I was
11 trying to express to the Court yesterday in terms of
12 Mr. Belcher's second statement not being a voluntary
13 statement given to law enforcement.

14 THE COURT: Well, as I said yesterday, the destruction
15 of the video causes difficulties and problems that should
16 not be necessary to cause. Simply by preserving it until
17 the case is over that could be resolved or those problems
18 could be resolved.

19 There is however no evidence that the destruction of
20 the video was done with a bad motive or in bad faith.
21 Apparently that's just simply at the discretion of the
22 officer that he videotapes the polygraph process. And if
23 in his view there's nothing of any value to the state, then
24 he destroys that video or tapes over it and uses it for the
25 next candidate, I guess.

1 Nevertheless while I realize, Ms. Hodges, that the
2 destruction of that video impairs your ability to
3 independently determine if there's anything that might have
4 been on that video that would benefit your client and your
5 representation of him, it's not that we don't know what
6 happened during the course of that interview, because your
7 client was there. So he knows what happened during the
8 course of that interview and he knows if any police officer
9 did anything that was inappropriate or unlawful in order to
10 obtain a statement from him. He would know that because he
11 was there, and he could tell us.

12 Everyone that was involved in that interview has
13 testified in this trial in a hearing to determine the
14 voluntariness of any statement, and there's been no
15 evidence presented that would indicate that the officer
16 during the course of that interview did anything that was
17 unlawful that resulted in Mr. Belcher's giving a statement
18 or altering a statement or changing a statement or saying
19 something different than he'd previously stated.

20 So I can only and you can only speculate as to what
21 might be on that video that might possibly be of any
22 benefit to your client or to you in representing your
23 client.

24 So based upon the fact that there's been no showing
25 that there was anything of any beneficial value to the

1 defendant that would be shown by the video and based upon
2 the fact that there is no evidence to indicate that the
3 officer with a bad motive or in bad faith destroyed the
4 video, I still find that the statement provided should not
5 be excluded based upon that lack of evidence being
6 available or, excuse me, not the lack of evidence but the
7 fact that that evidence, the video evidence, is not
8 available for you to examine.

9 MS. HODGES: Thank you, sir. That's all I had.

10 THE COURT: So I still find the statements to have
11 been voluntarily made.

12 Of course that's an issue for the jury if there's a
13 dispute over it.

14 Other than that fact, do you have any other ground
15 that you would like to present to support an exclusion of
16 statements?

17 MS. HODGES: No, sir. Thank you, Your Honor.

18 THE COURT: Okay. All right. As I discussed in
19 chambers, there is a juror who called in sick, Ms. Cox.
20 The jury coordinator talked with her, and I have also
21 personally talked with her. She's indicated an illness and
22 she's indicated that that illness would prevent her from
23 being able to continue and be able to concentrate and be
24 able to make an appropriate decision in the case because of
25 how she feels.

1 She did indicate that she had made an appointment and
2 was on the way to her doctor, and she named the doctor.
3 And I told her that she would also have to provide us with
4 a statement. So I'm satisfy that she, in my view she, is
5 providing truthful information.

6 Based upon that fact and her unavailability, the
7 alternate will be taking her place.

8 Any issue anyone wishes to address regarding that
9 juror being excused?

10 MS. REESE: Nothing from the state, Your Honor.

11 MS. HODGES: Nothing from the defense, Your Honor.

12 THE COURT: Are we ready for the jury now?

13 MS. REESE: Yes, sir, Your Honor.

14 MS. HODGES: Yes, sir.

15 THE COURT: Okay. Bring them in.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: Good morning, ladies and gentlemen.

19 As you are no doubt aware, one of your fellow jurors
20 has been unable to report this morning due to an illness.

21 And so, Mr. Rowe, you are now the 12th juror. As I
22 told you yesterday, you're no longer the alternate. So you
23 will participate fully through the balance of this trial.

24 As each of you also know, when we recessed yesterday
25 the state had begun with their presentation of evidence,

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1 and so we're going to continue with that presentation this
2 morning.

3 Ms. Reese.

4 MS. REESE: Thank you, Your Honor. The state calls
5 Meredith Loftis.

6 MEREDITH THOMPSON LOFTIS,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. REESE

9 Q Please state your name for the jury.

10 A Meredith Thompson Loftis.

11 Q And where are you employed?

12 A I am an independent contract therapist for the
13 Children's Advocacy Center in Spartanburg, and also I have
14 a private practice in Greenville at Pettigru Counseling
15 Associates.

16 Q And where were you employed in 2002?

17 A In 2002 I was employed here in Spartanburg with
18 Affiliated Counseling and Psychotherapy Centers.

19 Q What specific types of services do you provide your
20 clients?

21 A I provide individual and family therapy. I've done
22 some group therapy, but mainly to children and adolescents,
23 and family work also.

24 Q Are you a professionally licensed?

25 A Yes, I am.

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1 Q Have you had any courses or seminars or other training
2 in child abuse or child sexual abuse?

3 A Yes, I have.

4 Q And what are those?

5 A I've had extensive training. We are required by law
6 to get 20 hours a year of additional training in order to
7 support our license. And the majority of my training is in
8 trauma and sexual abuse, depression, anxiety.

9 I obtained specialized training at the National
10 Children's Advocacy Center, training in Huntsville, Alabama.
11 I have also done a majority of training locally with the
12 Greenville and Spartanburg chapters of sexual abuse in
13 sexual abuse training.

14 Q Are you a member of any professional organizations?

15 A I'm a member of APSAC, which is the American
16 Professional Society on Sexual Abuse of Children, and I
17 also am a member as a licensed professional counselor.

18 Q What is your experience in counseling victims of
19 sexual assault and abuse?

20 A I have done a majority of experience locally with the
21 Children's Advocacy Center where we specialize directly
22 with the sexual abuse and physical abuse of children.

23 I have also worked prior to becoming an independent
24 contract therapist, I've worked in foster care where I
25 worked with children who have been sexually abused.

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1 I've also taught psychology at Greenville Technical
2 College and provided an extensive amount of seminars and
3 whatnot in regards to those issues.

4 Q How many year have you been in practice?

5 A I've been in practice since 2001. So about six years.

6 Q And what is the estimated number of patients you've
7 treated for sexual abuse or sexual assault?

8 A I would say the estimated number of patients that I've
9 treated has probably been close to about 40. And I know
10 that number seems low, but it's mainly because it's an
11 extensive amount of treatment that each child requires.

12 Q Have you been qualified as an expert in general
13 sessions court of this state in the field of sexual abuse
14 trauma and treatment?

15 A Yes, I have.

16 Q How many times?

17 A I've been qualified numerous times in Spartanburg,
18 Cherokee, Greenville, Anderson, Union counties. I would
19 say at least ten times in Spartanburg County.

20 MS. REESE: Your Honor, at this time I would like to
21 offer Ms. Loftis as an expert in the field of sexual abuse
22 trauma and treatment.

23 MS. HODGES: No objection, Your Honor.

24 THE COURT: She is so qualified.

25 Q Ms. Loftis, do you know MINOR

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1 A Yes, I do.

2 Q And have you had occasion to work with MINOR

3 A Yes, I have.

4 Q How did MINOR come to you?

5 A MINOR was referred back in August of 2003 when I
6 worked at Affiliated Counseling. D. S. S. referred her for
7 treatment regarding the possibility of sexual abuse,
8 depression and anxiety related to separation from her
9 biological parents.

10 Q When MINOR first came to you was she able to sit down
11 and have a conversation with you?

12 A No, she was not.

13 Q Tell us about that.

14 A One of my first observations of MINOR was that she
15 was extensively delayed. She had an inability to verbalize
16 a majority of her feelings and also very basic terms.

17 I had to utilize extensive amounts of play therapy and
18 art therapy in order just to get her to feel comfortable and
19 also to be able to express herself in a way that I could
20 understand her.

21 Q What is play therapy?

22 A Play therapy is a way of working specifically with
23 children to where -- most children are not able to sit and
24 tell you exactly how they feel or to be able to tell you
25 things that are bothering them.

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1 So with play therapy we are able to use things like art
2 work and doll houses and games, anything that's
3 therapeutically oriented to help them feel more comfortable
4 in the setting to where they can talk about things or show
5 through their play how they feel.

6 Q And you talked about art therapy. What is art
7 therapy?

8 A Art therapy can be such things as painting or drawing.
9 It can also be things such as play dough to where kids can
10 mold and sculpt different things with art therapy and
11 drawing. You can also have them draw specific memories or
12 paint specific things that are bothering them.

13 Q Can you describe for the jury what would be a session,
14 a play therapy session? How would you go about organizing
15 that? What would happen during that session?

16 A There is two types of play therapy. There is directed
17 and nondirected. And nondirected is where you just leave
18 the play therapy room open for the child to select what
19 they want to do. There is also directed. The majority of
20 my play therapy is directed where I select a specific
21 activity ahead of time in order to, for the child to work
22 on.

23 A majority of therapy, of play therapy, that I do is
24 usually art related. So just a random session could be
25 something as simple as painting a picture or expressing

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1 feelings through a game.

2 Q Now, when MINOR came to you did you initiate this art
3 and play therapy with her?

4 A Yes, I did.

5 Q And when she first came to you did you have any
6 concern regarding any of the play that you observed?

7 A Yes, I did.

8 Q And can you describe for the jury the kind of play
9 that MINOR -- that you observed while MINOR in your
10 sessions?

11 A The types of play that I observed with MINOR in
12 session, the most disturbing was the fact that she had
13 extensive sexual knowledge at the age of five. Her play
14 was sexualized; her drawings were sexualized; her use of
15 slang terms for body parts was sexualized.

16 Q Okay. Talk about. When you say her play was
17 sexualized, can you give the jury specific examples of what
18 she did in the play therapy that concerns you?

19 A Specifically, she would utilize dolls from the doll
20 house or babydolls and put them in sexual positions, also
21 reenacting sexual play such as oral sex or anal sex.

22 Q And at this time MINOR couldn't speak to you, is that
23 right?

24 A That is correct.

25 Q Can you describe for the jury the specific things that

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1 you saw in the drawings that MINOR did for you that gave
2 you concern?

3 A Well, first off, she started most of her drawings by
4 drawing body parts, private parts, on, in normal pictures.
5 If you asked her to draw a picture of her family, she would
6 draw everybody with a private part.

7 It progressed from there to where she was actually
8 drawing pictures of sexual acts that she said had occurred.

9 Q And how old was MINOR at the time?

10 A At this, beginning when I saw her in 2003, she was
11 five.

12 Q Did you have any concerns regarding MINOR welfare
13 at this time?

14 A Yes, I did.

15 Q And what were those concerns based on?

16 A I had extreme concerns because she was still having
17 visits with her biological parents through D. S. S. And I
18 felt that those were hindering her therapy.

19 Q And why did you think those were hindering her
20 therapy? What did you observe that made you think that
21 they were hindering her therapy?

22 A Following her visits with her biological parents
23 through reports of the family she was staying with and then
24 also direct observations that I had, I had significant
25 concerns because she had extreme amounts of anxiety where

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1 she would have lots of bed-wetting incidents. She would be
2 extremely aggressive. Lots of tantrums, anger, poor
3 emotional control where she would cry instead of laugh, and
4 laugh instead of cry, not to mention, she also had
5 extensive sexual acting out behavior such as masturbation.
6 She also would sexualize with her play where she was found
7 at one point trying to perform sex on a teddy bear.

8 Q Now, you said that MINOR also used slang terms. Can
9 you describe for the jury the things that this
10 five-year-old, the words that this five-year-old, said that
11 you consider slang terms?

12 MS. HODGES: Judge, I would object to hearsay.

13 MS. REESE: Your Honor, it's not offered for the truth
14 of the matter asserted.

15 THE COURT: Well, let me see y'all just a minute.

16 (Bench conference held off the record in the presence
17 of the jury but out of the hearing of the jury.)

18 Q At some point during your discussions with MINOR did
19 she actually begin to disclose sexual abuse?

20 A Yes, she did.

21 Q Now, the law does not allow you to tell what exactly
22 she disclosed. Did she tell you where the sexual abuse
23 occurred?

24 A Yes, she did.

25 Q And where did this sexual abuse occur?

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1 A It was referred -- most children, specifically MINOR
2 with her developmental delays, refer to things based upon
3 the way she remembers them. And she remembers the home
4 that she lived in with her biological parents as a spider
5 house because there's an extensive amount of, from what I
6 understand, spiders within the home. So any time she
7 referred to that home it was called the spider home.

8 Q Did MINOR disclose every aspect of sexual abuse
9 immediately once she began disclosing?

10 A No, she did not.

11 Q What is a partial disclosure?

12 A A partial disclosure or a delayed disclosure is very
13 common in children. And what happens is most children are
14 unable to tell you every aspect of a trauma or abuse at one
15 point in time. They tell it piecemeal, kind of over time.
16 They tell you different points that they remember, a
17 different, in different sessions.

18 For example, if you were able to think of, you know,
19 what, when you brushed your teeth last Thursday, everything
20 that happened, you wouldn't be able to remember everything
21 that happened.

22 But, say, you went on a significant vacation, you would
23 be able to maybe tell at different points different things
24 that you remembered. And, say, you had to tell that story
25 to ten different people, you may tell ten different people

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1 ten different aspects of your vacation.

2 And it's the same way with children. When they
3 disclose something that's important they may tell different
4 pieces at different times.

5 Q Were those pieces that were given consistent with each
6 other?

7 A Yes, they were.

8 Q When MINOR disclosed to you, what was her demeanor?

9 A MINOR had a rather unique demeanor in that she had a
10 very flat affect. She was very calm, very matter of fact,
11 said things without any kind of emotion.

12 Q And in your opinion is that common or uncommon with
13 children in this age range?

14 A In this age range I would say that it is common.

15 Q And why is that?

16 A Mainly because I don't feel that children have an
17 understanding as to why sexual abuse is wrong if it's
18 something that started at an early age. They have no other
19 reason to believe that it's wrong.

20 So for her to recall something that occurred, it
21 doesn't seem like she's getting anyone in trouble or having
22 any cause or reason to do so. She's just doing that,
23 telling something that happened. She didn't understand that
24 what happened was wrong.

25 Q During MINOR period of this initial disclosure when

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1 she began just telling you pieces of this situation, did
2 you have occasion to meet Joann Belcher, the mother?

3 A Yes, I did.

4 Q And were you made aware by her of her position in
5 regard to this allegation?

6 A Yes, I was.

7 Q And was she supportive of MINOR disclosure?
8 MS. HODGES: Objection to relevance, Your Honor.

9 THE COURT: Sustained.

10 Q Based on the information that you observed from MINOR
11 during your sessions did you make any recommendation
12 regarding her visits with her biological parents?

13 A Yes, I did.

14 Q And what was that recommendation?

15 A The recommendation that I made initially was that the
16 visitation stop.

17 Q Now, I think you had said something earlier about how
18 MINOR was suffering from depression because she had been
19 away from her biological parents. Is it common or uncommon
20 for a child to still feel affection even if they have been
21 abused?

22 A I think it's very common. Most children, they don't
23 understand the immoral behavior that's occurred. So they
24 feel like their parents are somewhat untouchable and
25 invincible and they can't do anything wrong. So they don't

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1 understand why they're being separated from their parents.
2 So, I mean, it's very common for children to want to be
3 around their parents even though if something abusive has
4 occurred.

5 Q What is accidental disclosure?

6 A Accidental disclosure occurs most commonly with
7 children when they're not telling exactly what's happened
8 specifically. They say it by accident. They say things in
9 regards to they're not sure that they're going to be able
10 to tell something that was wrong. They are unable to.
11 They're telling me something or whoever something that's
12 not necessarily what they believe to be as wrong. They're
13 just accidentally telling you.

14 Q Is accidental disclosure common or uncommon in
15 children in this age range?

16 A It's very common.

17 Q In your dealings with MINOR have you been able in
18 terms of talking to her, have you been able to talk and
19 meet with the teachers regarding her developmental delays?

20 A Yes, I have.

21 Q And in the process of counseling her have you
22 discovered anything about her ability to say something in
23 terms of the numbers, in terms of her counting something
24 happened so many times?

25 A I guess I would have to know specifically what was

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1 asked of her in order to be able to answer that.

2 Q Hypothetically, if MINOR were to say something
3 happened three times or five times, what would that mean to
4 you?

5 A It's my understanding from what MINOR tells me, is
6 that the way I perceive the way MINOR tells things is that
7 she is unable to, to understand a specific number of
8 things.

9 You have to ask an appropriate question which would be
10 something like, you know, did this happen one time or more
11 than one time.

12 Asking her a specific number would be inappropriate for
13 MINOR and would be age -- for her delays, she would be
14 unable to answer that accurately.

15 Q Is MINOR able to give you timeframes as to what
16 happened or when something happened?

17 A MINOR is unable to do that, but she can identify
18 specific things about that timeframe. For example, she
19 identifies the spider house, which is what, the house that
20 she refers to that she lived in with her biological
21 parents.

22 Q What are the recognized symptoms of trauma following
23 an act of sexual abuse?

24 A Typically, you see a number of symptoms. You see
25 depression; you see anxiety. And these are manifested with

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1 bed-wetting, sometimes fecal smearing. You also see
2 extreme nightmares. You see aggressive behaviors,
3 explosive tantrums. More specifically, you often see a lot
4 of sexually acting-out behavior such as masturbation and
5 also the reenactment of sexual play, acting out on other
6 children.

7 Q And when MINOR -- what symptoms of this trauma have
8 you actually witnessed in MINOR

9 A MINOR has every single one of those symptoms.

10 MS. REESE: Nothing further.

11 CROSS-EXAMINATION

12 BY MS. HODGES

13 Q Ms. Loftis, how many times have you seen MINOR

14 A I was counting last night. I believe it's close to a
15 hundred.

16 Q Close to a hundred times since August of 2003?

17 A That is correct.

18 Q Okay. Are you still actively treating MINOR

19 A Yes, I am.

20 Q And she was referred to you by D. S. S.

21 A Yes.

22 Q Okay. Through their referral process.

23 A Yes.

24 Q Okay. And when you first started meeting with MINOR
25 in August of 2003 were you meeting with her on a regular

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1 basis?

2 A Yes, I was.

3 Q And what was the regularity of your meeting with her?

4 A I just need to look and see. I believe it was
5 initially on a weekly basis, but let me check. Yes, it was
6 on a weekly basis.

7 Q And how long did you continue to meet with her on a
8 weekly basis?

9 A As often as they could come. Transportation, and,
10 also, you know, there were extensive family circumstances
11 that often prevented her from coming. But the goal was on
12 a weekly basis.

13 Q And, I mean, are you still seeing her on a weekly
14 basis?

15 A No.

16 Q How long did you? At some point obviously then you
17 tapered off in terms of visits, in terms of the regularity
18 of visits, or frequency rather.

19 A Yes, I did.

20 Q Okay. Do you know how long it was you met with her on
21 a weekly basis?

22 A I would estimate, and I'm just estimating. I would
23 say at least for six months if not longer.

24 Q And then is it typical to have a step-down, I guess,
25 in terms of frequency in dealing with a child in therapy in

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1 these types of situations?

2 A Yes.

3 Q And do you go back to -- what was the next step? Was
4 it biweekly, monthly?

5 A It would have been every two weeks, and then as
6 depending upon her needs also. If she needed to come in
7 every week, she was welcome to. And then it would progress
8 to monthly or pick back up if needed. I think there were
9 several times where that happened.

10 Q And so over the course of the four years, obviously
11 life events changed, so needs and therapy change.

12 A That's correct.

13 Q At this point how often are you meeting with her?

14 A I believe I see MINOR about every two to three weeks
15 depending upon her needs. Sometimes it's monthly.

16 Q And you had indicated, I guess, in terms of some of
17 your professional affiliations, your license -- what is
18 your education?

19 A I have a bachelor of science degree from the
20 Pennsylvania State University in human development and
21 family studies with a focus on children and adolescents. I
22 also have a master's of arts degree in counseling. And
23 then I also have my license as a professional counselor
24 here in South Carolina.

25 Q And you said that your practice deals mainly with

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1 children and adolescents. Is there a particular age group
2 that you tend to deal with more than others?

3 A The youngest client that I have had was three years
4 old and the oldest I have are young adults 18, 19.

5 Q Is there any, any pattern in terms of whether you deal
6 with children that tend to be a preschool age, primary
7 grades, I mean, or is your practice pretty evenly spread
8 out?

9 A I have a preference for both the four, five, six year
10 olds, and then also for adolescents and teenage, teenagers.

11 Q And it just comes from your experience in working with
12 children?

13 A Yes.

14 Q You had indicated that initially you started out with
15 predominantly play therapy and art therapy with MINOR Do
16 you have an estimate as to what percentage of your sessions
17 were play therapy versus art therapy?

18 A I don't, honestly I don't know. The majority of them
19 are, well, they're all play therapies. And the majority of
20 times were art therapy related.

21 Q Okay. And is that consistent with even today that
22 they're all still play therapy?

23 A Yes, it is.

24 Q In terms of you said that you have, there is both a
25 directed play therapy and a nondirected play therapy. When

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Cross-examination by Ms. Hodges

1 you select the activity for the child is there a particular
2 rational, rationale for selecting any particular activity
3 for a child?

4 A I base it on her preference. Usually MINOR prefers
5 to do art related activities. Games are hard for her to
6 understand, and she gets easily frustrated. So a majority
7 of the times I pick things that she likes to do that make
8 her more comfortable.

9 Q And you said the games are hard for her to understand.
10 What sort of, types, of games do you use in your practice?

11 A We have a lot of therapeutic games. For example, we
12 have one game called the talking-feeling-doing game which
13 is a way for children to express their feelings when
14 they're playing a board game. And it was made by a
15 licensed professional counselor, and it's used in a variety
16 of practices.

17 MINOR is unable to complete that game. She doesn't
18 understand a lot of the questions that are involved in that
19 game. It's multistep. MINOR understands single-step
20 processes.

21 Q So you base your selection of the activities for what
22 the child enjoys and what the child would excel at as a,
23 basically in that foundation of what the child's strengths
24 are.

25 A Correct.

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Cross-examination by Ms. Hodges

1 Q Okay. Do you have an idea as to the practice that
2 you've used, what the percentage of your practice is
3 between directed versus nondirected play therapy with
4 MINOR

5 A The majority of the time it's been directed. However
6 if there's something that MINOR did not want to do, if she
7 was uncomfortable with something, I didn't force her to do
8 anything. Even if she would rather play with the dollhouse
9 than paint that day, then I allowed her to do that.

10 Q And when you say the majority, are we talking
11 50 percent, 52 percent, 80 percent?

12 A In regards to directed?

13 Q Directed versus nondirected.

14 A I would say probably about 60 percent.

15 Q Okay. You had talked about the recognized symptoms,
16 and I presume that's from the literature in your field in
17 terms of recognizing symptoms of child abuse.

18 A Yes, ma'am.

19 Q Have you actually yourself observed each and every one
20 of those symptoms with MINOR

21 A Specifically, I would not have observed a nightmare or
22 masturbation. But the other symptoms, yes.

23 Q Okay. So you base that your -- your statement that
24 MINOR has exhibited every one of them comes not just from
25 your observations but from what other people tell you.

Meredith Thompson Loftis
Cross-examination by Ms. Hodges

1 A From the family and also from the school staff.

2 Q Okay. In terms of talking about MINOR ability of
3 sequencing with numbers, if MINOR was asked did something
4 happen one time or more than once and she gave a specific
5 number of an answer, for example, that it happened four
6 times, would she be able to, does she understand what that
7 means if she's asked that one time or more than once and
8 she says it happened four times?

9 A Does she understand? I'm not sure I understand your
10 question.

11 Q Well, okay. You said MINOR is asked the question did
12 it happen one time or more than once and MINOR response
13 is it happened four times. What is you understanding?
14 What does that mean in your relation, in your understanding
15 of MINOR speak?

16 A In relation to MINOR speak, I would say that she may
17 not have fully understood the question.

18 Q Okay. Children often suffer depression and anxiety
19 for other reasons. It could be clinical depression, a
20 chemical imbalance, right?

21 A Yes.

22 Q And they could suffer anxiety dealing in transitions
23 from home to home or from school to school.

24 A Yes.

25 Q Okay. Often children exhibit bedwetting which is for

Meredith Thompson Loftis
Cross-examination by Ms. Hodges

1 either natural courses or some sort of physiological
2 problem.

3 A That is the case. But when it's severe it's usually
4 due to more of an emotional reaction.

5 Q Okay. But the emotional reaction doesn't necessarily
6 have to be sexual abuse or a reaction to sexual abuse, does
7 it?

8 A That's correct.

9 Q So you're basically basing all of the symptoms that
10 are indicative of sexual abuse, you're basing that on your
11 observations and what other people have indicated to you.

12 A And then also the statute and the structure of
13 diagnosis.

14 Q Okay. And that's based on professional. When you
15 talk about the structure of the diagnosis, that's based on
16 what other folks have observed, written about and tested.
17 And then you rely upon that in comparing what you observed
18 to the literature to make a determination of a diagnosis,
19 if you will.

20 A Yes.

21 Q All right. Do you actually diagnose your patients?

22 A Yes, I do.

23 Q Okay. But you're not in a position where you're able
24 to actually prescribe medication or anything like that.

25 A No. I do not.

Meredith Thompson Loftis
Redirect examination by Ms. Reese

1 Q Just a moment, please.

2 (Pause.)

3 Q Thank you. That's all the questions I have.

4 REDIRECT EXAMINATION

5 BY MS. REESE

6 Q Just one follow-up question. When you say something
7 is directed, do you specifically tell that child what to
8 draw?

9 A No, I do not.

10 Q When you say directed-out therapy, how do you direct a
11 child?

12 A I may say would you like to color today, would you
13 like to paint today, how about drawing today. It's just a
14 presentation.

15 Q Okay. Thank you.

16 MS. HODGES: I have nothing on recross, Your Honor.

17 THE COURT: You may step down.

18 MS. REESE: The state calls Dr. Nancy Henderson.

19 DR. NANCY N. HENDERSON, having
20 been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. REESE

22 Q Dr. Henderson, can you state your full name for the
23 jury?

24 A Nancy N. Henderson.

25 Q And what is your occupation?

Dr. Nancy N. Henderson
Direct examination by Ms. Reese

- 1 A I'm a pediatrician.
- 2 Q And where are you employed?
- 3 A I am employed with the Greenville Hospital System.
- 4 Q And are you licensed in the State of South Carolina?
- 5 A Yes, I am.
- 6 Q And where did you receive your undergraduate degree?
- 7 A Rutgers College of Pharmacy in New Brunswick, New
- 8 Jersey.
- 9 Q And where did you receive your graduate degree?
- 10 A Bowman Gray School of Medicine in Winston-Salem, North
- 11 Carolina.
- 12 Q Where did you do your residency?
- 13 A T. C. Thompson Children's Hospital in Chattanooga,
- 14 Tennessee.
- 15 Q And how long did your residency and training take?
- 16 A It's a 3-year pediatric residency.
- 17 Q Are you board certified?
- 18 A Yes, I am.
- 19 Q And what is your specialty?
- 20 A I'm board certified in pediatrics and sub-boarded in
- 21 adolescent medicine.
- 22 Q And what are the requirements for you to become board
- 23 certified?
- 24 A To become board certified you have to complete a
- 25 3-year pediatric residency and then you have to take a

Dr. Nancy N. Henderson
Direct examination by Ms. Reese

1 2-part exam. One is right after you finish and then there
2 is one about a year later. And then every seven years you
3 have to reaccreditate your certification with another test.

4 Q Are you a member of any medical associations?

5 A I am a member of the, the Pediatric Association, as
6 well as the SKIPSAC, the local child abuse association, as
7 well as the national organization.

8 Q And are you engaged in the private practice of
9 medicine?

10 A No, I am not. I'm just employed with the hospital
11 system.

12 Q Has your experience and practice included cases
13 involving child sexual abuse?

14 A Yes, it has.

15 Q And how many patients have you examined and treated
16 during the course of your professional experience in regard
17 to a medical condition resulting from sexual abuse?

18 A I evaluate approximately 300 children a year for this
19 type of evaluation.

20 Q Have you received any special training in the field of
21 child sexual abuse?

22 A Yes, I have. There's not a specific board
23 certification in the area of child abuse at this time, but
24 I have attended over the last ten years courses, initially
25 in the initial evaluation of child abuse, child sexual

Dr. Nancy N. Henderson
Direct examination by Ms. Reese

1 abuse, and subsequently in the area of advanced training.
2 The last course I attended was back in the fall in Saint
3 Paul, Minnesota. But I attended a number of courses in
4 California, as well as Huntsville, Alabama, where the
5 national child abuse center is located.

6 Q Have you ever been called upon to testify regarding
7 diagnosis and treatment of sexual abuse?

8 A Yes, I have.

9 Q Have you been qualified as an expert in the diagnosis
10 and treatment of sexual abuse in children?

11 A Yes, I have.

12 Q How many times?

13 A Well, I probably am in court, probably about 20 times
14 a year both in family court and criminal court.

15 MS. REESE: Your Honor, at this time I would move to
16 qualify Dr. Henderson as an expert in the field of child
17 sexual abuse diagnosis and treatment.

18 MS. HODGES: No objection, Your Honor.

19 THE COURT: She is so qualified.

20 MS. REESE: Thank you, Your Honor.

21 Q Did you have occasion to evaluate MINOR on
22 October the 9th of 2002?

23 A Yes, I did.

24 Q And what was the purpose of examining her?

25 A The purpose of the exam was to evaluate for any

Dr. Nancy N. Henderson
Direct examination by Ms. Reese

1 possible abuse that may have occurred to her.

2 Q Did you try to speak with her?

3 A Yes, I did.

4 Q And were you able to communicate effectively with her?

5 A I was able to communicate with her, but at the time
6 she was just four years of age. And so her speech was a
7 little bit limited at the time. She did share some
8 information at that time.

9 Q Was she, did you notice anything regarding her speech?

10 A Some of her words were difficult to understand. She
11 was able to kind of use some dolls that we have in the room
12 to help describe things a little bit easier than she was
13 able to actually verbalize in words at that point.

14 Q Do you know how old MINOR was at the time?

15 A She was four.

16 Q Did you examine MINOR

17 A Yes, I did.

18 Q Okay. And can you -- explain to the jury. When you
19 examine a child, where do you take the child for the
20 examination?

21 A Okay. The examination that we have, initially what we
22 do, we bring the child back with whatever family member is
23 with them, and we go over past medical history to help
24 understand what's going on, any kind of medications that
25 they had, any kind of behavioral problems or concerns that

Dr. Nancy N. Henderson
Direct examination by Ms. Reese

1 their guardian has or the child may have about their exam.

2 We have someone who goes over actually what's going to
3 take place so the child feels more comfortable with the
4 evaluation. And then I do try to talk to the child by
5 themselves if they're able to separate from that guardian.

6 And then we do the physical exam. We let whoever
7 they'd like to have in the exam with them. And the examine
8 involves a complete head-to-toe physical exam just looking
9 for any kind of problems, scars, infectious diseases, things
10 like that.

11 But it also includes looking at the genital area. In
12 the office we have what's called a colposcope. It's a large
13 piece of equipment, but it's totally noninvasive. It
14 doesn't touch the child at all. And it has a really good
15 light source to get a very good look at the genital area
16 with magnification so that I can make sure that I'm getting
17 as much information as I can from the evaluation.

18 We then conclude the exam. The child gets dressed.
19 And then I decide on any kind of tests or treatment that
20 might need to be done based on the findings of the exam and
21 then make the appropriate referrals if necessary.

22 Q Did you do a vaginal exam on MINOR

23 A Yes, I did.

24 Q And what were your findings?

25 A She had a normal exam.

Dr. Nancy N. Henderson
Direct examination by Ms. Reese

1 Q Now, do you have an opinion within a reasonable degree
2 of medical certainty about whether or not it's possible for
3 a child to have a normal medical exam if she had been
4 penetrated by an adult male?

5 A Well, normal exams in my experience and in my practice
6 are very common.

7 Most of the children that I see for this type of
8 evaluation do have normal medical exams when there is a
9 history of penetration. And there's a number of reasons for
10 that.

11 A lot of times children do not disclose right away, so
12 they don't have a medical exam right at the time that it
13 happened. So if there were small tears or injuries, we may
14 not see it because that area can heal very, very quickly.

15 Another reason is that when children disclose abuse we
16 kind of expect them to talk in a lot of adult language and
17 to know their anatomy, and it's really not -- I'm not sure.
18 A lot of adults don't know their own anatomy. And it's
19 quite easy to understand that children, we think just
20 especially in girls, they just use one term to describe
21 their whole genital area.

22 So when they talk about penetration, a lot of times it
23 may be penetration into their outer genital area but not
24 necessarily, you know, into the vaginal area through the
25 hymenal tissue to cause trauma.

Dr. Nancy N. Henderson
Direct examination by Ms. Reese

1 So a lot of times when children do disclose penetration
2 to their genital area, a lot of times it's just kind of into
3 that outer genital area. And a lot of times that may be why
4 we see normal exams on, on, on the evaluation.

5 Q Have there been any studies regarding normal exams in
6 cases of child sexual abuse?

7 A There has been. Probably the two best studies that I
8 know is a study done, kind of the earlier study that came
9 out with this was back in 1994.

10 Joyce Adams who is a pediatrician out in California
11 looked at about 250 cases where the perpetrators have been
12 convicted of the crime, and about 60 percent of the children
13 had disclosed penetration, whether it was either vaginal or
14 rectal penetration. And only 5 percent of the children had
15 any findings on the medical exam. So about 95 percent of
16 the children where there was a disclosure of abuse had
17 normal exams.

18 They also looked at another study, a little more recent
19 study, which was a prospective study where they looked at
20 2,000 children who are being evaluated who were referred to
21 a center such as mine for an evaluation. And, again,
22 60 percent of the children there were also disclosing
23 penetration, whether either vaginal or rectal penetration.
24 Statistically it's very similar. Only about 5 to 6 percent
25 of those children had any medical findings on the exam.

Dr. Nancy N. Henderson
Direct examination by Ms. Reese

1 Q Do you have an opinion within a reasonable degree of
2 medical certainty -- let me ask you this first. Did you do
3 an anal exam on MINOR

4 A Yes, I did.

5 Q And do you have an opinion to a reasonable degree of
6 medical certainty whether it would have been possible for a
7 small child to have been penetrated by an adult male at
8 that age and still had a normal anal finding?

9 A It is very possible. When you look at the studies
10 looking at anal penetration, I had mentioned that the
11 statistics, about 5 percent of children have findings when
12 it's vaginal penetration.

13 With anal penetration it's even less. It's about 1
14 percent, and the reason being is that when we think about
15 what the rectal area normally does, it's kind of a muscular
16 area and allows those large things to exit out. So it's
17 quite common, again, for things to exit in without causing
18 any trauma.

19 And also like the vaginal area, it has an excellent
20 blood supply. So even if there are very small tears, they
21 heal very, very quickly within days so that it, again, may
22 not be picked up on a medical exam.

23 Q Dr. Henderson, do you have an opinion within a
24 reasonable degree of medical certainty whether or not your
25 findings of a normal exam are consistent with a report of

Dr. Nancy N. Henderson
Cross-examination by Ms. Hodges

1 sexual abuse by a child, of penetration?

2 A Well, certainly, in my experience a normal exam
3 certainly could be very consistent with a report of
4 penetration.

5 Q Thank you.

6 MS. REESE: Nothing further.

7 CROSS-EXAMINATION

8 BY MS. HODGES

9 Q Dr. Henderson, my understanding is from your testimony
10 that injuries in this area, especially with children, heal
11 very quickly.

12 A Yes.

13 Q And that if there is any delay from the initial
14 disclosure to the child being brought to you or to any
15 other doctor, whatever evidence may or may not be there is
16 probably gone by that point.

17 A If there is evidence to begin with, you know, you
18 really want to get them within the first 24 hours, is the
19 ideal time if there is evidence to be able to actually see
20 it.

21 Q Okay. And I think that you said that the basically
22 the healing, basically for the anal area, can be, can be
23 accomplished, can basically be healed within days after,
24 after an event might happen.

25 A Yes, ma'am.

Dr. Nancy N. Henderson
Redirect examination by Ms. Reese

1 Q And there was no -- when you saw MINOR you said it
2 was October the 9th of 2002.

3 A Yes, ma'am.

4 Q When you saw her that day there was no physical
5 evidence of any trauma that had occurred to either her
6 vaginal area or to her, or to her rectal area.

7 A That's true.

8 Q Thank you ma'am.

9 A Yes.

10 REDIRECT EXAMINATION

11 BY MS. REESE

12 Q Dr. Henderson, do you know -- do you have any
13 knowledge of when MINOR disclosed?

14 A The initial disclosure?

15 Q Well, my question is do you know whether or not your
16 exam was near the time that she disclosed.

17 A From my records I do know that she was in a different
18 home for about three months at the time. My exam took
19 place three months after she had been placed in this home
20 that she came to.

21 Q And what would be the reason? Do you now how she came
22 to you, how she was referred to you?

23 A I have here, and I don't do that initial intake, so
24 I'm just looking back on that. And it says the source of
25 intake was Nicole Ruth as the referral source for the

Angela Talley Robinson
Direct examination by Ms. Reese

1 evaluation.

2 Q And she works for the Department of Social Services?

3 A It's not marked here, so I'm not sure.

4 Q But, at any rate, your --

5 A Yes.

6 Q -- evaluation was in October.

7 A Yes, ma'am.

8 MS. REESE: Nothing further.

9 MS. HODGES: Nothing further from Dr. Henderson.

10 THE COURT: You may step down. Thank you.

11 MS. REESE: The state calls Angela Robinson.

12 THE COURT: Does somebody need to get her? There is
13 nobody out there.

14 MS. REESE: I will get her judge.

15 MS. JORDAN: Your Honor, may Ms. Hodge and I approach?

16 THE COURT: Yes.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 ANGELA TALLEY ROBINSON, having
20 been duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. REESE

22 Q Would you state your name for the jury, please?

23 A Angela Talley Robinson.

24 Q And where are you employed?

25 A Spartanburg County Department of Social Services.

Angela Talley Robinson
Direct examination by Ms. Reese

1 Q And what are your duties as an employee of that
2 department?

3 A I supervise investigations for child abuse and
4 neglect.

5 Q Were you employed with the department in August
6 through October of 2002?

7 A Yes, I was.

8 Q And what were your duties then?

9 A Supervision investigations of child abuse and neglect.

10 Q Did you have occasion to work with the defendant,
11 Giles Belcher?

12 A Yes, I did.

13 Q And on or about October 4th of 2002 did you have
14 occasion to see MINOR at the Department of Social
15 Services?

16 A Yes. I have seen her at the Department of Social
17 Services.

18 Q And without telling us what was said, did MINOR make
19 a disclosure to you?

20 A Yes, she did.

21 Q Could you understand MINOR when she talked to you?

22 A Yes. I did.

23 Q What was her relationship with the defendant, do you
24 know?

25 A She was the daughter.

Angela Talley Robinson
Direct examination by Ms. Reese

1 Q And did you have occasion later to meet with the
2 defendant regarding allegations that MINOR had made?

3 A Yes, I did.

4 Q Can you describe that meeting with the defendant?

5 A Yes. Myself and the actual investigator on the case
6 had he and his wife come into the office to discuss some
7 things that MINOR had said.

8 During that interview Mr. Belcher did not look at us.
9 He clasped his hands together the whole time and made a
10 statement that if you can't believe someone who is looking
11 you dead in the eye, who can you believe.

12 His wife looked at us. She spoke to us about the
13 allegations, but he never, ever looked at us during the
14 entire time.

15 Q Did you have occasion to meet with him a second time?

16 A Yes.

17 Q And can you describe that meeting?

18 A Yes. Again, he did not look at us, kept his hands
19 together.

20 On the first meeting that we had with him he actually
21 had a migraine even to the point that he said he was going
22 blind and couldn't continue to speak with us.

23 The second time we met with him he wouldn't look at us.
24 He kept his hands clasped together and again just would not
25 make any eye contact with us.

Angela Talley Robinson
Direct examination by Ms. Reese

1 Q Would you explain to the jury or give them a little
2 information about the incident where he had a migraine in
3 detail?

4 A Yes. We were asking him about the allegations and why
5 would a child say that, why would we think that child will
6 say that.

7 And then he began to -- do I demonstrate -- began to
8 place his hands on his head sort of swimmingly, my head is
9 killing me, my head is hurting, my head is killing me, my
10 head is hurting, I can't see, I can't see, I can't see, and
11 started kind of pulling his chair back, I can't see. And
12 then we just couldn't continue because he wouldn't answer
13 any more questions. His head was hurting and he couldn't
14 see. He was going blind.

15 Q Did you try to continue the interview?

16 A Yes.

17 Q And what was his response?

18 A I can't see, my head is killing me, my head is killing
19 me, I'm going blind, I can't see, I can't see. He stood up
20 at one point talking even louder, I can't see, I'm going
21 blind.

22 Q And did you offer him any medical attention?

23 A I asked him, yes, did he need an ambulance, did he
24 need to see someone. And he said no.

25 Q Did the defendant leave your office?

Angela Talley Robinson
Cross-examination by Ms. Hodges

1 A Yes, he did.

2 Q And did you do anything or did you have any occasion
3 to see him after he left your office?

4 A At the second time that he came in to speak with us,
5 yes.

6 Q At the point where he had his migraine did you see him
7 as he left the building?

8 A Yes. I saw him walking down the hall.

9 Q Okay. And was there anything unusual about the way he
10 walked down the hall?

11 A Yes. He walked straight down the hall, but in the
12 office he couldn't stand up, he couldn't hold his head, his
13 head was moving back and forth. But he walked directly
14 down the hall, straight line.

15 Q What floor is your office on?

16 A Third.

17 Q And did the defendant walk down the stairs?

18 A Yes, he did.

19 Q Did he do that? Did he need aid to do that?

20 A No, he did not.

21 MS. REESE: Nothing further.

22 CROSS-EXAMINATION

23 BY MS. HODGES

24 Q Did you follow him down all three flights of stairs?

25 A No, I did not.

Angela Talley Robinson
Cross-examination by Ms. Hodges

1 Q And you would agree with me that it would be shocking,
2 I guess for lack of a better word, to hear that your child
3 is making disclosures of sexual abuse against you.

4 A Yes.

5 Q And that would be something, that would be something
6 that's pretty overwhelming emotionally to a parent.

7 A Could be, yes.

8 Q Have you ever bothered to get any records of
9 Mr. Belcher's in terms to find out if he suffers from
10 migraines or if he has any sort of other physical problems
11 that may have been triggered that day?

12 A No, I did not. I just saw him walk. I stood in the
13 hallway and I saw him walk directly down the hall. We were
14 in 308. He walked down past 301 and went directly out the
15 door. So I saw no reason to seek any further medical
16 evidence.

17 Q Okay. But, again, you didn't follow him all the way
18 down the stairs and then out.

19 A No. I saw him go down the entire hallway and out the
20 door.

21 Q Okay. Thank you.

22 THE COURT: Have you got anything else you want to ask
23 her?

24 MS. REESE: No, Your Honor.

25 THE COURT: You may step down.

Michael Gregory Woodcock
Direct examination by Ms. Reese

1 Ladies and gentlemen, we're going to take a short
2 break.

3 So I will ask you to please go to your jury room.
4 Remember the caution given previously. Don't discuss the
5 case. We'll bring you back shortly.

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

8 THE COURT: Court's in recess for 15 minutes.

9 (Whereupon, a recess was taken.)

10 THE COURT: Who is the next witness?

11 MS. REESE: Mike Woodcock, Your Honor.

12 THE COURT: Bring the jury in, please.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. The jury is present. You may
16 proceed.

17 MS. REESE: Thank you, Your Honor. The state calls
18 Mike Woodcock.

19 MICHAEL GREGORY WOODCOCK,
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. REESE

22 Q State your name for the jury, please.

23 A Michael Woodcock.

24 Q And where are you employed?

25 A Spartanburg County Sheriff's Office.

Michael Gregory Woodcock
Direct examination by Ms. Reese

1 Q And how long have you been employed there?

2 A I have been employed there since August of 2001.

3 Q And how long in law enforcement?

4 A I have been in law enforcement since 1988.

5 Q And as part of your duties at the sheriff's department
6 do you on occasion interview defendants or potential
7 defendants regarding cases that they might have or may be
8 in process?

9 A Yes.

10 Q And did you have occasion to actually do that in an
11 investigation of MINOR allegations against the
12 defendant, Giles Belcher?

13 A Yes, I did.

14 Q Did you interview Giles Belcher?

15 A Yes.

16 Q And tell me how that happened, how that came about.

17 A I was requested by Detective Gencarelli to do an
18 interview with the subject on May the 26th of 2005.

19 Q And I'm going to show you what's been marked as
20 State's Exhibit 3 for Identification. Can you identify for
21 the jury what that is?

22 A This is a standard rights advisory I give everyone I
23 interview.

24 Q And is that a particular rights advisory?

25 A Yes. It's the one that I gave to Giles Belcher on

Michael Gregory Woodcock
Direct examination by Ms. Reese

1 that date.

2 Q Where did you interview the defendant?

3 A At the old sheriff's office at the county
4 administration building on South Church Street.

5 Q Did you advise him of his constitutional rights?

6 A Yes, I did.

7 Q And that's the exhibit you have before you.

8 A That's correct.

9 Q Did you read those rights to the defendant?

10 A Yes. I read them to everyone I do.

11 Q And did he indicate that he understood those rights?

12 A Yes. He did so by signing both that he understood the
13 rights and the waiver of rights.

14 Q Is the form as it is before you substantially the same
15 as when you turned it in?

16 A Yes.

17 Q Has it been changed or altered in any way?

18 A No.

19 MS. REESE: Your Honor, at this time I would offer
20 that the words for-identification be stricken and the item
21 be admitted as State's Exhibit 3.

22 MS. HODGES: No objection to State's Exhibit 3 Your
23 Honor.

24 THE COURT: State's 3 is admitted.

25 (Rights and waiver of rights marked State's Exhibit

Michael Gregory Woodcock
Direct examination by Ms. Reese

1 No. 3.)

2 Q Would you demonstrate for the jury the way in which
3 you read the defendant his rights?

4 A Yeah. The first thing I tell everyone is this is
5 standard procedure, and then I go ahead and tell them their
6 rights. So I say these are your rights. I read off these.

7 "Before we ask you any questions you must understand
8 your rights. You have the right to remain silent. Anything
9 you say can and will be used against you in a court of law.
10 You have the right to talk to a lawyer for advice before you
11 answer any questions and to have him or her present with you
12 during questioning. If you have no money for lawyers' fees,
13 the Court will appoint one to represent you without cost to
14 you if you wish. If you decide to answer questions now
15 without a lawyer present you still have the right to stop
16 answering questions at any time. You also have the right to
17 stop answering questions at any time until you talk with a
18 lawyer."

19 And then I'll have them indicate whether they
20 understand their rights or not.

21 Q And did he indicate on the form that he did?

22 A Yes. And he signed so stating.

23 Q Did he agree to speak with you?

24 A Yes. After I make sure they understand their rights,
25 I will give them the waiver of rights to make sure they

Michael Gregory Woodcock
Direct examination by Ms. Reese

1 understand that as well.

2 Q Is that also on the form?

3 A Yes. It states, "Waiver of rights. I am willing to
4 make a statement and answer questions. I do not want a
5 lawyer at this time. I understand and know what I'm doing.
6 No threats or promises have been made to me, and no
7 pressure or coercion of any kind has been used against me."

8 I make sure that's correct. And if they agree it's
9 correct, they sign.

10 Q And did he sign?

11 A Yes, he did.

12 Q What was the defendant's physical appearance on that
13 day?

14 A He looked fairly normal. He didn't seem to be
15 particularly -- any problem. He complained of stomach
16 upset and diarrhea.

17 Q Have you ever dealt with people in your work who are
18 under the influence of drugs and alcohol?

19 A Yes, I have.

20 Q And did this defendant appear to be under the
21 influence of drugs or alcohol that day?

22 A Not that I could tell, no.

23 Q Did his speech appear to be coherent?

24 A Yes, it did.

25 Q Did he respond to questions as you asked them?

Michael Gregory Woodcock
Direct examination by Ms. Reese

1 A Yes.

2 Q Did he appear to understand what you asked him?

3 A Yes.

4 Q Did the defendant ever tell you that he wanted to
5 invoke his right to remain silent?

6 A No.

7 Q Did he ever ask for an attorney?

8 A No.

9 Q Did you promise this defendant anything in return for
10 talking to you?

11 A No.

12 Q Did you threaten him in any way?

13 A No.

14 Q To the best of your knowledge was the defendant's
15 statement to you given freely and voluntarily?

16 A Yes.

17 Q Did he ever at any time say I refuse to answer any
18 other questions, I want to stop this interview?

19 A No.

20 Q Did he during the interview ask for a break?

21 A We had two breaks. One break -- both went to the
22 bathroom.

23 Q Who asked for those breaks?

24 A He -- one break I usually give, I usually tell people
25 that we're going to have one anyway. But, yeah, I think he

Michael Gregory Woodcock
Direct examination by Ms. Reese

1 asked for both of those breaks.

2 Q And did he -- did you assist him in any way?

3 A In the second break I -- he felt weak and shaky, and I
4 assisted him physically to the bathroom.

5 Q Did he come back?

6 A Yes.

7 Q And did he seem okay when he came back?

8 A He seemed better, yes.

9 Q At any time during this interview did you get the
10 impression that the defendant did not know what he was
11 doing or was too sick to go on?

12 A No.

13 Q Can you tell me briefly what the defendant -- how long
14 did you interview the defendant?

15 A I was in there with him for about perhaps two and a
16 half hours, maybe a little longer.

17 Q And during that time did you carry on a conversation
18 with him?

19 A Yes. We discussed many things, and particularly the
20 case.

21 Q And at any point did he make any statement regarding
22 whether or not he had done what he was accused of doing to

23 MINOR

24 A He just denied the allegation, just told me he didn't
25 know what had happened.

Michael Gregory Woodcock
Direct examination by Ms. Reese

1 Q And that was his final statement, he didn't know what
2 had happened?

3 A That's all he told me.

4 Q At that point what, if anything, did you do with the
5 defendant?

6 A I went ahead and turned him back over to Detective
7 Gencarelli.

8 Q And Detective Gencarelli was the investigator assigned
9 to the case.

10 A That's correct. It was her case.

11 Q So the only statement he made to you was what? I'm
12 sorry. "I don't remember."

13 A Correct.

14 Q Okay. And did you convert that to a, to a report?

15 A Correct. I make a report on every interview I do.

16 Q Now, was the interview originally taped?

17 A Yes, it was.

18 Q And what happened to the tape?

19 A It was reused. If there is no -- standard procedure
20 at the time was if there is no new information gleaned from
21 the interview it was just reused.

22 Q Okay. So did you do that to all? During that
23 timeframe did you do that to all the interviews?

24 A Correct, yes.

25 Q Okay. So and this was just one of several.

Michael Gregory Woodcock
Cross-examination by Ms. Hodges

1 A That's correct. I do.

2 Q And what was the reason for destroying interviews
3 where there was no information?

4 A It was space and a cost consideration. I do literally
5 up to hundreds of interviews a year. So this, the little
6 office there, was just nowhere to put them, and they
7 weren't considered evidence.

8 Q But you did record in your report that he said, "I
9 don't remember."

10 A Correct.

11 MS. REESE: Nothing further.

12 CROSS-EXAMINATION

13 BY MS. HODGES

14 Q Lieutenant Woodcock, you have been in law enforcement
15 since 1988, is that right?

16 A That's correct.

17 Q And you have been with the sheriff's office since
18 when?

19 A Since August of 2001.

20 Q Okay. And you are now in a position of leadership at
21 the sheriff's office.

22 A That is correct.

23 Q And what is that position?

24 A I am lieutenant on the, in charge of the crime
25 analysis unit.

Michael Gregory Woodcock
Cross-examination by Ms. Hodges

1 Q And how long have you been conducting interviews with
2 suspects in law enforcement?

3 A Formal interviews of the type I did with your client
4 ten years.

5 Q And this interview lasted two and a half to three
6 hours, is that correct?

7 A That's about right.

8 Q My understanding is, and correct me if I am wrong,
9 that State's Exhibit 3 actually shows a time, a military
10 time, at the top of the form that says 1830, which would be
11 6:30 in the evening.

12 A That's correct. I spent four years in the military,
13 so I am very much familiar with that system.

14 Q And so 6:30 in the evening, is that when you started
15 your interview?

16 A That's correct. That's the -- the first thing I did
17 in the interview is rights advisory. So that's when it
18 started.

19 Q Do you know if Mr. Belcher had been present at the
20 sheriff's office prior to your interview?

21 A I understood he had come in earlier. I don't know
22 what time he had come in though.

23 Q You don't know how long he had been there prior to
24 your coming into contact with him.

25 A No, I did not know.

Michael Gregory Woodcock
Cross-examination by Ms. Hodges

1 Q And you didn't have any involvement in that prior
2 interview.

3 A That's correct.

4 Q And in the interview that you had with Mr. Belcher,
5 was there anybody present in the room with you other than
6 you and Mr. Belcher?

7 A No. Just, just myself and Mr. Belcher.

8 Q All right. So, in fact, where his signature that's
9 witnessed, that's actually your signature witnessing
10 Mr. Belcher's signature.

11 A Correct.

12 Q And you video-taped the statement, is that correct?

13 A I video-taped the interview, that's correct.

14 Q The interview. And at what point did you decide to
15 tape over that tape of the interview?

16 A It was probably immediately thereafter because there
17 was no new information gleaned from the interview. I may
18 have asked Gencarelli if she wanted to keep it. I don't
19 remember that. It was standard at the time.

20 Q And you knew that Mr. Belcher was a suspect in this
21 case.

22 A Correct.

23 Q The purpose of your interviewing him was in order to
24 determine if he would confess to the charges against him.

25 A I tried to find any new information, inculpatory or

Michael Gregory Woodcock
Cross-examination by Ms. Hodges

1 exculpatory.

2 Q And any information. You said y'all talked about a
3 lot of things during that interview.

4 A Correct.

5 Q Today -- well, this interview was done back on May the
6 26th of 2005, is that right?

7 A That's correct.

8 Q We're almost two years later. You couldn't tell me
9 all the questions that you asked him during that interview,
10 could you?

11 A No.

12 Q You couldn't tell me all the answers that he gave you
13 during that interview, could you?

14 A No.

15 Q And yet you knew that this was a case where he was
16 suspected of abusing his child sexually.

17 A Correct.

18 Q And you chose because of space considerations to not
19 save that interview, that video tape of that interview.

20 A Yeah. That's standard procedure if there's no new
21 information gleaned, yes.

22 Q So you chose to not save that video tape interview, is
23 that right?

24 A That's correct.

25 Q Knowing that this man could possibly be in court on

Michael Gregory Woodcock
Cross-examination by Ms. Hodges

1 these charges.

2 A That's correct.

3 Q And you did not turn that video tape over to the
4 solicitor's office.

5 A That's correct.

6 Q And you did not turn that -- therefore the solicitor's
7 office didn't have that video tape available to turn over
8 to me or anybody representing Mr. Belcher.

9 A That's correct.

10 Q Mr. Belcher originally was denying the allegations
11 prior to your interview with him, wasn't he?

12 A That's my understanding, yes.

13 Q And do you know if that interview was memorialized in
14 any way?

15 A To my knowledge it was not.

16 Q You don't -- that interview wasn't, a record wasn't
17 made of that interview in any way?

18 A You're talking about the initial interview?

19 Q The initial interview with Detective Gencarelli.

20 A As far as I know a written statement was taken.

21 Q A written statement was taken.

22 A Yes.

23 Q And the written statement was saved.

24 A I believe so.

25 Q Is it practice of the sheriff's office to not save a

Michael Gregory Woodcock
Cross-examination by Ms. Hodges

1 written statement that's taken from a suspect?

2 A If you, if in the written statement he doesn't tell
3 you anything different, then you don't make a new
4 statement.

5 Q That wasn't my question. My question was is it a
6 practice of the sheriff's office not to save a written
7 statement that is made by a suspect.

8 A No. You keep written statements made by suspects.

9 Q Okay. But you don't keep video-taped statements.

10 A Not interviews when nothing's going on, no.

11 Q To your estimation nothing's going on. We don't know
12 what went on that day, do we?

13 A Only what I testified to.

14 Q So we'll just have to take your word for that.

15 A That's correct.

16 MS. HODGES: I have nothing further, Your Honor.

17 Actually, Judge, I apologize. I do have something further.

18 Q My understanding of the policy is, is that if Giles
19 Belcher had confessed during that interview, that
20 video-taped interview, would you have saved that statement,
21 that video tape?

22 A Certainly.

23 Q So it's not always destroyed.

24 A No. That's what I say. Only if there's no new
25 information gleaned would it be retained.

Michael Gregory Woodcock
Cross-examination by Ms. Hodges

1 Q Only if there's no new information gleaned. Did you
2 have a chance to know what he said in his first written
3 statement to Detective Gencarelli before you started
4 interviewing?

5 A Yes.

6 Q Did he deny the charges in that first statement?

7 A Yes.

8 Q And in your statement he says he didn't remember what
9 happened, is that right?

10 A He denied and said he didn't know what happened to
11 her.

12 Q Said he didn't know what happened.

13 A Correct.

14 Q And that's not something different.

15 A I didn't think that was substantially different, no.

16 Q So it has got to be substantially different.

17 A It didn't appear to be different to me.

18 MS. HODGES: Nothing further, Your Honor.

19 MS. REESE: Nothing further of this witness.

20 THE COURT: You may step down.

21 MS. REESE: Your Honor, may we approach?

22 (Bench conference held off the record in the presence
23 of the jury but out of the hearing of the jury.)

24 MS. REESE: The state calls Charity Gencarelli.

25

Charity Gencarelli
Direct examination by Ms. Reese

1 CHARITY GENCARELLI, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MS. REESE

4 Q Will you state your name for the record?

5 A Charity Gencarelli.

6 Q And where are you employed?

7 A Spartanburg County Sheriff's Office.

8 Q And how long have you been employed there?

9 A Since January of 1998.

10 Q And were you employed there in a certain capacity in
11 2005, in May of 2005?

12 A Yes, ma'am. I was an investigator, a detective.

13 Q And what were you an investigator of at that time?

14 A Sexual assault investigator.

15 Q Are you still a sexual assault investigator?

16 A I am per se. I do a lot of other internet cases now.
17 I'm part of the major crimes unit.

18 Q Did you have occasion to investigate the allegations
19 of MINOR

20 A Yes, ma'am, I did.

21 Q And what did you do in your first part of your
22 investigation regarding MINOR

23 A And this is in 2005, correct?

24 Q This is 2002 when the allegation first came out.

25 A Okay. I initially heard about it in 2002. I actually

Charity Gencarelli
Direct examination by Ms. Reese

1 responded to D. S. S. And that's the first time I ever saw
2 MINOR And I could not understand her at all.

3 And after some, after going through the investigation I
4 just realized there was no way at that point that I could
5 make any charges or anything just due to her developmental
6 delays at that time.

7 Q Did you have occasion later to start the investigation
8 again?

9 A Yes, ma'am, I did.

10 Q And how did you -- did someone contact you regarding
11 the investigation?

12 A Yes. I was notified, I believe. I don't have my
13 notes right here in front of me. But I was notified that
14 MINOR had been consistently making disclosures, the same
15 disclosures, to Meredith, her therapist, over a period of
16 time.

17 Q As a result of the information you received did you
18 ask to speak with the defendant?

19 A I did.

20 Q And that was in May of 2005.

21 A Yes, ma'am. It was.

22 Q And how did you go about asking to speak to the
23 defendant?

24 A We talked on the phone, and I asked him if he would
25 come to the sheriff's office for an interview. He said

Charity Gencarelli
Direct examination by Ms. Reese

1 that he would. He said he didn't have a ride. So he said
2 that I could come and pick him up from his job on a
3 specific date after work. And I did that.

4 Q And was that date May 26th of 2005?

5 A Yes, ma'am, it was.

6 Q And where did you go to pick him up?

7 A He worked at the D. O. T., I think, on Fairforest, and
8 that's where I went to pick him up.

9 Q And where did you take him?

10 A To the sheriff's office, to the old sheriff's office,
11 on Church Street.

12 Q And did you discuss anything regarding the case while
13 you were in the car on the way back?

14 A Absolutely not. I hadn't read him his rights, and we
15 didn't discuss anything about the case.

16 Q When you arrived at the sheriff's department did you
17 actually have a chance to sit down with him?

18 A I did.

19 Q And where did that happen?

20 A One of our interview rooms.

21 Q And did you, in fact, read him his rights?

22 A I did.

23 Q I show you what's been marked as State's Exhibit 1 for
24 Identification.

25 A Okay.

Charity Gencarelli
Direct examination by Ms. Reese

- 1 Q Can you identify that?
- 2 A I can. This is called a preinterrogation waiver form.
- 3 This is the first thing that I do any time I interview
- 4 someone. I read them their rights.
- 5 Q And did you, in fact, read him his rights?
- 6 A I did.
- 7 Q And how did he appear when you picked him up that day?
- 8 A He was normal as someone that had finished their
- 9 working day. So he was normal.
- 10 Q Did you see anything that gave you any concern
- 11 regarding him being able to talk with you at that time?
- 12 A No. He was normal. He presented normal.
- 13 Q Did he report any stomach upset to you at that time?
- 14 A No, he did not.
- 15 Q How did you go about reading the defendant his rights?
- 16 A What I do is I turn the paper towards the suspect.
- 17 We're sitting at a small table. He's on, you know, one
- 18 side and I'm on the other like this. And I turn it towards
- 19 them. And I just read each line. And I make a check
- 20 beside each line as I read it to them.
- 21 And just like on that Detective Woodcock's, there's two
- 22 places to sign, one that they understand their rights. And
- 23 I always ask them if they understand, because if they don't
- 24 understand something I want to clarify it to make sure that
- 25 they understand it before they sign it.

Charity Gencarelli
Direct examination by Ms. Reese

1 And then the second part is the waiver which is saying
2 that they're willing to talk at that time and waive their
3 rights. But I always explain that at any time during the
4 interview if they don't want to talk any more it's their
5 right. And they sign the second part if they are willing to
6 waive their rights that I had explained prior.

7 Q And did you go through that process with the
8 defendant?

9 A Yes, I did.

10 Q And did he sign in both places?

11 A Yes, ma'am, he did.

12 Q And is the form in front of you his signature?

13 A It is.

14 Q Were you present when he signed?

15 A Yes, ma'am.

16 Q And has that form been altered or changed in any way?

17 A No, ma'am, it has not.

18 MS. REESE: And at this time, Your Honor, we would
19 move to admit that State's Exhibit 1 for the record and
20 words for-identification stricken.

21 MS. HODGES: I have no objection to State's 1, Your
22 Honor.

23 THE COURT: It's admitted.

24 (Waiver form marked State's Exhibit No. 1.)

25 Q After you initialed or he initialed the form or signed

Charity Gencarelli
Direct examination by Ms. Reese

- 1 the form, did the two of you begin to talk?
- 2 A We did.
- 3 Q And at the time did you have any indication that he
- 4 was under the influence of any drugs or alcohol?
- 5 A No, ma'am.
- 6 Q Did you have any indication that he was suffering from
- 7 any mental disability?
- 8 A No, ma'am.
- 9 Q Did his speech seem coherent to you?
- 10 A Yes.
- 11 Q Did he ever ask for an attorney?
- 12 A No. He never asked for anything like that.
- 13 Q Did he ever ask to remain silent?
- 14 A No, ma'am. He didn't.
- 15 Q Did he ever say I don't want to talk to you any more?
- 16 A No, ma'am, he didn't.
- 17 Q Did you coerce this defendant?
- 18 A No, ma'am.
- 19 Q Did you threaten him in any way?
- 20 A Absolutely not.
- 21 Q Did he respond to your questions?
- 22 A He did.
- 23 Q And did he ever refuse to answer any other questions?
- 24 A No, ma'am.
- 25 Q Was a record of the first statement he gave made?

Charity Gencarelli
Direct examination by Ms. Reese

1 A Yes. He wrote a voluntary statement.

2 Q And I'm going to show you what's been marked as
3 State's Exhibit 2 for Identification.

4 A Okay.

5 Q Can you identify that?

6 A This is his voluntary statement that was made during
7 this interview.

8 Q And did you watch him write that statement?

9 A I did.

10 Q Did you watch him sign that statement?

11 A I did.

12 Q And did you have anyone else notarize that statement?

13 A Yes. Another investigator notarized the statement.

14 Q And do you have any -- as you look at that form does
15 it appear to have been altered or changed in any way?

16 A No, ma'am.

17 MS. REESE: Your Honor, at this time I would move to
18 admit State's Exhibit 2 and the words for-identification
19 stricken.

20 MS. HODGES: I have no objection to State's 2, Your
21 Honor.

22 THE COURT: It's admitted.

23 (Voluntary statement marked State's Exhibit No. 2.)

24 Q Would you read for this jury the statement that he
25 gave you, his first statement to you?

Charity Gencarelli
Direct examination by Ms. Reese

1 A Okay. It says, "I, Les Belcher, state that I never
2 sexually or physically done anything to my daughter, MINOR
3 Belcher. Yes, I did whip her, but that was for disobeying.
4 I haven't seen or been near my children since September of
5 '03. Joann and her people have been and had contact with
6 my children. I haven't seen Joann since December of '04
7 and at the last two court dates. I say that I didn't do
8 anything to MINOR and that's the truth."

9 Q After the defendant gave you that statement did you
10 speak with him about talking to Lieutenant Woodcock?

11 A I did.

12 Q And did you talk to him about whether or not he had
13 anything to eat?

14 A I did. I offered to buy him some dinner if he wanted
15 something to eat, if he was hungry.

16 Q And what time was it when you finished this statement?

17 A 5:56 is when I finished the statement.

18 Q And at that time did he say he was hungry?

19 A He did, and I gave, actually I think it's the same
20 investigator that notarized the statement, I gave him \$7
21 and he went to Burger King and bought him a hamburger,
22 fries and a drink for dinner.

23 Q And was that given to the defendant?

24 A Yes, it was.

25 Q And did he have time to eat?

Charity Gencarelli
Direct examination by Ms. Reese

1 A He did. He had as much time as he wanted to eat.

2 Q And at that point did he agree to talk to Lieutenant
3 Woodcock?

4 A He did.

5 Q Now, tell me Lieutenant Woodcock's interview area, is
6 there a way you can observe that interview?

7 A Yes, ma'am, there is.

8 Q And did you observe part of that interview?

9 A I did.

10 Q And at the time did you ever see anything such as
11 Lieutenant Woodcock threaten him or coerce him or anything
12 in any way?

13 A Absolutely not.

14 Q Did you see anything inappropriate going on in that
15 interview room?

16 A Absolutely not. Nothing inappropriate.

17 Q After his interview with Lieutenant Woodcock, where
18 did the defendant go then?

19 A After Lieutenant Woodcock finished his interview, I
20 spoke with Lieutenant Woodcock briefly. And the defendant
21 came back to the interview room that I had interviewed him
22 in initially. And we sat down and talked again.

23 Q And did Lieutenant Woodcock tell you something that
24 the defendant had said to him during his interview with
25 him?

Charity Gencarelli
Direct examination by Ms. Reese

1 A He said that he had denied it, and then said he didn't
2 remember or didn't know what he had done.

3 Q Did you decide at that time that you wanted to talk to
4 the defendant again?

5 A I did. I just, I wanted to understand how he couldn't
6 remember or couldn't know if he had done something or not
7 to MINOR So I just wanted some clarification really.

8 Q And did he agree to speak with you again?

9 A Yeah, he did.

10 Q I'm going to show you what's been marked State's
11 Exhibit 4 for identification.

12 MS. HODGES: Your Honor, we renew our objections to
13 State's 4.

14 THE COURT: All right.

15 Q Did you talk to -- how long did you talk to the
16 defendant the second time you interviewed him?

17 A I would have to be estimating, but I would say it was
18 probably a couple of hours or so, two or two and a half.
19 But I really don't remember exactly.

20 Q And at that time did he -- when you first saw him did
21 he appear to be upset?

22 A No. Initially he just came walking back, you know, to
23 the interview room. We sat down.

24 Q Did he, did he report to you anything that Lieutenant
25 Woodcock said or done to him that he was complaining about?

Charity Gencarelli
Direct examination by Ms. Reese

1 A No.. It was kind of like the first interview. We just
2 sat down and started a conversation again.

3 Q Did you threaten him in any way?

4 A No, ma'am.

5 Q Did you coerce him in any way?

6 A No, ma'am.

7 Q Did you make him any promises?

8 A Absolutely not, no promises.

9 Q Tell me what happened as you came, as he came into the
10 room. Where were y'all seated in the room?

11 A Again, there's an inner interview room. There's a
12 table maybe the size of this if this was a full table here
13 and maybe a chair on this side and a chair on that side and
14 usually a chair kinda beside me or beside this chair, maybe
15 a little bit behind. So usually three chairs in the room
16 with a small table.

17 Q And how did you start discussing this situation with
18 him?

19 A I just really started asking for clarification as far
20 as how could he not remember if he touched his daughter or
21 not. That's where I began. I just wanted to know, wanted
22 him to explain to me how he wouldn't know.

23 Q And did, did you yell at him?

24 A No. I never yell at anybody.

25 Q What, if anything, did he -- well, did anything happen

Charity Gencarelli
Direct examination by Ms. Reese

1 in which he changed the previous statement he had given?

2 A Yes. He did change his previous statement.

3 Q Okay. Briefly describe for the jury what happened in
4 that interview room after you talked to him about how he
5 couldn't remember.

6 A Okay. Like I said, I just wanted some clarification
7 as to why he says he couldn't remember.

8 And while we were talking he just became upset, you
9 know, and started crying and talking about, you know, that
10 he, he had been molested and then started making statements
11 about, you know, he was sorry if he did anything to MINOR
12 and those type of statements.

13 And he was upset for a while, and then he calmed down.
14 And then he, I asked him if he would write another
15 statement, because obviously he had said, you know, he had
16 said some things that I would want him to write down. And
17 he agreed to do that.

18 Q And did he write the statement?

19 A He did not. He asked me to write it. I always give
20 people an option. A lot of times people don't want to
21 write their own statements. I had rather them write their
22 own statements. But they, sometimes they just want us to
23 write them. So I wrote down specifically what he said to
24 me.

25 Q Tell the jury how that statement was written piece by

Charity Gencarelli
Direct examination by Ms. Reese

1 piece. And how did you go about getting the information
2 from him and writing it down?

3 A Okay. In all of my interviews we talk. We have a
4 conversation. And then at the end if someone is willing to
5 write a statement I'll get my pen out if they want me to
6 write it.

7 And I'll say, okay, you know, tell me what you want to
8 say, this is your statement, you tell me. And as they say
9 it I write it. And then I always read it back to them,
10 because, again, I mean, it's their statement. And I want to
11 make sure it's what they said and it's correct.

12 Q And is this the statement that he asked you to write
13 for him?

14 A It is.

15 Q And after you wrote the statement did you go back and
16 read it to him?

17 A Yes, ma'am.

18 Q And did he agree to that statement?

19 A He did.

20 Q Did he sign the statement?

21 A He did on both pages. He signed the statement.

22 Q Did you have anybody else present with you in the
23 interview room when he gave that statement?

24 A I did.

25 Q And who was that?

Charity Gencarelli
Direct examination by Ms. Reese

1 A It was Officer Balderama who is now Sergeant
2 Balderama.

3 MS. REESE: Your Honor, at this time we would move to
4 admit this exhibit and strike the words for-identification,
5 State's Exhibit 4.

6 A Yes, ma'am, it is.

7 MS. HODGES: Your Honor, we renew our objection.

8 THE COURT: It's admitted over objection.

9 (Voluntary statement marked State's Exhibit No. 4.)

10 Q Detective Gencarelli, can you read for the jury the
11 statement that the defendant gave you?

12 A Yes, ma'am, I can.

13 "This statement is being written by Detective
14 Gencarelli at Mr. Belcher's request. I don't know if I did
15 anything to MINOR but if I did I'm sorry. I have been
16 racking my brain trying to remember if I did anything to
17 MINOR and I don't know. If anything did happen I didn't
18 mean for it to. But I didn't, I don't remember if it did.
19 I'm sorry if I did anything. I love MINOR and I didn't
20 mean for it to happen if it did. Back then all I saw was
21 that guy who abused me coming towards me. That's all I can
22 remember. I can't deal with this pain that I hurt my
23 daughter because somebody hurt me. And I didn't know it.
24 He forced me down on him and made me suck on him. And I
25 don't know if I made MINOR do that to me. I hurt my

Charity Gencarelli
Direct examination by Ms. Reese

1 daughter, and I didn't even realize it because I was hurt.
2 I'm so ashamed of myself. I can't deal with this pain any
3 more because I should have protected her and I didn't. --I
4 failed my daughter. I should have been in control of
5 myself. I hope MINOR and everyone else can forgive me. I
6 just want a chance to make things right and be a father.
7 I'm just sorry if I did anything. I just can't remember."

8 Q And that was his statement.

9 A Yes, that was his statement.

10 Q Detective, did you have occasion to after this go back
11 and determine where the house was that MINOR referred to,
12 the spider house?

13 A Yes, ma'am.

14 Q The last house where the two, the couple had lived
15 together?

16 A Yes, ma'am, I did.

17 Q And where is that located?

18 A It's on Stephens Grove Road, I think 1172, I believe,
19 Stephens Grove Road in the Una community in Spartanburg
20 County.

21 Q But, at any rate, it's in Spartanburg County.

22 A It is. It is in Spartanburg County, yes.

23 Q Could you tell the jury what -- did you actually go
24 out there?

25 A I did. It was a yellowish color.

Charity Gencarelli
Direct examination by Ms. Reese

1 Q Were you able to establish when the family lived in
2 that home?

3 A Yes. Ms. Belcher said they lived in that home
4 between --

5 MS. HODGES: Objection to hearsay, Your Honor.

6 THE COURT: Sustained.

7 A May of 2002 to --

8 MS. HODGES: Objection to hearsay.

9 THE COURT: I sustained the objection.

10 THE WITNESS: I'm sorry; I'm sorry.

11 Q Were you able to determine through other ways other
12 than Ms. Belcher whether or not the defendant and his wife
13 lived in that home prior to MINOR disclosure?

14 A I don't remember. I mean, I guess I can't say how I
15 found out.

16 MS. REESE: Your Honor, may we approach?

17 THE COURT: Sure.

18 (Bench conference held off the record in the presence
19 of the jury but out of the hearing of the jury.)

20 Q Detective, when did you go out to this house to
21 observe it, do you remember?

22 A It's probably, it hasn't been very long ago that I
23 went out there, within the last month or so that I actually
24 prepared it.

25 Q And you were able to establish the color of the house.

Charity Gencarelli
Cross-examination by Ms. Hodges

1 A Yes.

2 Q Okay. And what color was it?

3 A It was yellow.

4 MS. REESE: Nothing further of this witness, Your
5 Honor.

6 CROSS-EXAMINATION

7 BY MS. HODGES

8 Q Detective Gencarelli, my understanding from your notes
9 and incident report in this case is that you first were
10 approached by D. S. S. October the 4th of 2002.

11 A Yes, ma'am. I remember it was 2002.

12 Q And do you remember if -- you didn't take the initial
13 incident report, did you?

14 A No, ma'am, I didn't, a patrol officer.

15 Q Would that be Martin Eldredge?

16 A Yes, ma'am, that was Martin Eldredge.

17 Q And if his report is dated October the 4th of 2002
18 would that be --

19 A Yes, ma'am. That would be correct.

20 Q And the report, is it your understanding -- you have
21 had a chance to review that report, is that right?

22 A I have looked at it, yes, ma'am.

23 Q To your recollection was the incident first disclosed
24 to D. S. S. prior to that date in October?

25 A Honestly, I would just have to look at it. I don't

Charity Gencarelli
Cross-examination by Ms. Hodges

1 want to testify to something that I'm not looking at or can
2 remember right off the top of my head.

3 Q You know, I guess you know, from your own memory when
4 it was initially reported to D. S. S.

5 A I definitely don't remember the date. I just know
6 that they were contacted by a family member. But I don't
7 remember the date in which that happened. No, ma'am.

8 Q Okay. You weren't contacted by D. S. S. back in
9 August of 2002 when Kathleen Perry and Jamie Belcher
10 originally contacted D. S. S. You weren't contacted then,
11 were you?

12 A I know that I was, I know that I went to D. S. S. I
13 actually reported to D. S. S. And MINOR was there. I
14 can't remember. I'm assuming that Officer Eldredge is the
15 one that contacted me because he's the one that did the
16 report. But I do remember, you know, going to D. S. S. and
17 MINOR being there.

18 Q And standard procedure for your office would be D. S.
19 S. would say, hey, we have just gotten, you know, been told
20 something by a child we need to report to law enforcement.
21 Law enforcement would then send out a patrol officer to
22 take the initial report. And then he'd contact somebody in
23 investigations or whatever.

24 A A lot of times, a lot of times. A lot of times it
25 happens, although, you know, over the years we do get

Charity Gencarelli
Cross-examination by Ms. Hodges

1 relationships or know, you know. The D. S. S. workers know
2 investigators, and sometimes they can call us directly.
3 But obviously what happened in this case was that they
4 called law enforcement and a patrol officer responded, thus
5 the patrol officer contacted the investigator, being me.

6 Q You.

7 A Yes, ma'am.

8 Q And you could not understand MINOR speech to be
9 able to determine what she was disclosing at that point.

10 A No. I really had a difficult time. I didn't
11 understand her. There was no way I could tell exactly what
12 she was saying.

13 Q And did you or did D. S. S. make a referral then to
14 put the child into counseling?

15 A Just from what I can remember, D. S. S. did it.

16 Q Okay. Were you given any information at the time of
17 the report when you became involved as to where these
18 allegations had actually occurred?

19 A Stephens Grove Road was the incident location.

20 Q And you were told that at the time?

21 A That was on the incident reports, I'm assuming. I got
22 that information at the time.

23 Q Did you go to the home on Stephens Grove Road to
24 conduct any sort of investigation of the scene there?

25 A I did not. I know that MINOR could not -- I couldn't

Charity Gencarelli
Cross-examination by Ms. Hodges

1 understand MINOR I did not want to proceed in this
2 investigation. I didn't want to talk to the suspect at
3 that time just because I wouldn't even know what to ask
4 because I had no idea really what the allegations were. So
5 really I let D. S. S. handle it.

6 I knew that MINOR needed to be in counseling at that
7 time so she could become more developmentally, you know,
8 able to talk and to disclose. And so that's how I handled
9 it at that time. I closed my part of the case out at that
10 time.

11 Q Are you familiar with the Child Advocacy Center?

12 A Yes.

13 Q Are you familiar with the forensic interviews the
14 Child Advocacy Center does?

15 A Yes, I am.

16 Q Do you know if MINOR was referred to the Child
17 Advocacy Center for a forensic interview?

18 A She was.

19 Q What is a forensic interview?

20 A I don't know if I'm the one that can specifically
21 testify to that.

22 Q What's your understanding?

23 A Okay. A forensic interview -- well, the Children's
24 Advocacy Center is a safe place where kids can go to talk
25 about sexual abuse, physical abuse when there have been

Charity Gencarelli
Cross-examination by Ms. Hodges

1 allegations of that.

2 Forensic interviewers are qualified. They have, of
3 course, higher degrees, have specific qualifications to talk
4 to children in an appropriate, in a child-appropriate, way,
5 whereas, you know, law enforcement may not, you know, have
6 those type of degrees and that kind of training.

7 My understanding is they just want to find the truth if
8 it did or did not happen. There's not a -- they don't
9 assume that it did. It's a really kind of a truth-finding
10 session.

11 I know there can be multiple sessions really depending
12 on the child. Some children have a hard time disclosing
13 obviously such hard things initially. And so sometimes it's
14 a series of interviews. That's my understanding of a
15 forensic interview.

16 Q And after that process, after she was referred for a
17 forensic interview, did you receive any information from
18 the Child Advocacy Center that caused you to, to conduct a
19 further investigation back in October of 2002?

20 A They usually send us a report. . Honestly, I don't
21 remember what that report said at this point. I don't have
22 it in front of me.

23 Q Is it fair to say that you did not based on the report
24 that they sent you, you did not go out and interview
25 Mr. Belcher?

Charity Gencarelli
Cross-examination by Ms. Hodges

1 A No. At that time, again, the information that I had
2 was not sufficient enough for me to go and talk to the
3 suspects.

4 Again, when I go talk to a suspect I want to know as
5 much as I can know. Obviously, I want to be able to ask
6 questions and get to the truth. And so I didn't feel like I
7 had enough information to approach him at that time.

8 Q Did you do anything between 2002 and when you were
9 contacted then again in 2005 in investigation of this case?

10 A I never initiated any kind of contact with the
11 suspect.

12 I believe on and off I spoke with Meredith, obviously.
13 MINOR -- you know, the case didn't go out of my mind. I
14 hadn't forgotten about it. So I'm sure I talked with
15 Meredith at times but not investigative-wise. It was still
16 kind of on hold waiting.

17 Q Were you ever a member of what they call the CART
18 staffing?

19 A Yes.

20 Q And the CART staffing, that's something that's
21 basically a child abuse response team. They have meetings
22 about different cases, right?

23 A Yes. We, we do several different agencies, whether it
24 be D. S. S., law enforcement, the advocacy center. We sit
25 down and talk about cases. And I, when I was working these

Charity Gencarelli
Cross-examination by Ms. Hodges

1 cases I did regularly attend the CART staffings.

2 Q And do you remember if there are any CART staffings
3 that you attended that involved MINOR during the time of
4 2002 to 2005?

5 A I would think, I would think that I did. I can't, I
6 don't have, you know, I don't recollect, but I'm sure I
7 probably did.

8 Q But fair to say that you didn't conduct anything else
9 in terms of any investigation in this case until Meredith
10 Thompson Loftis contacted you about MINOR progress in
11 therapy.

12 A Yes, ma'am. That's correct. That's a fair statement.

13 Q So there's no physical evidence that was seized from
14 the home on Stephens Grove Road.

15 A No, ma'am.

16 Q And there were no other doctors' reports that you are
17 aware of other than Dr. Henderson's report involving this
18 case.

19 A Not that I am aware of, no, ma'am.

20 Q And you're the lead detective on the case.

21 A Yes, yes.

22 Q So you ought to know everything.

23 A You're right. I should know. Yes. You're right.

24 Q All right. So in 2005 you're contacted by Meredith
25 Thompson Loftis. MINOR has progressed in therapy. You

Charity Gencarelli
Cross-examination by Ms. Hodges

- 1 decide to go interview Mr. Belcher.
- 2 A I decided to try to make contact with him, yes, yes.
- 3 Q And you make contact with him somehow.
- 4 A Yes, ma'am.
- 5 Q And you go to pick him up at work. Do you remember
- 6 about what time you get to work?
- 7 A I think it was --
- 8 Q You did work.
- 9 A Yes. I think it was around 4:45 that afternoon.
- 10 Q So you pick him up from work at 4:45. And he's at D.
- 11 O. T. at Fairforest?
- 12 A Yes, ma'am.
- 13 Q How far is it from Fairforest to the old sheriff's
- 14 office?
- 15 A Ten to 15 minutes maybe.
- 16 Q So you get to the sheriff's office somewhere around
- 17 5:00 o'clock.
- 18 A Yes, ma'am.
- 19 Q When you get to the sheriff's office, what do you do?
- 20 A We walk.
- 21 Q First thing.
- 22 A Walk in the door and walk back to the criminal
- 23 investigation division because that's where our two
- 24 interview rooms are located. So we would just, we would
- 25 walk back there.

Charity Gencarelli
Cross-examination by Ms. Hodges

1 Q Was there anybody else there at the sheriff's office
2 that was there to meet with you and Mr. Belcher?

3 A His pastor, pastor, I think, Pastor Long. I had
4 actually talked to him on the phone when I was trying to
5 communicate with Mr. Belcher. And he was, he was there in
6 the lobby.

7 Q And did Les have an opportunity to talk with his
8 pastor?

9 A I don't, I don't know if they had a conversation or
10 not. Honestly, I don't remember. He was in the lobby. He
11 would have, I am sure, seen us walk through. But I don't
12 remember if Mr. Belcher stopped and talked to him or not.

13 Q And then did y'all pretty much proceed, pretty much
14 through into the interview process?

15 A Right. We walked through, in the door downstairs
16 through the lobby and then back to the interview room is
17 where we would. I would have read his rights. And then we
18 began our conversation.

19 Q And you have I believe the state's exhibit.

20 A Yes, 1.

21 Q Does it indicate when you began your first interview
22 with him?

23 A Yes. Well, it was around 4:56.

24 Q Okay. So you started interviewing at 4:56. And what
25 time does it finish?

Charity Gencarelli
Cross-examination by Ms. Hodges

- 1 A He wrote his statement and I signed it and dated it
2 and timed it at 5:56.
- 3 Q Okay. And then at that point is when you offer him,
4 asked him if he's had anything to eat.
- 5 A Right.
- 6 Q Or if he's hungry.
- 7 A Right, yes, ma'am.
- 8 Q Had you asked him any of those questions before you
9 started interviewing him, whether he had eaten that day?
- 10 A I don't remember. Probably not. But I don't remember
11 if I did or not.
- 12 Q Did you ask whether he'd taken any medication that day
13 or if he was on any medications?
- 14 A I don't remember asking that, no.
- 15 Q And he'd worked. He worked for D. O. T., is that
16 correct?
- 17 A Yes, ma'am.
- 18 Q So do you know what his particular job duties were at
19 the Department of Transportation?
- 20 A I don't remember his particular job duties, no.
- 21 Q I mean, did he work outside, physical labor, or inside
22 an office?
- 23 A You know, I would assume D. O. T. is outside physical
24 labor, but, honestly, I don't remember asking him that.
- 25 Q But he had a full day to work.

Charity Gencarelli
Cross-examination by Ms. Hodges

1 A Yeah, he had a full day to work, I'm assuming. That's
2 where I picked him up. So I'm assuming he had a full day.

3 Q So y'all break at 5:56. He has about half an hour or
4 so, because then we've heard testimony that he went into
5 this interview with the lieutenant at 6:30.

6 A Actually, I think the lieutenant was just waiting on
7 him to finish eating. So he really just kinda had however
8 long he needed to eat.

9 Q Okay. So it was about a half-an-hour break in there.

10 A Right, uh-huh.

11 Q And do you know how much he ate, he being Mr. Belcher?

12 A No. I don't remember how much he ate. I don't even
13 know if I looked to see how much he ate.

14 Q And then the interview with Lieutenant Woodcock lasted
15 about three hours.

16 A I think he'd said somewhere around there, but I'm not,
17 somewhere around there.

18 Q And so then when Mr. Belcher's brought back to the --
19 he goes from Lieutenant Woodcock back into your interview
20 area.

21 A Yeah. He did agree to talk with me again, yes.

22 Q And he goes back into your interview area. Do y'all
23 pretty much start talking immediately, or do you remember?

24 A Yeah. I'm sure we probably did.

25 Q And then did you re-read him his rights at that point?

Charity Gencarelli
Cross-examination by Ms. Hodges

1 A No, ma'am. He had already been Mirandized by me and
2 then by Lieutenant Woodcock, so no. I don't have to read
3 him his rights again.

4 Q So we don't know. We don't really have a timestamp as
5 to when that second interview with you actually begins.

6 A No. Unfortunately, I don't know exactly when it
7 began.

8 Q But we do know when that interview ended.

9 A I would know that just like on the first voluntary
10 statement. On each and every voluntary statement we write
11 down what time we ended this, well, that the statement was
12 completed.

13 Q And when was the second statement completed?

14 A 12:21 a.m. on the 27th of May.

15 Q And at that point there were no other interviews with
16 Mr. Belcher after that. After 12:21 a.m. y'all didn't have
17 any other interviews.

18 A No, ma'am.

19 Q Now, you testified that, I guess, Lieutenant Woodcock
20 had told you that he didn't remember or didn't know what
21 happened.

22 A Right. Excuse me. I'm sorry. Right.

23 Q Is that basically what your testimony was that
24 Lieutenant Woodcock told you?

25 A Yes.

Charity Gencarelli
Cross-examination by Ms. Hodges

1 Q And at that point you kind of wanted to explore that
2 because that was different than what you had been told
3 initially, right?

4 A He had denied it. And he, like I said, Lieutenant
5 Woodcock said he did, at first he denied it, and then he
6 said he didn't remember or didn't know. So obviously I
7 would want to ask him to clarify that.

8 Q So to you that was something that was different enough
9 to want to clarify in your mind.

10 A Right. He did not write that on his initial
11 statement. So, yes, of course I would want to ask about
12 that.

13 Q And that's when y'all got the second statement that
14 you write for Mr. Belcher.

15 A No. We talked for a while. And then, and then, yes,
16 at the end of the interview, just like at the first one, I
17 gave him a chance to give another written statement. And
18 that's how this came about.

19 Q Any idea how long you and Mr. Belcher were talking
20 before you actually get out the pen to start writing the
21 second statement?

22 A Honestly, I have no idea. But, again, normally the
23 conversation or the interview takes, you know, a while.
24 That's really the bulk of the interview, is the actual
25 talking and the actual writing of the statement. That

Charity Gencarelli
Cross-examination by Ms. Hodges

1 usually doesn't take as long. So I would say, you know, it
2 was very a small amount of the interview time probably.

3 Q The interview, very first interview, with him at
4 5:00 o'clock in the afternoon, was that tape-recorded or
5 video-taped in any way?

6 A No, ma'am.

7 Q And what about the second interview that you did with
8 Mr. Belcher? Is that recorded or taped or videoed in any
9 way?

10 A No, ma'am. I never tape-record a video in any of my
11 statements.

12 Q But y'all have that capacity at the sheriff's office.

13 A We don't have a video room, a recording room, no.

14 Q You have a video camera.

15 A If we have video cameras for that reason, I honestly
16 don't know about them.

17 Q So you don't know about the sheriff's office having
18 video cameras in its possession?

19 A Well, our media guy has a video camera, but I'm saying
20 specifically to video-tape interviews, no.

21 Q But y'all have tape recorders.

22 A We do have tape recorders.

23 Q Okay. Do you know if Mr. Belcher talked to anybody
24 else in law enforcement that evening during that interview
25 process in the interview room?

Charity Gencarelli
Cross-examination by Ms. Hodges

1 A I had actually forgotten that one of my investigators
2 had went in there. Supposedly, he knew Mr. Belcher. So he
3 stepped in and talked with him briefly. Yes. So that did
4 happen.

5 Q And who is that?

6 A Investigator Richie McSwain.

7 Q Did he get a statement from him?

8 A No. I don't think he did. No. Obviously, it would
9 be here. He did not.

10 Q Because the video is not here, right?

11 A I think that we've already testified to that.

12 Q Other than talking to Mr. Belcher on May the 26th of
13 2005, talking to MINOR in October of 2002, sitting in on
14 some staff meetings about her progress potentially and
15 talking to Meredith Thompson Loftis in 2005 about the fact
16 that she is progressing in therapy and taking a photograph
17 of a home on Stephens Grove Road, is there anything else
18 that you did in this case in the investigation of the
19 charges?

20 A There were no witnesses, so there was no witnesses
21 to --

22 Q That's a yes-or-no question.

23 A No. You're right. Those are the things that I did
24 and the people that I talked to about this case, yes.

25 Q Thank you.

George Balderama
Direct examination by Ms. Reese

1 A You're welcome.

2 MS. HODGES: Nothing further, Your Honor.

3 MS. REESE: The state calls George Balderama.

4 Nothing further of this witness.

5 GEORGE BALDERAMA, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. REESE

8 Q Officer Balderama, would you please state your name
9 for the jury, please?

10 A George Balderama.

11 Q And what, where are you employed?

12 A I'm employed with the Spartanburg County Sheriff's
13 Office.

14 Q And what are your duties as an employee of that
15 department?

16 A I'm the second shift desk sergeant. I work from 3:00
17 in the afternoon until around midnight or whenever my
18 duties are done.

19 Q And were you employed there in May of 2005?

20 A Yes, ma'am, I was.

21 Q And did you have occasion on May 26th of 2005 to be
22 present when a statement was given by the defendant?

23 A Yes, ma'am, I did.

24 Q And can you briefly describe how you came about being
25 there with the defendant in that room?

George Balderama
Direct examination by Ms. Reese

1 A One of my duties as desk sergeant, I have to take
2 paperwork like faxes and anything that comes during the
3 night to the different offices and divisions that are not
4 there. And so I go back and I deliver it to evidence,
5 investigations, I. D., whoever it's meant for, the sheriff
6 or whoever, uniform patrol.

7 And this night I was taking and dropping off the
8 messages and faxes and stuff in investigations. And
9 Investigator Gencarelli called me over and asked me to come
10 to where she was at, which is near the interview room.

11 Q And when you walked into the interview room, where was
12 the defendant?

13 A When I got to where she was at, she was at the door of
14 the interview room. And when I got there he was like, this
15 is the interview room. It's kind of square like this. And
16 right here is the doorway. And then there's a table right
17 here and the chair, and a chair. And this is the wall.
18 It's not a very big place. And he was in the chair right
19 here in this corner of the interview room.

20 Q And what was his appearance?

21 A When I saw him he was like crying, sobbing.

22 Q Did, were you in there with him for long enough to
23 hear him speak?

24 A Later on after she had, Investigator Gencarelli had,
25 invited me in to sit down for the statement he was doing.

George Balderama
Cross-examination by Ms. Hodges

1 Q Did his speech, was it coherent?

2 A Yes, ma'am.

3 Q Did he appear to be suffering from any mental illness
4 to the best of your knowledge?

5 A No. Just somebody that was just like, you know, just
6 crying. He was just crying like.

7 Q Did he appear to know where he was?

8 A Yeah, at that time he did, I mean.

9 Q And did you ask him anything in regard to the
10 statement?

11 A Just if he was going to, was giving it of his own free
12 will.

13 Q And what did he say?

14 A Yes.

15 Q And at that time you notarized the statement?

16 A Yes, ma'am. After it was finished.

17 Q Nothing further of this witness.

18 CROSS-EXAMINATION

19 BY MS. HODGES

20 Q Sergeant Balderama, my understanding is you didn't,
21 you weren't there for the entire interview, is that right?

22 A No, ma'am.

23 Q So just, actually were you there for the entire part
24 of Detective Gencarelli actually writing out the statement?

25 A I was there for that part. I wasn't there for

George Balderama
Cross-examination by Ms. Hodges

1 whatever they were doing before that. I wasn't there.

2 Q Thank you, sir.

3 A Yes, ma'am.

4 THE COURT: You may step down.

5 MS. HODGES: May we approach?

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 THE COURT: All right. Ladies and gentlemen, we are
9 going to recess for lunch.

10 Keep in mind my caution. Don't talk about the case.
11 Don't allow anyone to discuss it with you. Don't expose
12 yourself to any media coverage that might relate to it, and
13 don't conduct any research or do any investigation.

14 Do have a good lunch. Please report back to your jury
15 room at 1:45, 1:45 this afternoon, a quarter till 2:00.
16 Have a good lunch.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: Court is in recess until 1:45.

20 (Whereupon, a recess was taken.)

21 THE COURT: Who is the next witness?

22 MS. JORDAN: Scotty Belcher.

23 THE COURT: All right. Bring the jury in, please.
24 Is Mr. Belcher in the courtroom?

25 MS. JORDAN: He is right outside. Barry will grab

Eric Scott Belcher
Direct examination by Ms. Jordan

1 him.

2 (The following takes place in the presence of the
3 jury.)

4 THE COURT: Good afternoon, ladies and gentlemen.

5 We are going to continue with the state's
6 presentation. Ms. Jordan.

7 MS. JORDAN: Thank you, Your Honor. The state calls
8 Scotty Belcher.

9 ERIC SCOTT BELCHER, having
10 been first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MS. JORDAN

12 Q Please state your name for the record.

13 A Eric Scott Belcher.

14 Q Do you know the defendant?

15 A Yes, I do.

16 Q How do you know him?

17 A He is my brother.

18 Q Do you remember when Joann and your brother last lived
19 on Stephens Grove Road in Una?

20 A Yes, ma'am.

21 Q How long did they live there?

22 A About four or five or six months.

23 MS. JORDAN: Nothing further, Your Honor.

24

25

Eric Scott Belcher
Cross-examination by Ms. Hodges

1 CROSS-EXAMINATION

2 BY MS. HODGES

3 Q Scotty, do you know when they lived there?

4 A It's, it's been a couple or four or five or six years
5 since this all happened.

6 Q Okay. Do you know when they moved in to that home?

7 A No, I don't.

8 Q All right. And do you know when they left the home?

9 A No, I don't.

10 Q Do you know the address of the home?

11 A No, ma'am, I don't.

12 MS. HODGES: That's all I have, Your Honor.

13 MS. JORDAN: May this witness be excused?

14 THE COURT: Yes. Step down.

15 (Whereupon, the witness was excused.)

16 MS. JORDAN: Your Honor, at this time the state rests.

17 THE COURT: All right. Ladies and gentlemen, that's
18 all of the testimony or other evidence to be offered by the
19 state, at least in their case in chief.

20 Before we go any further I've got some matters to
21 address with the lawyers. So I'll ask you to please go to
22 your jury room.

23 Do not yet discuss the case. I will bring you back in
24 just a few minutes.

25 (The following takes place outside the presence of the

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1 jury.)

2 THE COURT: All right. Any matters to address before
3 we go any further?

4 MS. HODGES: Your Honor, the defense would make a
5 motion for a directed verdict on the indictment of criminal
6 sexual conduct with a minor in the first degree.

7 It's the defense's position that the state has not
8 been able to establish sufficient evidence for the charges
9 of sexual battery upon the victim of MINOR on the
10 dates alleged in the indictment to go forward.

11 We would ask the Court for a directed verdict of
12 acquittal based on the sum total of the evidence that the
13 Court has heard today and yesterday.

14 THE COURT: All right. Ms. Reese.

15 MS. REESE: Your Honor, the state believes we have
16 established what we need to to get past a directed verdict
17 motion.

18 As to the dates alleged in the indictment, Kathy Perry
19 on yesterday testified that she went to the Belchers'
20 residence on Stephens Grove Road in August of 2002.

21 At that time they were moving out of the residence.
22 That is the reason that she took MINOR to her home, and
23 that's when MINOR began to disclose. She stated that
24 there were roaches in the home which she witnessed and
25 MINOR was covered with lice.

Motion

1 MINOR has expressed that this happened to her in the
2 spider house. The house was yellow. The witness just now,
3 Mr. Belcher, testified that they lived in that house for
4 four to six months prior to their moving out, which would
5 be the dates alleged in the indictment.

6 And Charity also confirmed, Charity Gencarelli also
7 confirmed, that she did go out to the residence and
8 confirmed that the house was yellow as Taylor stated.

9 THE COURT: All right. The motion for a directed
10 verdict is denied.

11 Any others?

12 MS. HODGES: Yes, sir. We would obviously renew our
13 other objections we've made to preserve those.

14 THE COURT: Okay. Have you talked to your client
15 about whether or not he is going to testify?

16 MS. HODGES: I have, Your Honor.

17 THE COURT: What does he indicate to you he wishes to
18 do?

19 MS. HODGES: I don't know that he has made a decision
20 as to that, Your Honor, if the Court would like to inquire
21 from him at this point.

22 THE COURT: All right. Mr. Belcher, have you had a
23 chance to talk to your lawyer about your right to testify
24 or not testify in this case?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And do you understand that when you're
2 charged with a crime you have an absolute right to remain
3 silent, which simply means that nobody can make you take
4 the witness stand and testify during this trial?

5 Nobody can require that you make any statement or
6 answer any questions as they relate to this charge. You
7 have an absolute right to remain silent.

8 At the same time, if you wish to testify now is the
9 only opportunity that you will have to do so. In other
10 words, you can't wait and make a decision after the jury
11 has reached a verdict. You have to make that decision now
12 because the state has concluded with their presentation and
13 now is your opportunity to testify or to present evidence
14 if you wish to. That's simply a decision that you have to
15 make. It's your decision to make. Nobody else can make it
16 for you.

17 Has Ms. Hodges discussed with you the advantages and
18 disadvantages of testifying as well as not testifying?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you understand what those
21 advantages and disadvantages are?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And have you had time to reflect upon that
24 decision?

25 THE DEFENDANT: I'm still deciding, sir.

1 THE COURT: Well, how much time do you think you're
2 going to need to make that decision? Because, you know,
3 we're in the middle of this trial now.

4 THE DEFENDANT: I know that.

5 THE COURT: And I assume you've had a couple of years
6 to think about it.

7 THE DEFENDANT: There's a lot that needs to be said,
8 sir, but I'm not allowed to say it, sir.

9 THE COURT: Well, did you understand my advice earlier
10 that you have a right to testify if you want to?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Well, then you can take the witness stand
13 and testify if you want to.

14 THE DEFENDANT: The only problem, sir, I see and know
15 is that I cannot say what truly needs to be said, sir.

16 THE COURT: Well, I don't really have any idea what
17 you mean by that. But do you want to testify or have you
18 made a decision not to testify?

19 THE DEFENDANT: At this point, sir, I see no use in
20 testifying because I am not allowed to say what needs to be
21 said, sir, because --

22 THE COURT: Well, you can testify to anything that's
23 relevant and probative in this case.

24 You can't testify to things that are not relevant and
25 are not probative. Do you understand?

1 THE DEFENDANT: Sir, you asked me. I swore to tell
2 the truth earlier, and to tell the truth, and that is in
3 the Bible, to tell the truth, sir. And my hands are tied
4 at this point, sir, because I'm not allowed to completely
5 have the whole truth told, sir. Because they are
6 witnesses, sir, but you and the solicitor have ruled that
7 that is inadmissible evidence, sir.

8 THE COURT: Oh, I see what you mean. You mean you
9 think the whole truth is something that occurred three
10 years after these events are alleged to have occurred?

11 THE DEFENDANT: There is stuff that is in D. S. S.
12 paperwork, sir, that proved that others were there and
13 that, pardon me, sir, but my wife wasn't there and that she
14 is accused of it as well and that she has stated that
15 someone else done it, sir, and --

16 THE COURT: Okay. Well, there is obviously a
17 disagreement between you and the state's position in this
18 case. But the question I have for you, and it's a simple
19 one, do you want to take the witness stand and testify
20 during this trial.

21 THE DEFENDANT: I'll go ahead and testify, but
22 whatever happens, happens, sir.

23 THE COURT: Well, you're sort of vacillating now. I
24 need to understand. You appreciate the fact that only you
25 can make the decision as to whether you will testify or

1 not.

2 THE DEFENDANT: I do want to testify, but I am not
3 allowed to tell everything, sir.

4 THE COURT: Well, you can testify to anything that is
5 relevant and probative that relates to this case.

6 You will not be permitted to testify to matters that
7 are not relevant and not probative.

8 ~~Do you need some more time to talk to Ms. Hodges about~~
9 your decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Take 15 minutes.

12 MS. HODGES: Thank you, Your Honor.

13 (Whereupon, a recess was taken.)

14 THE COURT: All right. Ms. Hodges, have you and
15 Mr. Belcher now had sufficient time to discuss it so that
16 he can make a decision?

17 MS. HODGES: Yes, sir, we have.

18 THE COURT: Has he indicated to you he's made a
19 decision?

20 MS. HODGES: He has.

21 THE COURT: What did he tell you he wants to do?

22 MS. HODGES: He indicates to me that he does wish to
23 testify in his own defense.

24 THE COURT: All right. Mr. Belcher, your lawyer tells
25 me you want to testify and you've made that decision on

1 your own. Is that true?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, do you understand that if you take
4 the witness stand you're going to have to answer not only
5 your lawyer's questions but you're going to have to answer
6 the state's lawyers' questions even if the answers to those
7 questions might tend to prove you guilty of this crime that
8 they allege you committed? Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So as long as their question is relevant
11 you will have to respond to it even though it might prove
12 you guilty. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Does the defendant have any record that
15 you would seek to impeach him with?

16 MS. REESE: Just fraudulent checks, Your Honor.

17 THE COURT: Okay. Ms. Hodges, you've discussed with
18 him about the introduction of previous criminal history for
19 the purpose of impeachment?

20 MS. HODGES: We have, Your Honor.

21 THE COURT: Okay. Now, Mr. Belcher, you're satisfied
22 with the decision that you've made.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you want to testify in this case.

25 THE DEFENDANT: Yes, sir.

Giles Belcher
Direct examination by Ms. Hodges

1 THE COURT: Do you have any other witnesses that you
2 want Ms. Hodges to call? Did you understand my question?

3 MS. HODGES: Did you understand the judge's question?

4 THE COURT: Do you have any other witnesses that you
5 want her to call?

6 THE DEFENDANT: There's none other that can be called,
7 sir.

8 THE COURT: Okay. All right. Thank you. Have a
9 seat.

10 Bring the jury in.

11 (The following takes place in the presence of the
12 jury.)

13 THE COURT: All right. Ladies and gentlemen, as you
14 know, the state has concluded with their presentation. So
15 we'll now proceed with any to be offered by the defense.

16 Ms. Hodges.

17 MS. HODGES: Thank you, Your Honor.

18 Your Honor, the defense calls Mr. Giles Belcher in his
19 defense.

20 GILES BELCHER, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. HODGES

23 Q I'm going to ask you to make sure you speak up loud
24 enough so that I can hear you. And if I can hear you,
25 everybody on the jury can hear you. All right?

Giles Belcher
Direct examination by Ms. Hodges

- 1 A Yes, ma'am.
- 2 Q State your name for the record, please.
- 3 A Giles Les Belcher.
- 4 Q And how old are you?
- 5 A Thirty-four.
- 6 Q And you are the father of MINOR
- 7 A Yes, ma'am.
- 8 Q When did you first learn about the charges against you
- 9 in this case, that MINOR was saying something about you in
- 10 this case?
- 11 A October the 15th of 2002.
- 12 Q And where were you when you heard that?
- 13 A In the D. S. S. building.
- 14 Q And is that D. S. S. building here in Spartanburg?
- 15 A Yes, ma'am.
- 16 Q And when that happened, who told you what the
- 17 allegations were?
- 18 A Nicole Ruth and Angela Robinson.
- 19 Q And that was Ms. Robinson that just testified earlier
- 20 today?
- 21 A Yes, ma'am.
- 22 Q When she told you -- you heard her testimony earlier
- 23 today about the reaction that you had.
- 24 A Yes, ma'am.
- 25 Q Do you have a problem with migraine headaches?

Giles Belcher
Direct examination by Ms. Hodges

1 A Yes, ma'am.

2 Q How long have you had a problem with migraine
3 headaches?

4 A I've had them since junior high school.

5 Q And how do the migraines affect you?

6 A Basically, I get stressed out. The headache comes on.
7 My vision fluctuates in and out, and then my vision just
8 quits.

9 Q And have you had a problem with your vision in the
10 past?

11 A I've had problems with my vision all of my life.

12 Q And what kind of problems have you had with your
13 vision?

14 A Double vision, my eyes really cannot focus, and the
15 fact that there's nothing that can be done about it. I had
16 two surgeries done when I was real little, but it couldn't
17 correct the situation.

18 Q And when you have a migraine does that cause your
19 vision, the problems with your vision, to get worse?

20 A Yes, ma'am.

21 Q Had you been having any problems with headaches that
22 day before you went to D. S. S.?

23 A I had, and I was stressed out.

24 Q And why were you stressed out?

25 A Because we was having to move and trying to get a

Giles Belcher

Direct examination by Ms. Hodges

1 place and just trying to get things straightened out.

2 Q Is it fair to say that money was kind of tight back
3 then?

4 A Basically, I had lost my job. And I had been going
5 where I could, walking where I could to try to find a job.

6 Q So you went to D. S. S. that day. And Ms. Robinson
7 starts to tell you about what MINOR said. Tell me, tell
8 me what happened with the migraine.

9 A The migraine happened before that, ma'am.

10 Q Okay. When did the migraine happen?

11 A August the 27th of '02.

12 Q All right. But did a migraine, did you have a
13 migraine headache that day when you went to talk to D. S.
14 S.?

15 A No, ma'am.

16 Q All right. You heard Ms. Robinson's testimony saying
17 that you were having a migraine and that you were going
18 blind. What was happening that day?

19 A That day me and Joann, we had, we were told to come to
20 D. S. S.

21 Q Okay.

22 A And that was August 27th.

23 Q All right. And what happened with your, what happened
24 with the blindness that you heard Ms. Robinson testify
25 about? What was going on with you?

Giles Belcher
Direct examination by Ms. Hodges

1 A I's getting, my head was hurting. It was painful.

2 And my eyes was hurting, focusing in and out. And it was
3 just too much.

4 Q Were you able to walk on your own down the hallway?

5 A At first I used my hands, because I had been blind
6 before and I learned how to feel walking, until I got to
7 the steps. Then I knowed I couldn't negotiate that.

8 Q Did anybody help you with the steps?

9 A Joann, my wife.

10 Q Because money was tight, have you been convicted of
11 fraudulent checks?

12 A Yes, ma'am.

13 Q All right. And do you remember when that was?

14 A Those checks were written at the time between May of
15 '02 until July of '02.

16 Q And do you know when you were actually convicted of
17 those?

18 A I was convicted December the 31st of '02.

19 Q Okay. When you, were you able to ultimately get a job
20 with the Department of Transportation?

21 A I got the job April the 20th of '05.

22 Q And what were you doing for the Department of
23 Transportation?

24 A Doing road crew, which pretty much means going out
25 along the highway and picking things up. Besides that,

Giles Belcher

Direct examination by Ms. Hodges

1 doing a flagman's job, watching the highway, directing
2 traffic. And then during that time if I'm not doing that,
3 I'm taking trees down.

4 Q Okay. And you had been doing that job for about a
5 month when you went to talk to the detectives about this
6 case.

7 A Yes, ma'am.

8 Q At the time, do you have any other, were you
9 experiencing any physical problems when you went to talk to
10 the detectives in May of 2005?

11 A Other than the fact that gout was really bothering me
12 and I hadn't had much sleep and hadn't been eating much.

13 Q Where does the gout affect you?

14 A Usually it starts in my big toe or it goes to my
15 ankle. And if it goes beyond, it goes to my knee, and then
16 that's serious trouble.

17 Q And is it your right foot or left foot that it starts
18 in?

19 A It will hit either one.

20 Q Were you experiencing gout and problems with your gout
21 in May of 2005?

22 A Yes, ma'am.

23 Q How long had you been experiencing any problems with
24 it?

25 A Three days.

Giles Belcher
Direct examination by Ms. Hodges

1 Q And do you take medication for it?

2 A Yes, ma'am.

3 Q Had you taken your medication the day that you went to
4 talk to the sheriff's office?

5 A Yes, ma'am.

6 Q How much medication had you taken that day?

7 A I had taken three of the pills.

8 Q And when did you take those?

9 A I took them that morning.

10 Q And did you take them with food or water?

11 A I didn't take them with anything.

12 Q Did you have anything to eat that day?

13 A Just a pack of crackers and two fountain sodas.

14 Q When you say a pack of crackers, what do you mean?

15 A The necot that you get off the shelf that's got six to
16 eight in the packet.

17 Q And is that all that you had eaten, to eat that day
18 before you got to the sheriff's office?

19 A Yes, ma'am.

20 Q How much sleep had you had the night before you went
21 to the sheriff's office?

22 A At least maybe two, maybe four.

23 Q Maybe four?

24 A Hours.

25 Q Hours. Does gout affect your sleep?

Giles Belcher
Direct examination by Ms. Hodges

1 A Yes, ma'am.

2 Q Had it been affecting your sleep since you had had the
3 onset of it three days before going to talk to the
4 sheriff's office?

5 A Yes, ma'am.

6 Q Do you know how much sleep you had gotten over the
7 course of those three days?

8 A Maybe 24.

9 Q Okay. How much sleep do you, would you, do you
10 remember what day it was that you went to the sheriff's
11 office to talk to the detective, what day of the week?

12 A It was Thursday, May the 26th.

13 Q Okay. And when you, had you worked a full day that
14 day?

15 A Yes, ma'am.

16 Q Do you remember what your specific job duties were for
17 that particular day?

18 A I was the lead flagman.

19 Q And what do you do as lead flagman?

20 A I stand in the middle of the road, or to the side.
21 The road is blocked with one of the big trucks. We have at
22 least three. And the ones that are controlling the
23 chainsaws to take the trees down, my job is to watch the
24 traffic behind me and in front of me.

25 Q And are you on your feet the whole shift?

Giles Belcher
Direct examination by Ms. Hodges

1 A Yes, ma'am.

2 Q Did, we've heard testimony that Detective Gencarelli
3 picked you up at your work yard.

4 A Yes, ma'am.

5 Q And did you have any transportation of your own at
6 that point?

7 A All I had was a bicycle.

8 Q When she picked you up did y'all go straight to the
9 sheriff's office?

10 A Yes, ma'am.

11 Q When you got to the sheriff's office what did you do?

12 A I, when we got to the sheriff's office I got out of
13 the car. My pastor, Gary Long, was there.

14 Q Okay. And did you speak with him at all?

15 A I said hey and we talked briefly.

16 Q And then did you go into the sheriff's office?

17 A Yes, ma'am.

18 Q And when you went into the sheriff's office did you go
19 back to start the interview process?

20 A Yes, ma'am.

21 Q Were you offered anything to eat or drink prior to
22 beginning the interview process?

23 A No, ma'am.

24 Q During the first interview -- testimony was that it
25 lasted about an hour. Does that sound about right?

Giles Belcher

Direct examination by Ms. Hodges

1 A I believe so.

2 Q At that point were you offered something to eat?

3 A Right after that, yes.

4 Q And did you have -- how much did you eat?

5 A I ate two or three bites off the hamburger. Other
6 than that, the taste, I didn't like it.

7 Q And why was that?

8 A Because of the gout medication and the fact that I had
9 diarrhea that day prior, before going to the sheriff's
10 department.

11 Q And had you been having the diarrhea just that day or
12 had you been having it more than that?

13 A It had been off and on.

14 Q Off and on?

15 A Before that.

16 Q For the whole, the three days that you had been
17 experiencing the gout?

18 A Yes, ma'am.

19 Q Did you feel like you were physically strong or weak,
20 or how did you feel?

21 A I was tired, but I had drunk the two Power Aid
22 fountain drinks, and I pushed myself.

23 Q After you ate a couple of the bites of the hamburger,
24 you went in and had the interview with Lieutenant Woodcock,
25 is that right?

Giles Belcher
Direct examination by Ms. Hodges

1 A Yes, ma'am.

2 Q And that interview itself lasted about three hours.

3 A I suppose so.

4 Q I mean, does that sound about right, or do you really
5 have any knowledge?

6 A I have no idea.

7 Q During the interview with Lieutenant Woodcock did you
8 need to go to the restroom?

9 A Yes, ma'am.

10 Q And was that because of the effect that the medication
11 was having on you?

12 A That and the fact that I had eaten something that was
13 pretty solid.

14 Q And that was also -- would that bother your stomach as
15 well?

16 A Yes, ma'am.

17 Q After you finished with Lieutenant Woodcock you spoke
18 to who at the sheriff's office?

19 A Richie McSwain.

20 Q And do you know about how long you spoke with him?

21 A Maybe five or ten minutes.

22 Q And was he talking to you about the case as well?

23 A Yes, ma'am.

24 Q And what was he saying to you about the case?

25 A He said that he had stepped in. He had heard that I

Giles Belcher

Direct examination by Ms. Hodges

1 was there and that he had looked in on the interview. And
2 he stated that he wanted to know the truth of things.

3 Q And after -- did he take any sort of formal written
4 statement or anything from you?

5 A No, ma'am. It was just me and him talking.

6 Q And then you spoke to Detective Gencarelli.

7 A Yes, ma'am.

8 Q And at that point what was your emotional state when
9 you were speaking with her the second time?

10 A I was upset but I was trying to keep calm.

11 Q And why were you upset?

12 A Because I had just talked to my, to a friend, and he
13 was pushy.

14 Q He was what?

15 A He was, he had --

16 Q I didn't hear you. What word did you say?

17 A He was pushing me, and it bothered me that he didn't
18 believe.

19 Q What was it that you told Richie about the case?

20 A He was wanting to know the truth of things, and I told
21 him that I didn't do anything.

22 Q And he didn't believe you?

23 A No, ma'am.

24 Q In talking with Detective Gencarelli, tell me about
25 how that interview went. You know, was it a

Giles Belcher
Direct examination by Ms. Hodges

1 question-and-answer session, or how did it? Tell me what
2 you remember about it.

3 A I remember talking and that we were kind of arguing a
4 little bit, and I was getting upset. And then she said she
5 had a case, and I said prove it right then and there,
6 where's the proof, and she stated that she didn't know.

7 Q And do you remember giving her, telling her what she
8 wrote in the second statement?

9 A I remember that things just wasn't right.

10 Q Okay. What do you mean by things just weren't right?

11 A I was upset and mad.

12 Q And being upset and mad, how did that affect your
13 ability to talk with the detective?

14 A I just was tired and confused at that point.

15 Q And why were you confused?

16 A During that time I was having flashbacks.

17 Q What were you having flashbacks about?

18 A About being molested.

19 Q About you being molested?

20 A Yes, ma'am.

21 Q And how were those flashbacks affecting your ability
22 to understand what was going on that day?

23 A I had suppressed them long ago, and it just surfaced.

24 Q And when it surfaced how did it affect you?

25 A All I remember was back then. I don't remember

Giles Belcher

Direct examination by Ms. Hodges

1 nothing else. I just remember being in the situation and
2 was hurting.

3 Q Being in the situation of what you had experienced.

4 A Yes, ma'am.

5 Q You've heard a lot of talk yesterday and today about
6 what it is that you're charged with. Do you understand
7 what you're charged with?

8 A Yes, ma'am.

9 Q At any time did you do anything to your daughter,

10 MINOR

11 A No, ma'am.

12 Q At any time did you do anything to your daughter,

13 MINOR that would be interpreted as sticking your weeny in
14 her butt?

15 A No, ma'am.

16 Q Or sticking your weeny between her legs?

17 A No, ma'am.

18 Q Or sticking your weeny in her mouth?

19 A No, ma'am.

20 Q Did you ever ejaculate in her mouth?

21 A No, ma'am.

22 Q The flashbacks that you said you were experiencing
23 when you were talking to Detective Gencarelli, when did
24 they start?

25 A They started a little bit right then during the second

Giles Belcher
Direct examination by Ms. Hodges

1 interview, a little bit afterwards.

2 Q With Lieutenant Woodcock?

3 A They had not started then.

4 Q Okay. But you said they started during the second
5 interview. Do you mean the second interview with Detective
6 Gencarelli?

7 A Yes, ma'am.

8 Q Was there anything in the interview with Lieutenant
9 Woodcock that got you upset?

10 A Other than him. He kept saying, kept accusing me,
11 wanting me to admit to something that I didn't do. He kept
12 asking you penetrated your daughter in her anus, and I said
13 no. And I kept denying it. I didn't.

14 Q Other than the break that you had to eat something
15 between your first interview with Detective Gencarelli and
16 your interview with Lieutenant Woodcock, and I guess the
17 two bathroom breaks, were there any other breaks that you
18 had that night?

19 A No, ma'am.

20 Q By the end of the night how were you feeling
21 physically?

22 A Exhausted and wore out.

23 Q How were you feeling emotionally?

24 A Torn up.

25 MS. HODGES: Beg the Court's indulgence just a moment.

Giles Belcher
Direct examination by Ms. Hodges

1 (Pause.)

2 Q When was the last, other than yesterday when was the
3 last, time that you had seen MINOR

4 A Back in September, October, of 2003.

5 Q Okay. Did you know what you were telling Detective
6 Gencarelli during your second statement?

7 A In a sense, yes; and in a sense, no.

8 Q What do you mean by that?

9 A I was going back to when I was younger when all of
10 that started with the flashbacks, with being molested.

11 Q What changed between the time you gave your, in terms
12 of, or what caused you to change your statement from the
13 first statement you gave to Detective Gencarelli to the
14 second statement?

15 A It just happened. It was just like a switch hit. It
16 just overwhelmed me. It just come up.

17 Q And when you say it, what are you talking about?

18 A The flashbacks.

19 Q The flashbacks.

20 A Being tired and exhausted. I was confused over
21 things.

22 Q Had y'all worked a full, that Monday through Thursday
23 of that week?

24 A Yes, ma'am.

25 Q And were you basically serving as a flagman all three

Giles Belcher
Cross-examination by Ms. Reese

1 days, or do you remember?

2 A It varies. It depends on what the road crew that I'm
3 assigned to does that day.

4 Q Depending on what the assignment is, is it fair to
5 characterize your work duties there as basically physical
6 labor?

7 A Yes, ma'am.

8 Q If you would, answer any questions the state might
9 have.

10 CROSS-EXAMINATION

11 BY MS. REESE

12 Q Mr. Belcher, you stated your migraines started on
13 August the 27th. Why is that day significant to you?

14 A Because me and Joann were called to the Department of
15 Social Services for a fact-finding.

16 Q Now, when was MINOR taken away from you?

17 A That day.

18 Q And when MINOR was taken away from you, she was
19 covered in lice, isn't that true?

20 A No, ma'am.

21 Q And were there roaches all over your house when she
22 was taken away from you?

23 A We wasn't, we were not, we was at that house that day,
24 but that was the last day that we were there. And MINOR
25 was not with us then.

Giles Belcher
Cross-examination by Ms. Reese

1 Q When Kathy Perry came to get that child at that house
2 were there roaches in that house?

3 A Yes, ma'am. We'd had a problem with roaches in the
4 neighborhood, and they were there when we moved in.

5 Q You had a problem with lice too?

6 A Not at first.

7 Q Now, when MINOR was taken away, did you ever try to
8 get her back? Did you go to get her back from Kathy?

9 A We had visited several times with MINOR And there
10 was a note left on our door by Jamie and Kathy Perry for us
11 to come up there.

12 Q Now, you agree that the statements that were given to
13 D. S. S., what started this whole investigation, were made
14 by your family members, isn't that right?

15 A It was made by Joann originally.

16 Q Kathy Perry is the one that called the Department of
17 Social Services. She testified to that, did she not?

18 A Yes, ma'am. But Kathy Perry had talked to my wife
19 that day when we were moving out of the house at 1121
20 Stephens Grove Road, ma'am.

21 Q Kathy Perry and your brother, Jamie, gave statements
22 to the Department of Social Services about the condition of
23 your daughter when they got her from you, isn't that right?

24 A Yes, ma'am. And the only reason MINOR was dirty,
25 because she had played that day and we had not had time to

Giles Belcher
Cross-examination by Ms. Reese

1 give her a bath because we was in the process of moving.

2 Q And so her not having a bath that day caused her to
3 have lice so bad that Kathy testified she had to pick it
4 out for hours. Is that your testimony?

5 A We had given MINOR several treatments with a lice --
6 where she got the lice from was my adopted sister before
7 that.

8 Q Okay. So that was your sister's fault.

9 A MINOR had been playing with my adopted sister,
10 Alexis, over at my dad's house previously.

11 Q But the lice was your sister's fault. The lice, your
12 sister gave her the lice, is that right?

13 A Yes, ma'am.

14 Q And Jamie and Kathy gave statements to D. S. S.
15 regarding your child and how she was cared for, is that
16 right?

17 A For that day and that time.

18 Q Were they telling the truth?

19 A At that time, yes.

20 Q You testified that you got the migraine in D. S. S. on
21 10/22 because that was the first time you had ever heard
22 allegations regarding what your daughter was saying you had
23 done to her.

24 A No, ma'am.

25 Q You testified on 10/22 you got a migraine at the

Giles Belcher
Cross-examination by Ms. Reese

1 Department of Social Services, is that right?

2 A I never had a migraine 10/22.

3 Q Okay. When did you have that migraine?

4 A August the 27th of '02.

5 Q So when you went to the Department of Social Services,
6 from their records and from her testimony on the 22nd of
7 October, you didn't go blind that day?

8 A No, ma'am.

9 Q So Angela Robinson is lying.

10 A There was another witness there. My wife was there in
11 August, October the 22nd, because we were both summoned
12 that day.

13 Q You heard Angela Robinson testify from that stand that
14 on 10/22 you left her office, refused to talk about the
15 allegations, said you had a migraine and then she watched
16 you walk down the hall unassisted. Do you remember that
17 testimony?

18 A That's what she said.

19 Q But that didn't happen. That's what you're saying?

20 A It did not happen in October, ma'am.

21 Q On August the 27th, is it your statement that you were
22 confronted about allegations your daughter had made that
23 day?

24 A There was a fact-finding mission August the 27th of
25 '02. Me and Joann was summoned to that, along with others.

Giles Belcher
Cross-examination by Ms. Reese

1 Q And Joann helped you that day with your migraine. Is
2 that your testimony?

3 A Yes, ma'am.

4 Q Did you walk down the hall unassisted after you got
5 out of Ms. Robinson's door?

6 A All I needed was directions where the wall was, and I
7 may have proceeded along that way.

8 Q But that never happened on October the 22nd.

9 A Yes, ma'am.

10 Q So she was not telling the truth, is that your
11 testimony?

12 A Yes, ma'am. There is stated paperwork for that,
13 ma'am.

14 Q I'm looking at the D. S. S. paperwork that says on
15 10/22 you had a migraine in her office. Now, do you have
16 any paperwork that I need to look at on 8/27 that says
17 there's a migraine?

18 A No, ma'am. There are others that were there August
19 the 27th.

20 Q Did you have a migraine or did you just not want to
21 answer the question?

22 A I told her October the 22nd. I denied it. I said no.

23 Q You didn't get a migraine -- so you couldn't answer
24 the question. You had to leave.

25 A I was mad because of what was said, but I told the

Giles Belcher
Cross-examination by Ms. Reese

1 truth. I denied it. I didn't do it.

2 Q So if she says that you said I can't answer that
3 question, I have a migraine, she's not telling the truth.

4 MS. HODGES: Judge, I am going to object to the
5 pitting.

6 THE COURT: Sustained.

7 Q Do you remember a birthday party in 2003 when you had
8 visitation with MINOR

9 A Yes, ma'am.

10 Q Do you remember that you snuck behind a trailer
11 several times to try to talk to MINOR and they had to ask
12 you to leave that party?

13 A No, ma'am.

14 Q That never happened.

15 A There was a birthday party there. I was invited, as
16 well as Joann.

17 Q Were you confronted about trying to sneak away with
18 MINOR alone at that birthday party?

19 A What happened there, we was all having a time playing
20 around having fun.

21 They had set up a little sprinkler system. Everybody
22 was jumping and running through it. MINOR got upset and
23 scared and didn't want to do that.

24 I went around to calm her down to tell her that it was
25 okay. Vivian Gore that was there, me and her got in an

Giles Belcher
Cross-examination by Ms. Reese

1 argument over it. She threatened me.

2 Q She was supposed to be supervising those visitations,
3 is that correct?

4 A Betty and David Hamrick were.

5 Q And you were not supposed to be alone with MINOR is
6 that correct?

7 A Yes, ma'am.

8 Q And you were alone with MINOR behind that trailer.

9 A No, ma'am.

10 Q Did you tell Vivian Gore or anybody else that's my
11 young'un and I'll do whatever I want to?

12 A I told her that she was my young'un and she had no
13 place telling me what to do, to threaten me and to tell me
14 that she would do as she wanted with my child.

15 Q Did you end up having to leave the party?

16 A I left after that argument, after I was threatened and
17 told that I would be killed.

18 Q Now, the next time you talked to anybody about these
19 allegations, you go in and you talk to Charity Gencarelli,
20 is that right?

21 A Yes, ma'am.

22 Q And then you go to Lieutenant Woodcock, is that right?

23 A Yes, ma'am.

24 Q Now, tell me about this stomach upset. What had you
25 done that day?

Giles Belcher
Cross-examination by Ms. Reese

- 1 A I had gotten up that morning and taken my three gout
2 pills, and then I went straight on to work.
- 3 Q What time did you have to be at work that day?
- 4 A 8:00 o'clock that morning.
- 5 Q And you work at the D. O. T., is that right?
- 6 A I did.
- 7 Q And what was your job that day? What were you doing
8 particularly that day?
- 9 A I was the flagman.
- 10 Q And you conducted your business that day, is that
11 right?
- 12 A Yes, ma'am.
- 13 Q And there weren't any accidents that day.
- 14 A There was none.
- 15 Q You didn't have any flashbacks that day.
- 16 A No, ma'am, not at that time.
- 17 Q All right. And in 2002 when these allegations first
18 came out, you didn't have any flashbacks then.
- 19 A No, ma'am.
- 20 Q You didn't have any flashbacks during the whole time
21 from 2002 until 2005. You didn't have any flashbacks?
- 22 A No, ma'am.
- 23 Q Had you ever reported being abused before that day,
24 before the day that you talked to this officer?
- 25 A No, ma'am.

Giles Belcher
Cross-examination by Ms. Reese

1 Q Who abused you?

2 A I do not remember who it was and all. Honestly, I do
3 not want to know who it was because of what happened.

4 Q Did you talk to Officer Balderama and tell him that
5 was your statement, your voluntary statement?

6 A As far as I know that's what was said. I can't
7 remember.

8 Q So you remember you took three pills, gout pills, that
9 morning, is that right?

10 A Then. And then that afternoon I had taken three
11 separate packets of Aleve or Advil, which is two packs,
12 which is two tablets in each, because of the gout and the
13 pain that I was feeling in my leg and ankle from wearing
14 the steel-toed boots and having to keep them tightly laced.

15 Q So you remember that day fairly well.

16 A Yes, ma'am.

17 Q The only part you don't remember is when you decided
18 to talk to Charity Gencarelli the second time. That's the
19 part you're not clear on, is that right?

20 A Yes, ma'am.

21 Q That's the only part of the day that you don't
22 remember much.

23 A From where we had that second interview, me and
24 Charity Gencarelli.

25 Q The day that you did have the migraine at the

Giles Belcher
Cross-examination by Ms. Reese

1 Department of Social Services, how long did it last?

2 A I have no recollection of the time, but we were
3 supposed to be there early.

4 Q Have you ever told anyone else that you don't know
5 whether you abused MINOR or not?

6 A Those that have asked, I have told them I didn't do
7 it.

8 Q Did you ever tell your brother I don't know when you
9 talked to him from the jail, I don't know what I did to
10 MINOR I don't know, I may have done something to MINOR
11 Did you ever tell him that?

12 A I told my brother that I never did do it. I didn't do
13 it.

14 Q And you never told him I may have. From the jail on a
15 recorded phone call did you ever tell him I may have done
16 something to MINOR

17 A Not that I know of.

18 Q Did you ever tell your pastor you didn't know whether
19 you did it or not?

20 A I told my pastor that I didn't do it.

21 Q Did you ever tell him that you didn't know whether you
22 did it or not?

23 A What was said in the statement is there, because I do
24 not remember and I do not know.

25 Q And that's what you told your pastor, isn't it?

Giles Belcher
Redirect examination by Ms. Hodges

1 A Yes, ma'am.

2 MS. REESE: Nothing further.

3 REDIRECT EXAMINATION

4 BY MS. HODGES

5 Q Did you molest MINOR

6 A Do what, ma'am?

7 Q Did you molest MINOR

8 A No, ma'am.

9 Q Did you do what MINOR has accused you of doing?

10 A No, ma'am.

11 MS. HODGES: Nothing further, Your Honor.

12 THE COURT: You may step down.

13 MS. HODGES: Your Honor, the defense rests.

14 THE COURT: Any reply?

15 MS. REESE: No, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, that's
17 all of the testimony or evidence to be introduced in the
18 case.

19 What remains to be done are the lawyers' final
20 summations, after which I'll instruct you on the law. And
21 then you'll begin deliberating. But I've got some matters
22 to address with the lawyers.

23 So I'll ask you to please go to your jury room. Do
24 not yet begin discussing the case. I'll bring you back in
25 just a few minutes.

Motion

1 (The following takes place outside the presence of the
2 jury.)

3 THE COURT: All right. Any motions or other matters
4 to address?

5 MS. HODGES: Your Honor, we would renew our motion for
6 a directed verdict on this issue, on the issues that we've
7 raised and the objections that we've raised previously.
8 And then I also have a specific request to charge.

9 THE COURT: Okay. The motion for a directed verdict
10 is denied.

11 MS. HODGES: Your Honor, I gave a copy to the state.
12 I will approach the Court. It's rather short.

13 THE COURT: Well, absent there being some showing of
14 bad faith or fraud, I don't think that instruction is
15 applicable. And so I decline. Of course you can argue
16 what you would like about it.

17 MS. HODGES: Thank you, Your Honor. May we have that
18 made a part of the record?

19 (Defendant's request to charge marked Court's Exhibit
20 No. 1.)

21 THE COURT: Okay. Any other requests for instruction?

22 MS. REESE: None, Your Honor. Your normal charges.

23 THE COURT: All right. How much time are y'all going
24 to need to argue?

25 MS. REESE: Probably about 30 or 35 minutes.

Closing arguments

1 MS. HODGES: Probably about right, somewhere between
2 20 minutes, and 30.

3 THE COURT: Are y'all ready to proceed now?

4 MS. HODGES: We can, Your Honor. We can.

5 MS. REESE: I'm ready, Your Honor.

6 THE COURT: Okay. Bring the jury in.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Ladies and gentlemen, as you know, all of
10 the evidence has now been received.

11 You are now going to hear the final summations of the
12 lawyers, after which I'll instruct you on the law. And
13 then you'll begin deliberating.

14 So please give the lawyers your attention now as they
15 give you their final summations.

16 MS. HODGES: May it please the Court.

17 THE COURT: Ms. Hodges.

18 MS. HODGES: You've had a lot of information given to
19 you over the last couple of days, and I appreciate your
20 ability to take in that information, to listen attentively
21 as I note that you have.

22 There are times when we as lawyers are listening to
23 the testimony, thinking about our next question and having
24 a client or investigator speak in our ears. So if I talk
25 about something that you remember differently, since you

Closing arguments

1 are the fact-finders in this case, you need to use your
2 collective judgment as to what the actual facts are. But I
3 wanted to go through some of the things that we have heard
4 and not heard over the course of the last two days and to
5 talk about what the verdict in this case should be.

6 As you know, Giles Belcher is charged with criminal
7 sexual conduct with a minor in the first degree with a
8 child who is under 11. That child is MINOR his
9 daughter.

10 And there are dates that are alleged in the indictment
11 between May of 2001 and August of 2002 that he did three
12 things to MINOR And you've heard what MINOR said that
13 they were. She said that he stuck his weeny in her butt,
14 stuck his weeny between her legs, stuck his weeny in her
15 mouth and that he pee-ed. She also says that each of those
16 things happened three times. And she said that it happened
17 in the spider house.

18 This case first came to light to D. S. S. in August of
19 2002 when Jamie Belcher and Kathleen Perry went to D. S. S.
20 and reported some concerns that they had from something
21 that MINOR had done.

22 It's interesting in the testimony if you listened to
23 it, what Kathleen Perry said was that first Joann had told
24 her that she thought MINOR had been molested. And then
25 she said that she saw MINOR do something and then reported

Closing arguments

1 it to D. S. S.

2 But she doesn't do that immediately. She waits a
3 couple of days. She's had the child for several days.
4 When she gets the child, the child is dirty, supposedly
5 covered in lice. She doesn't call D. S. S. then.

6 She saw the home that the child was taken out of, the
7 couch that was, you know, placed on the ground and you
8 could see roaches come running out. She doesn't call D. S.
9 S. then.

10 She didn't call D. S. S. and she didn't take the child
11 to the hospital when that night she couldn't give the child
12 a bath because she claims that her bottom was so swollen
13 and raw that she claims, you know, that there is a problem.
14 She doesn't do anything.

15 She doesn't do anything until what she says happened
16 in the bed happens. And that's in August of 2002. The
17 first time that law enforcement is contacted by D. S. S. is
18 in October of 2002.

19 Now, supposedly D. S. S. had this family meeting. The
20 children were taken out of the custody of the parents and
21 placed with somebody else. That happens on August the
22 27th of 2002, but they don't call law enforcement until
23 October the 4th of 2002 for a child that's claiming that
24 she's been sexually abused.

25 Now, we don't know because we haven't seen her over

Closing arguments

1 the course of the last five years. We don't know what sort
2 of progress MINOR has made. We don't know what the
3 communication levels and skills were at that point. But
4 all the more reason why D. S. S. should have been and law
5 enforcement should have been contacted and should have been
6 investigating the case from the very beginning, and yet
7 they didn't.

8 What they did do was wait an entire year from when
9 something is first known that there is a problem with this
10 child. They wait until August of 2003 to send the child
11 into counseling. So they wait an entire year for a child
12 who has supposedly been sexually abused to the extent that
13 she's now exhibiting all of the standard recognized
14 symptoms of child sexual abuse.

15 Meredith Loftis testified that she, and counted up the
16 times that she had met with MINOR and that she has met
17 with her at least a hundred times since 2003. And for the
18 first six months of those, of that therapy, that it was on
19 a weekly basis and that it's tapered back somewhat
20 depending on fluctuations in life as things change. You
21 know, sometimes she sees the child more often and sometimes
22 she sees her not so often.

23 A hundred times talking to somebody where you get to
24 go and play. You get to go and play, but you got to play
25 with certain types of things and talk about certain things

Closing arguments

1 or be encouraged to talk about certain things or be
2 encouraged to be able to develop your feelings about
3 certain things or how to express your feelings.

4 There is very little else that has been done in this
5 case until 2005. In fact, I dare say there's been nothing
6 else done in this case since 2005.

7 The child discloses in August of 2002. Law
8 enforcement is not contacted until October of 2002. At no
9 point did law enforcement go to the house that they
10 supposedly moved out of to get a search warrant to see if
11 there was any sort of ejaculation, sperm, something still
12 in the house that might be able to be traced back to maybe
13 it was MINOR room, to be able to provide, you know, some
14 documentation.

15 At no point did D. S. S. contact law enforcement
16 immediately knowing that they had just left the home to be
17 able to investigate the home. It's not until 2005
18 preparing for a trial that a picture of the home is even
19 supposedly taken.

20 The only thing that was done in this case was to send
21 the child to counseling, and that didn't start until a year
22 after she disclosed. And yet now the state wants you to
23 convict Les Belcher of criminal sexual conduct in the first
24 degree.

25 A good 60 percent of the time the therapy that this

Closing arguments

1 child underwent was directed activities, suggested
2 activities. This is a young child. She's already
3 developmentally delayed. And she is sort of being kind of
4 moved along in the direction.

5 Now, she is given some latitude, do you want to draw,
6 do you want to color, do you want to do art, do you want to
7 play dolls. But each and every week or each and every
8 month she's going to go play and talk about this.

9 They tried to do an interview in October of 2002, a
10 forensic interview, an interview that basically is designed
11 that you heard the detectives testify about. It's
12 basically a fact-finder, an open interview, trying to do a
13 forensic interview to determine if this happened or not.
14 That interview was inconclusive.

15 The child's not seen by Dr. Henderson for a physical
16 exam after the allegations come out, she's not seen by
17 Dr. Henderson until October 9th of 2002. And
18 Dr. Henderson's testimony is that in a child physical,
19 child sexual abuse that involves physical abuse of the
20 child where you find physical findings, that you really
21 need to have that child examined within 24 hours of
22 something happening.

23 And the reason why is because the child is young,
24 there is blood that a good blood supply that goes to that
25 area of the body, I mean, parts of that area of the body

Closing arguments

1 she described to you. I mean, it's a muscular area. The
2 parts are designed, you know, to have large things come
3 out. So, you know, large things can go in. So if you
4 don't do the exam at the time that the abuse is suspected
5 you're not going to have physical findings.

6 Well, the problem with that, ladies and gentlemen, in
7 this particular case is I don't dispute the doctor's
8 medical findings. I mean, she's the expert. She's the
9 medical expert. She told you, you know, what the studies
10 show.

11 But the problem is that in this particular case we
12 knew. We knew that there supposedly was a problem with
13 this child in August of 2002 when Kathleen Perry had the
14 child in her custody. She didn't call 9-1-1. She didn't
15 take her to a family doctor; she didn't take her to the
16 free clinic; she didn't take her to the emergency room.
17 She just decided to wait a couple of days to see what might
18 develop.

19 The judge is going to give you the law in this case,
20 and the law in child sex abuse cases does indicate that
21 there is no corroboration that has to be introduced as
22 evidence. But just because they don't have to introduce
23 corroboration as evidence, ladies and gentlemen, doesn't
24 mean that you can't consider the lack of corroboration as
25 reasonable doubt in this case.

Closing arguments

1 You have the province to be able to make that
2 determination as to whether the state has proven their case
3 or not beyond a reasonable doubt.

4 Les Belcher does have some physical problems. You can
5 tell it by looking at him. He wears thick glasses. If I
6 don't wear my contacts, actually I wear thick glasses too.
7 But, you know, he wears thick glasses. You heard about his
8 problems with migraines. You heard about his problems with
9 gout.

10 When you go into a governmental office whose sole
11 purpose unfortunately by virtue of many folks in the
12 community kind of look at, well, they are people that take
13 your kids away, when you go into that and you've been
14 called to that governmental office already having had your
15 children removed from the home, already being in a
16 situation where things are tight financially, you're not
17 able to have the best home, and you're told, oh, by the
18 way, your 4-year-old daughter says that you've molested
19 her, she says you've done unspeakable things to her, that's
20 a pretty stressful situation.

21 And if you've ever suffered from migraines, stressful
22 situations tend to trigger things like that. And if you
23 suffer from vision problems and stress tends to aggravate
24 your vision problems, the facts that he had the spell of
25 blindness or whatever you want to call it that day doesn't

Closing arguments

1 necessarily indicate that it's an avoidant behavior as I
2 suspect the state is probably going to want to come up and
3 argue to you about. It very well just could be a natural
4 reaction to probably one of the biggest shocks that any of
5 us could ever imagine in our lives.

6 The child discloses in August of 2002. The law
7 enforcement and D. S. S. is called at some point that
8 month. Law enforcement is notified in October of 2002.

9 A year goes by. The child is put into therapy.
10 Nothing happens the rest of 2003 in terms of the testimony
11 from D. S. S.'s perspective or law enforcement's
12 perspective.

13 They may have some meetings every so often to just
14 kind of check on the status of the case, but no
15 investigation is being done. Nobody has been interviewed.
16 Nothing is done in 2004.

17 For several months in 2005 nothing is done until a
18 phone call from a therapist to law enforcement that then
19 says, by the way, she's really improved, she's been
20 consistent in her disclose for however many times, for
21 however many periods of years, for however many sessions,
22 at this point we think you have enough now to go talk to
23 the defendant, you have enough now to go talk to the
24 child's father, you have enough now to go talk to the
25 suspect.

Closing arguments

1 At no point was there anything done to talk to law
2 enforcement up and until, and then the only thing that law
3 enforcement does is ask him, well, come on in after work
4 one day, talk about it, I'll give you a ride.

5 So on May 26th of 2005 Les wakes up, takes his
6 medications. He's been suffering from gout for three days.
7 Goes to work. Has a couple of Power Aids, maybe a pack of
8 Lance crackers out of the machine.

9 He goes to talk to law enforcement. These allegations
10 have been floating around since August of 2002. Nothing
11 has been done on them. So he goes in and talks to law
12 enforcement.

13 He is not feeling well. He has got an upset stomach
14 because of his medication and not eating. He's been out
15 working, I dare say, in the hot sun at the end of May all
16 day. He's on his feet. His gout is bothering him.

17 He is picked up at 4:45 and goes to the sheriff's
18 office around 5:00 o'clock or so that afternoon. And then
19 pretty much consistently from 5:00 o'clock in the afternoon
20 until 12:21 the next morning he's under interrogation.

21 He first goes and talks to Detective Gencarelli and
22 gives a written statement. And you'll have the statements
23 back there. They've been admitted into evidence.

24 But he denies the allegations. He denied the
25 allegations to D. S. S. in October of 2002, said I didn't

Closing arguments

1 do it. He denies the allegations to Detective Gencarelli
2 in the statement that supposedly begins or conversation
3 that results in a statement that begins at 4:56 p.m. and
4 ends at 5:56 p.m. And he writes that he denies it and
5 that's the truth.

6 She offers him, to get him something to eat at that
7 point. He's able to eat a couple of bites, and then he
8 goes into another interview with Lieutenant Woodcock. And
9 all we have from Lieutenant Woodcock's interview is a
10 1-page Miranda or waiver of rights form, his constitutional
11 rights, and Lieutenant Woodcock's testimony, a
12 two-and-a-half-to-three-hour interview that was video-taped
13 and then immediately destroyed by the police, knowing that
14 this man was a suspect of abusing his child sexually at a
15 very, when she's a very young age. That's his protocol.

16 He didn't say anything significantly different or
17 substantially different enough from denying that it
18 happened during my interview, so there's not enough space
19 in the old sheriff's office and, well, you know, golly, he
20 didn't say anything that was important so we just destroyed
21 it. Sorry.

22 He shrugs his shoulders and tells you sorry when this
23 man is accused of criminal sexual conduct in the first
24 degree against his own daughter, an incident that
25 supposedly happened over five years ago. Oops. And he

Closing arguments

1 expects you to convict on an oops.

2 We don't know what that interview was. All we have is
3 Lieutenant Woodcock's word about it. We don't know what
4 the interview said. We don't know what happened during
5 that interview.

6 What we do know is that after three hours of being in
7 an interrogation with basically two small breaks to go to
8 the bathroom and come back Mr. Belcher is taken into
9 Detective Gencarelli's interview area again. Sees his
10 friend -- we never even heard from that officer -- who
11 basically tells him you need to tell the truth, start
12 telling the truth, you need to tell the truth. Well, he's
13 been telling the truth since October when he was first
14 asked about it of 2002 denying that he did it.

15 At this point we are now at the interview with
16 Lieutenant Woodcock that started at 1830, 6:30. It lasted
17 three hours. We're now at 9:30 in the evening after
18 somebody has already been to work at 8:00 o'clock, had a
19 pack of crackers, two bites of a hamburger, a couple of
20 Power Aids, maybe a sip of soda or two, maybe a couple of
21 French fries and has now been in interrogation for four and
22 a half hours and is turned back over to Detective
23 Gencarelli.

24 We have no idea what has been said to this man during
25 that interview with Woodcock. But, clearly, something must

Closing arguments

1 have happened to cause somebody to change their statement.
2 And what happened is that the emotional stress that had
3 been thrust upon this man throughout that day and over the
4 past then three years was such that, as he told you today,
5 basically flipped his switch or switched his flip.

6 And his memory has come flooding back in, something
7 that he has suppressed a very long time ago. It is hard to
8 understand why somebody would say I don't know if I did
9 anything to my daughter but if I did I'm sorry. It's hard
10 to understand why somebody would say that when heretofore
11 they've all been denying it.

12 But, you know, when you are under the most intense
13 stress of your life and it's now seven hours of
14 interrogation in a police department, probably almost be
15 willing to say anything to get them to just stop. He was
16 emotionally distraught. He's physically exhausted. He's
17 physically sick.

18 I found it interesting that Lieutenant Woodcock wanted
19 to tell you that because something wasn't substantially
20 different from denying, his first written statement from
21 denying, what happened that he didn't save the tape, yet
22 Detective Gencarelli gets up on the stand right after that
23 and tells you that there was something from what he told
24 Lieutenant Woodcock that made her want to clarify it.

25 In her mind it clearly was something significantly

Closing arguments

1 different enough to be able to go back and reinterview.

2 Quite frankly, ladies and gentlemen, it ought to be in your
3 mind too.

4 The state has the burden of proof in this case. They
5 are required to prove to you beyond a reasonable doubt that
6 Les Belcher molested his daughter in Spartanburg County.

7 We don't know the actual dates that the family lived
8 at this spider house. Quite frankly, there is still a
9 question in my mind, and I submit there ought to be a
10 question in your mind too, as to whether the spider house
11 itself is also the same house that's on Stephens Grove
12 Road. But all along the state has dropped the ball in this
13 case. They haven't been able to prove to you.

14 Child sexual abuse is not something to be taken
15 lightly. And, as I told you at the beginning of this,
16 there's nothing that I do by any means, means to undermine
17 the seriousness and the importance of pooling the resources
18 of our county and state and national government to be able
19 to combat child sexual abuse.

20 That said, the United States Constitution and the
21 Constitution of South Carolina says that the state has the
22 burden of proving beyond a reasonable doubt that this
23 incident happened in Spartanburg County on the dates
24 alleged and that it happened by Les Belcher, and they
25 haven't done that. They haven't done that.

Closing arguments

1 There is no physical evidence on this child to show
2 that she was actually molested when we knew that there was
3 an opportunity for physical evidence to have been gathered.
4 There is no physical evidence on this child. There is no
5 physical evidence gathered by law enforcement when they
6 knew that they had an opportunity to go and try and gather
7 it.

8 There is no attempts by law enforcement to do anything
9 other than leave the child in counseling for three years
10 day after day, week after week, month after month talking
11 about the same thing to get her ready to come to court.

12 The only thing that is different from October of 2002
13 when MINOR wasn't able to be able to be understood,
14 although she was clearly disclosing that something had
15 happened and it happened by her father, because D. S. S.
16 was able to confront the father with it in October of 2002.
17 D. S. S. was able to confront daddy about it. Certainly
18 law enforcement would have been able to confront daddy
19 about it.

20 So the only thing that is different from October of
21 2002 to May of 2005 when these charges were brought against
22 my client is the statement after seven and a half hours of
23 interrogation, a man who is weak and sick, and three years
24 of therapy getting the child to the point where she could
25 talk to you about it. That's it.

Closing arguments

1 That, ladies and gentlemen, is reasonable doubt. Your
2 sworn duty is to apply the facts as you find them. You are
3 not responsible for the case that's presented to you. But
4 your sworn duty is to find the facts as you find them and
5 the facts as they're presented to you, apply that to the
6 law as the judge gives you and to render a just verdict in
7 this case. And the only just verdict in this case at this
8 time, ladies and gentlemen, is that of not guilty. Thank
9 you.

10 THE COURT: Ms. Reese.

11 MS. REESE: Thank you Your Honor. May it please the
12 Court.

13 My father growing up used to love to bring me little
14 books to read, and they were called five-minute mysteries.
15 I don't know what he thought or how he thought that would
16 help me. But he would bring them to me. And then he would
17 want to know if I could pick out the who-did-it, if I could
18 pick out who did the crime. And I would read. And it got
19 to be a big thing with me, so I would like at that. I
20 wanted him to see that I was doing this.

21 And as I got older I started being interested in the
22 law. What I figured out is in all of the cases that we
23 look at, I'm kind of like those mysteries. You have to
24 look at the clues. It would be great if everything was C.
25 S. I. I don't watch the show because it's just not

Closing arguments

1 realistic to me.

2 We don't have medical evidence in most cases of child
3 abuse. We never have eye witnesses. There's no tickets to
4 this. So what we have to do is base our decisions on
5 whether to prosecute and base your decision on whether to
6 convict on the clues, the parts of the puzzle that people
7 bring to us. And each witness brings part of the piece of
8 the puzzle.

9 Now, you're going to hear about reasonable doubt.
10 What is reasonable doubt? Well, reasonable doubt is a
11 doubt for which you have a reason. Okay. It's not beyond
12 any doubt. Nothing is beyond any doubt.

13 I always give the example if you see me walk in the
14 back of the courtroom and you've been in here all day and
15 no windows in here and I have on a raincoat and it's wet
16 and I'm carrying an umbrella, you can say beyond a
17 reasonable doubt it's raining. You don't have to see it
18 rain. It is if you are firmly convinced. It is not beyond
19 any doubt.

20 Now, what the state has to prove is a sexual battery,
21 which means that the defendant did one of these things.
22 He's charged with one count of sexual battery, which means
23 he did penetration, whether it's anal penetration or
24 vaginal penetration or oral sex. Either of those three
25 constitute a sexual battery. And you only need one of

Closing arguments

1 those. The child has to be under the age of 11. MINOR
2 was eight. So the question that you have to ask yourself
3 is did this defendant do what this child said he did to
4 her.

5 Now, let's look at each clue. Let's talk first about
6 this disclosure they keep talking about. MINOR didn't run
7 up to anybody and say, hey, look, guys, I'm being abused,
8 help me.

9 She's four years old. She is developmentally delayed.
10 She can't talk to you in complete sentences. So what does
11 she do? She backs out. It's an accidental disclosure.

12 She goes over to the house of her aunt and uncle. She
13 grabs her uncle's penis and says suck. Think about that.
14 Where did this child learn that?

15 And ask yourself what dog Kathy Perry has in this
16 fight. This is the child's aunt. This woman has children
17 with this man's brother. His brother himself went to D. S.
18 S. And they didn't accuse anybody. They didn't say, hey,
19 we know who did it. They said, look, somebody needs to,
20 somebody needs to check this out, this is not right. She
21 did not disclose to anybody. She did what she was expected
22 to do at home.

23 Kathy says when she gets her she puts her in the
24 bathtub the first night. She has a swollen vaginal area.
25 She says it's real red and it doesn't look right. But she

Closing arguments

1 said, you know, she was so dirty. She has lice. She's
2 filthy. I thought it was a cleanliness thing. She said
3 that. I thought maybe the cleanliness was an issue,
4 because right then the other acts haven't happened yet.
5 She hasn't put two and two together. She thinks this child
6 needs to be cleaned.

7 And you know what? She should have called D. S. S.
8 probably. But this is her family. This is her family.
9 And she says, you know, I'm going to clean this child up
10 and I'm going to talk to her.

11 She says the child has nightmares. And keep in mind
12 Kathy Perry doesn't know what the symptoms of child sexual
13 abuse are. She doesn't have any idea. But what she says
14 is she hears the child in the night. She goes stiff. She
15 thrashes her arms. She moans in her sleep. She screams.
16 It's like nothing I've ever seen. Every two hours, all
17 night, I tried everything, I tried everything, I got up
18 with her, I brought her to bed with me, whatever.

19 She still doesn't understand that that means anything,
20 because this is still her family. And it's not until this
21 happens in the bed. It's not until this little 4-year-old
22 reaches out and grabs this man's penis and says suck that
23 Kathy and Jamie said, look, we've got to do something. And
24 the truth is if they hadn't stepped up and done the right
25 thing we wouldn't be here today. So D. S. S. comes in.

Closing arguments

1 Keep in mind MINOR has no enemies here. She still
2 hasn't disclosed. She doesn't realize she has done
3 anything different. I mean, she's just doing what comes
4 naturally to her. She's four years old. She doesn't
5 understand that she lives any differently from anybody else
6 in the world.

7 She loves her parents. Meredith Loftis testified she
8 was depressed because she wasn't around them. She doesn't
9 understand her daddy is different from anybody else's
10 daddy. She has no motive to lie. She hasn't lied. She
11 hasn't told anybody anything yet. She did not disclose.

12 And D. S. S. says, okay, let's take her out of the
13 house, let's try to figure out what's going on. And that's
14 in 2002.

15 And what's the next thing that happens? They try to
16 talk to MINOR But everybody you heard from says, you
17 know, MINOR can't really communicate with you.

18 What does Nancy Henderson say when she talked to her
19 on October the 9th? She was trying to say something that I
20 couldn't understand. She had to act it out visually for me
21 with dolls because I couldn't understand. But she says she
22 acts this out visually with the dolls in front of her.

23 Again, MINOR is not lying. She can't even talk.
24 Where did she learn that? MINOR is mentally slow. We
25 talked about that. So you've got a child who not only has

Closing arguments

1 the regular struggles of being a 4-year-old and being
2 sexually abused, but she's a child that is developmentally
3 disabled, that can't speak, that can't tell people. The
4 perfect victim.

5 She can't communicate and she doesn't have the words
6 to tell you what's going on. When somebody asks her, she
7 can't say I'm telling you. She has to grab dolls and act
8 them out or grab something and do it because she doesn't
9 have the words to articulate.

10 How does she know these things? Because her mama told
11 her this is what happens at my house, this is how you're
12 expected to behave. I have four kids of my own. The last
13 thing I tell them is when you go somewhere please act the
14 way you're supposed to act in this house, you're supposed
15 to act. She is behaving around her father like she's
16 expected to behave.

17 Let's talk about the nightmares that we observed. We
18 talked about that already. Okay. Again, Kathy Perry when
19 she reports, Jamie Perry when they report what's happened,
20 they don't know nightmares are a sign of sexual abuse.
21 They don't know this acting out and they don't know that
22 the other things that they see, swollen vaginal area.

23 It's not until that final act that they decide to
24 report. And then they don't say it's him. They just say,
25 look, somebody needs to check this out. His own family.

Closing arguments

1 So then what happens? Then MINOR is placed in a home
2 where she lives for a while. She goes, you were told, to
3 forensic. You can't understand her. Sometimes people can
4 understand her. Most of the time you can't understand her.

5 How do you know MINOR story if she can't tell you?
6 And what are you going to do if you're law enforcement?
7 What are you going to do if you're law enforcement? Well,
8 we know something happened. Wouldn't you guys love to be
9 on that jury? Something happened. So, well, look. This
10 child is doing this. They don't know, they don't have
11 enough.

12 And as Detective Gencarelli told you, they don't have
13 enough to approach this defendant, because when you
14 approach a defendant you have to know what's going on. If
15 you don't have the right allegations when you approach that
16 defendant, he's going to laugh at you if you don't know
17 what you're talking about.

18 You don't have a chance to find out what's going on.
19 You have got to know what your case is before you approach
20 that defendant. And you also don't want to accuse somebody
21 that hasn't done anything.

22 Remember, they don't know that he's a suspect. And
23 that's the problem with him telling you that he was
24 confronted with these allegations on August the 27th.

25 MINOR had not done anything at that point to name

Closing arguments

1 him. She could only act it out. It was in October when
2 the D. S. S. caseworker, Angela Robinson, talked to her
3 that she disclosed what had happened. For whatever reason,
4 all the people this child saw in the first few months,
5 Angela Robinson is the one that she talked to. That lady
6 was the one.

7 And after that disclosure what did Angela Robinson do?
8 She confronted the defendant. In October she confronted
9 him, and she said this is what your daughter told me.

10 And what did he do? He had a migraine. You remember
11 she said I asked him about it and he got a migraine and he
12 refused to finish the interview, refused medical help,
13 stumbled out of the door. I got to go, got to go, got a
14 migraine.

15 And then miraculously, miraculously as he gets out
16 into the hall it goes away and his sight is restored and he
17 walks all the way down the hall without any help at all,
18 because he didn't realize that she was wise to him.

19 When she is taken into counseling, when they refer her
20 to a therapist who can do play therapy, she's got to have
21 play therapy because she can't communicate with you.

22 And let's talk about directed and nondirected therapy.
23 What is directed and nondirected? According to Meredith
24 Loftis, directed is would you like to draw today, not go
25 draw a picture of something, but would you like to draw

Closing arguments

1 today.

2 This child doesn't have the ability to communicate
3 with you, so she has to draw it. She has to show it. She
4 has to be able to get it out. She has to be able to
5 communicate. She can't talk about it.

6 When she comes in to her, Meredith says this child had
7 sexualized behavior. Now, at this time she is five years
8 old. And what does she see and what does she know has
9 happened? Masturbation, trying to have sex with dolls,
10 punching stuffed animals, something like that. These are
11 the things that are happening with MINOR at five.

12 She knows slang terms for body parts, and when she
13 draws she doesn't draw a house like other 5-years-olds or a
14 dog or a cat. She tries to draw private parts on people.
15 That's what she draws. I was disturbed by those drawings
16 the therapist tells you.

17 This child is not communicating. She's drawing.
18 She's drawing what she knows. Some kids draw houses,
19 trees, plants. Some kids draw pictures of sexual acts when
20 they're five.

21 How does she know how to do this? How does she know
22 how to draw these private parts? Why is she so concerned
23 with these at five?

24 Then she begins to disclose after she's talked a
25 while, after she's in school, whatever they're doing over

Closing arguments

1 there. She begins to be able to talk.

2 And when she discloses, she discloses in detail, not
3 detail that you would have if you were making something up.
4 She says he put his wiener in my butt. Does a 5-year-old
5 know that? She told you he put his wiener between my legs.

6 She don't want to tell any more. I had to say is that
7 all. He put his wiener in my mouth and then he had to pee.
8 What color was it? White. And you tell me that child
9 doesn't know. It went down my throat.

10 Anxiety, aggression. All of those things MINOR has,
11 all of the symptoms that a child has been sexually abused.
12 When she talks about the place it happened, she calls it
13 the spider house. She's developmentally delayed, no doubt.
14 Spider house. And think about that disability. Is MINOR
15 making this up? Has she been told to say that? How does
16 she know it?

17 Ladies and gentlemen, you take any adult and you give
18 them a story to tell that didn't really happen and you let
19 them tell it by themselves over a 4-year period and you
20 find out how many mistakes they make.

21 But you let this mentally disabled child who starts
22 out at five tell this story over and over and over again,
23 and she's always consistent, because it's easy to remember
24 something that's happened to you, especially when it's the
25 worst thing that will ever happen in your life.

Closing arguments

1 She says I hate the spider house because it has
2 spiders in it. And what you hear from Kathy Perry is when
3 they go over there to move them out and that couch falls a
4 sea of roaches comes out. She says there's spiders
5 everywhere.

6 The child is covered in lice. It's the spider house.
7 And then we find out from Charity Gencarelli that when she
8 goes out there to look at the house after MINOR has done
9 all of this disclosure, what color is it? It's yellow.

10 And she came in here and she sat up there and she told
11 you. She was scared. She looked down some. And when she
12 got to the parts about the sexual abuse, she lowered her
13 head. It was hard for her, but she told you what happened.

14 She's been in therapy. She's been in therapy. And
15 every one of those visits were necessary when they made it
16 necessary for us.

17 She's not having fun. She's not out there playing.
18 She is trying to deal with what this man has done to her
19 and what she will have to deal with forever.

20 Now, if that's not enough of the pieces of the puzzle,
21 let's talk about the defendant, and let's see, because he's
22 going to bring you a few pieces of the puzzle. Let's talk
23 about the mysterious migraine.

24 Let me tell you what your daughter said about you.
25 Well, I've got a migraine. I lost my sight. I'm blind.

Closing arguments

1 Then when Mike Woodcock asked him let's talk about your
2 daughter, he's got an upset stomach. He has to leave the
3 room twice because his stomach is upset. And then when
4 Charity Gencarelli talks to him about it he is having
5 flashbacks.

6 Most men in the world, you ask them if they sexually
7 molested their daughter, they would know the answer to
8 that. But if you're going to ask Giles Belcher, you better
9 have a medicine cabinet and a Seeing Eye dog, because he is
10 going to avoid the question. He's not going to answer.
11 And then when he does, it's going to be somebody else's
12 fault.

13 I'm hungry. So they feed him. He's got an upset
14 stomach. So they let him go to the bathroom. I can't
15 remember. Having flashbacks. Somebody abused me. Who
16 abused you? I don't know. I don't want to know. I don't
17 know. I'm having flashbacks and I don't know. This may
18 have happened to me when I was a child.

19 Let's look at his statement. And ask yourself is his
20 statement really I don't remember. "I hurt my daughter and
21 I didn't even realize it because I was hurt." Is that a
22 man saying I don't remember? "I am so ashamed of myself."
23 That's in the statement. "I can't deal with the pain any
24 more. I should have protected her and I didn't. I hope
25 MINOR and everyone else can forgive me. I should have had

Closing arguments

1 control of myself. I just want a chance to make things
2 right and be a good father if I did anything. I don't
3 remember."

4 The defense has been a sea of defenses. I call it a
5 let's-make-a-deal defense. If you don't want what's behind
6 door number one, we'll talk about door number two and door
7 number three. We'll find one that you like.

8 And the first one is, well, MINOR I guess, is just
9 not telling the truth. Remember, she didn't budge. She
10 did not disclose. There's been no reason.

11 According to Meredith Loftis, she still loves these
12 people. She can't fake the nightmares. She can't fake the
13 therapy. The drawings, the things that she knew, there was
14 no reason she could have known.

15 The police arrested him. You know what? I wish they
16 had. I desperately wish they had. But let's talk about
17 what they arrest. The defendant comes in, and he meets
18 with Charity Gencarelli. And she takes a statement where
19 he says I didn't do it.

20 You buy him a hamburger. And then he goes to meet
21 with Mike Woodcock. And Mike talks to him for two hours?
22 And what does he tell you? He denied it, he denied it and
23 he denied it, and then he says, you know, I don't remember.

24 To him it wasn't what he wanted. It wasn't an
25 admission really in his mind and he erased it. I shouldn't

Closing arguments

1 have done it.

2 But he also told you it was standard procedure unless
3 they got a statement at that time, unless that investigator
4 with a tape recorder got a statement, that there is none.

5 The defense is we don't know what happened. Yeah, we
6 do. He told us. He got up there and told you. He said I
7 talked to him and he just kept saying, you know, I don't
8 believe you and I just kept telling him the same thing.

9 That's exactly what Mike Woodcock said.

10 So what are you missing? Charity Gencarelli told you
11 she watched that tape, or that not the tape, but the
12 interview and nothing looked unusual. He didn't get a
13 statement from it. Smoking mirrors. Let's put that out
14 there, maybe something amiss. Let's just put it out there.

15 No physical evidence. Dr. Henderson testified that's
16 very common in these cases, no physical evidence. When
17 children are very young, don't exactly sometimes know about
18 penetration vaginally especially, but there can be no
19 mistake about the allegation of the oral sex. And keep in
20 mind that's the one that MINOR is most detailed about.

21 Look at the defendant's statement. What does he talk
22 about in his statement? The oral sex. That's what he says
23 on the same thing that MINOR did. Is that a coincidence?

24 MINOR said it happened three times. Do you remember
25 the question? My memory of that question is, MINOR did

Closing arguments

1 it happen one time, did it happen two times or did it
2 happen more than that. She said three times. She was
3 saying more than that.

4 And what did Meredith Loftis tell you today? That's
5 an improper question for MINOR Numbers, she can't do.
6 She can't tell you how many times or when something
7 happened.

8 And we hear a lot about this five years from the time
9 that she disclosed. But keep in mind he was arrested in
10 2005. And it has taken two years to get to court on it.
11 So it's actually three years from the time that it's
12 disclosed.

13 And what happens is once MINOR is placed into
14 therapy, the therapist works with her and she begins
15 disclosure. She talked to you about partial disclosures
16 and how a child will tell you something that happened, like
17 you're on vacation and you'll remember something else and
18 you'll tell something else. It's a very normal way for
19 there to be a disclosure.

20 Finally, the police have everything they need. And
21 keep in mind MINOR is going to have to have time to heal.
22 This isn't about him. This is about this child being able
23 to do what she's done. She's got to have time. She's got
24 to be able to do this.

25 Once they have the allegations, once they know what

Closing arguments

1 they're looking at, then they go talk to him. That's the
2 time.

3 You know, MINOR didn't cry. And that to me is one of
4 the saddest things. MINOR has been through this a long
5 time. She has had to. So she's little bit better able to
6 deal with that. But the saddest thing of all is that
7 MINOR will never understand what it was like to have a
8 normal family or a normal father.

9 You don't -- she tells that story -- like I might tell
10 childhood memories, it's different from her. But they take
11 the same place in her history as mine do.

12 I don't cry when I talk to you about catching
13 fireflies when I was little. She doesn't cry when she
14 talks about her father's sexually abusing.

15 You know, there's a statement children are born loving
16 their parents. They're true. That's what MINOR did. She
17 came into this world. She loved her parents. She still
18 loves them.

19 But the second part of that is they grow to judge
20 them. And nobody has any more right to judge this
21 defendant than MINOR And she will. It would be
22 wonderful if you could come back and say not guilty and
23 that would erase everything MINOR has been through. But
24 we can't do it.

25 And no matter what this decision is today, MINOR

Jury charge

1 knows what happened. He can lie to the police; he can lie
2 to MINOR And she will remember for the rest of her life
3 what has happened to her, depression, everything about
4 herself.

5 My memories of my father are some of the best I've
6 ever, some of the best I've ever had. And MINOR has hers.
7 I remember my dad coming in the bedroom in the middle of
8 the night and waking me up because there was a Perry Mason
9 rerun on. MINOR will remember her daddy coming into her
10 bedroom in the middle of the night and putting his penis in
11 her mouth until he had to pee.

12 MINOR will deal with this because MINOR is strong.
13 She got up here and she told you the truth. And she'll
14 leave from here and she will keep going to therapy and she
15 will handle it.

16 You can't change the past. For the first four years
17 of MINOR life she was in the hands of this man, and we
18 can't change that. But you can do something about it,
19 because now you know what happened. MINOR has told her
20 story to you. And she is. Thank you.

21 THE COURT: Madam forelady and ladies and gentlemen of
22 the jury, you of course have heard and seen all the
23 evidence and now the final summations of the lawyers. And
24 so I'm now going to instruct you on the law that's
25 applicable. Then you'll go back and begin your

Jury charge

1 deliberations.

2 Now, it is your exclusive duty to determine what the
3 facts are. You do that through your own common sense
4 examination and evaluation of all of the testimony and any
5 other evidence received during the trial of the case. And
6 you 12 jurors alone will decide what weight, value and
7 effect to give to any particular testimony in this case.

8 Your sole objective is to simply reach the truth in
9 the matter, and by doing that you will have fulfilled your
10 obligations as jurors, and that is to simply give both the
11 state and the defendant a fair and impartial trial in the
12 case.

13 In this case, as you know, the state of South Carolina
14 through the solicitor has accused the defendant of having
15 committed the crime of criminal sexual conduct with a minor
16 in the first degree.

17 The allegations setting forth that charge or contained
18 in the indictment. The indictment of course is that
19 document I referred to at the beginning of this case. And
20 you'll have that indictment in the jury room, because it is
21 on the back of the indictment, Madam Forelady, that you're
22 going to be asked to indicate the jury's unanimous
23 decision.

24 But, as I previously told you, the indictment is not
25 evidence of anything. It's not proof of anything. It'll

Jury charge

1 only be in the jury room so that you can indicate the
2 jury's verdict on the back of that indictment. So it
3 serves no other purpose so far as you 12 jurors are
4 concerned other than serving as the verdict form.

5 Now, as to the allegations that are set forth in the
6 indictment and as to the charge that has been brought
7 against this defendant the defendant has entered a plea of
8 not guilty. And, as I told you, that plea of not guilty
9 therefore places upon the state the burden of proving the
10 allegations that are set forth in the indictment, the
11 burden of proving each of the essential elements of the
12 crime that is alleged against the defendant; and therefore
13 the burden is upon the state to establish the defendant's
14 guilt to the satisfaction of you 12 jurors beyond a
15 reasonable doubt before a verdict of guilty could be
16 returned.

17 The burden is never upon a defendant to prove that he
18 is not guilty or to prove that he is innocent because in
19 many cases that might not be possible. The burden is
20 always upon the state because they bring the charge to
21 establish a defendant's guilt beyond a reasonable doubt.

22 You are instructed that it is a vital, important and
23 cardinal rule of law that every defendant in a criminal
24 trial, no matter how serious the offense might be, is
25 always presumed innocent of that charge.

Jury charge

1 That presumption of innocence remains with any
2 defendant, as it does with this defendant, from the time
3 that he is arrested and throughout the course of the
4 criminal process, throughout the course of the actual trial
5 in the case.

6 As I told you, that presumption of innocence will be
7 with Mr. Belcher even when you go back to begin
8 deliberating. That presumption of innocence will be with
9 him in that jury room, and it will remain with him forever
10 unless you 12 jurors determine that he's no longer entitled
11 to that presumption of innocence.

12 That is after you've carefully considered all of the
13 evidence in the case, from that evidence you've determined
14 what you believe to be the true facts, and after deciding
15 those facts you apply the law that I provide you, if you 12
16 jurors unanimously determine that his guilt has been proven
17 beyond a reasonable doubt, then he would no longer be
18 entitled to that presumption of innocence. But it's only
19 if, unless and until you are satisfied of his guilt beyond
20 a reasonable doubt that the defendant would no longer be
21 entitled to that presumption of innocence.

22 Now, while the state does have the burden of proving a
23 defendant's guilt beyond a reasonable doubt, that doesn't
24 mean that the state has to prove his guilt beyond all doubt
25 or beyond any possible doubt, but it does require the state

Jury charge

1 to prove his guilt to your satisfaction beyond a reasonable
2 doubt.

3 The term reasonable doubt should be given its plain
4 and ordinary meaning. A reasonable doubt is the kind of
5 doubt that would cause a reasonable person to hesitate to
6 act upon the information provided.

7 A defendant in a criminal trial is entitled to any
8 reasonable doubt that arises from the evidence or lack of
9 evidence in a case. And if upon any factual issue
10 essential to a finding of a verdict of guilty you have some
11 reasonable doubt as to how that issue should be resolved,
12 it is always your duty to resolve that reasonable doubt in
13 favor of the defendant.

14 Therefore if upon your consideration of the whole case
15 you have a reasonable doubt as to his guilt, it would be
16 your duty to resolve that doubt in his favor and to return
17 a verdict of not guilty.

18 And, on the other hand, if after you're carefully
19 considered all the evidence in the case and applied the
20 law, if you have no reasonable doubt as to his guilt, then
21 of course it would your corresponding duty to convict the
22 defendant or to find him guilty of any crime the state has
23 proven he has committed beyond a reasonable doubt.

24 Now, the same law that provides that you are the
25 judges of the facts also provides that I am the judge of

Jury charge

1 the law. And that simply means nobody is going to tell you
2 how to arrive at your determination of fact in this case.
3 You do that, as I have stated, through the exercise of good
4 judgment and common sense conscientiously applied to the
5 evidence in the case.

6 You must however under your oath as a juror accept the
7 law as I provide it to you as being the law that is
8 applicable in the case. And so you're not to concern
9 yourself with what you thought the law was before you came
10 to serve as a juror this week or what you think the law
11 ought to be.

12 Under your oath you must simply accept the law as I
13 provide it as being the law that's applicable. Then you
14 take that law and you apply it to the facts as you 12
15 jurors determine those facts to be based upon your common
16 sense examination of the evidence in the case.

17 Now, because you are the sole judges of the facts in
18 this case, you are therefore necessarily the sole judges of
19 the credibility, that is the believability, of each witness
20 that has testified during the trial of this case. And you
21 12 jurors alone will decide what weight, value and effect
22 to give to any particular testimony or other evidence in
23 case. Your sole objective, again, is to simply reach the
24 truth in the matter. And it should not matter from what
25 source that truth may come.

Jury charge

1 But in order for you to assess a witness' credibility
2 there are a number of factors which you should consider,
3 and I'm going to list those for you.

4 You may consider the demeanor of the witness, that is
5 how the witness appeared to you as the witness testified
6 from that witness stand. Was the witness straightforward
7 in responding to questions or was the witness hesitant or
8 evasive in responding to questions that were posed of that
9 witness? Simply put, did the witness appear to you to be
10 telling the truth and to have knowledge of the facts to
11 which that witness has testified.

12 You may also consider whether or not the testimony of
13 a witness is consistent, or is it inconsistent with that
14 witness' own testimony as well as any statements made by
15 that same witness in court or outside of court. You may
16 also consider whether or not the testimony of a witness is
17 consistent, or is it inconsistent with other witnesses'
18 testimony or other evidence received during the trial of
19 the case.

20 You may also consider how the witness came to know the
21 facts to which that witness has testified. That is what
22 was that particular witness' opportunity and ability to
23 perceive the existence of those facts to which that witness
24 has testified by having previously used their senses, and
25 then what is their ability to be able to come into court

Jury charge

1 and to accurately recollect to you as to what they have
2 previously seen or heard, or felt for that matter?

3 You may also consider any bias or prejudice or
4 interest that a witness might have in a case. And by that
5 I simply mean do you find some reason that a particular
6 witness would come into court and would testify one way or
7 another to help or to hurt one side or the other.

8 You may consider any interest that a witness might
9 have in the outcome of the case if you determine that a
10 witness does have such an interest and you find that that
11 interest would bear upon that particular witness'
12 credibility.

13 Now, you as the finders of the facts and you as the
14 judges of the credibility of each witness are permitted to
15 believe as much or as little of what a witness has
16 testified to as you deem is appropriate in the exercise of
17 good judgment and common sense. And so therefore you may
18 believe everything that a witness testified to; you may
19 choose to believe none of it. You may believe some portion
20 of a witness' testimony and reject some other portion of
21 that same witness' testimony.

22 In a case you may believe one witness as opposed to
23 several, or several as opposed to one. But whatever your
24 good judgment and common sense tells you is the most
25 believable and credible testimony is the testimony you

Jury charge

1 should accept. And you should reject any testimony or
2 evidence that you find not to be credible or believable.
3 Again, your sole objective is to simply reach the truth in
4 the matter. And by doing that you will have fulfilled your
5 obligations as jurors in this case.

6 Now, although it is ordinarily a function of the Court
7 to determine the admissibility of evidence, it is always
8 the jury's decision as to what weight, if any, to give to
9 any evidence which has been received during the trial of
10 the case.

11 Now, there has been admitted into evidence during the
12 trial of this case certain statements which were alleged to
13 have been made by the defendant pursuant to some
14 interrogation or questioning by law enforcement officials.

15 You are instructed that in regards to any statement
16 that is alleged to have been made by the defendant you must
17 make your own determination as to whether or not any
18 statement was made by the defendant and if one was made
19 whether or not that statement was freely and voluntarily
20 given by the defendant.

21 You are further instructed that before you may
22 consider any statement in any fashion whatsoever that is
23 alleged to have been made by the defendant against him,
24 then you must be satisfied beyond a reasonable doubt that
25 any statement given by the defendant was freely and

Jury charge

1 voluntarily made after considering the totality of the
2 circumstances surrounding the giving of any statement.

3 Now, in making your determination as to the
4 voluntariness of any statement you must consider a number
5 of factors relating to the characteristics of the accused
6 as well as the circumstances which surrounded the
7 interrogations.

8 Some of the factors that you must consider are whether
9 or not the accused was advised of and understood his
10 constitutional rights to remain silent; that anything he
11 said may be used against him in court; that he had a right
12 to the presence of a lawyer and if he couldn't afford one a
13 lawyer would be provided for him free of charge before any
14 questioning would begin; and that if he wished to answer
15 questions he could stop that questioning at any time that
16 he wished.

17 You must also consider evidence relating to his age,
18 his intelligence, his education, his capacity, his
19 experience, as well as the nature of the interrogations
20 themselves, including whether or not there were any threats
21 or coercion or deprivations or promises occurring.

22 Now, if after your consideration of the totality of
23 the circumstances relating to any statement you are not
24 satisfied beyond a reasonable doubt that that statement was
25 freely and voluntarily made by the defendant, then you may

Jury charge

1 not and must not consider that statement in any way as
2 evidence against the defendant.

3 Should you find beyond a reasonable doubt that any
4 statement by a defendant was given freely and voluntarily,
5 then you may consider such statement as you deem
6 appropriate. And you may accept it or reject it in its
7 entirety or in part just as you do any other testimony or
8 other evidence in the case.

9 Now, in this case, as you know, the defendant is
10 accused of the crime of criminal sexual conduct with a
11 minor in the first degree.

12 This is a criminal offense which is a statutory
13 offense. In other words, it's set forth in a statute. The
14 legislature, the General Assembly of South Carolina, has
15 provided what constitutes that criminal offense. There are
16 elements that constitute offenses. And before a defendant
17 may be found guilty of a criminal offense set forth in a
18 statute the state has to prove each of the essential
19 elements to your satisfaction beyond a reasonable doubt
20 have.

21 Now, in this case the state has accused the defendant
22 of criminal sexual conduct with a minor in the first
23 degree. And that criminal offense is set forth in Section
24 16-3-655, Subsection 1, of the Code of laws of South
25 Carolina, the code of laws simply being these blue volumes.

Jury charge

1 There's a lot of them. This is one particular code
2 section. And it is a criminal offense.

3 But that code section provides as follows: A person
4 is guilty of criminal sexual conduct in the first degree if
5 the actor, that's the person accused of the crime, engages
6 in sexual battery with the victim, the victim being the
7 person who is accused of being subjected to criminal sexual
8 conduct, and that victim is less than 11 years of age at
9 the time of the offense.

10 Now, there are some definitional sections that are
11 also set forth in the statute. As I stated, actor is
12 defined as the person accused of criminal sexual conduct.
13 Victim is defined as the person alleged to have been
14 subjected to criminal sexual conduct.

15 The sexual battery is defined as sexual intercourse,
16 cunnilingus, fellatio -- those refer to oral stimulation of
17 the female and male genitalia -- anal intercourse or any
18 other intrusion, however slight, of any part of a person's
19 body or of any object into the genital or anal openings of
20 another person's body except when accomplished for
21 medically recognized treatment or diagnostic purposes.

22 Therefore based upon the language of this statute
23 there are two essential elements which the state must
24 satisfy you beyond a reasonable doubt exist before you
25 could find the defendant guilty of criminal sexual conduct

Jury charge

1 with a minor in the first degree.

2 The first element is the state must prove to your
3 satisfaction beyond a reasonable doubt that the defendant
4 did engage in a sexual battery as that term has been
5 defined with the victim as named in the indictment. In
6 this case it is MINOR

7 Secondly, the state must prove beyond a reasonable
8 doubt that at the time of the commission of any sexual
9 battery the person alleged to be the victim, MINOR
10 Belcher, was less than 11 years of age.

11 If either of these elements has not been proven to
12 your satisfaction beyond a reasonable doubt, then you must
13 return a verdict in favor of the defendant and find him not
14 guilty. If the state has proven each of those essential
15 elements to your satisfaction beyond a reasonable doubt,
16 then you may return a verdict of guilty.

17 Now, Madam Forelady and ladies and gentlemen of the
18 jury, I am not in any way concerned with what your verdict
19 is, but I do tell you that the decision of the jury must be
20 unanimous. All 12 of you must be in agreement before any
21 verdict may be returned.

22 Madam Forelady, as I have stated, this indictment will
23 be in the jury room in your possession. And it is on the
24 back of the indictment, you'll see on the back in the lower
25 left-hand corner there's the word verdict. And it's going

Jury charge

1 to be beneath that word that you'll indicate the jury's
2 unanimous decision.

3 As I've stated, there are two potential verdict forms.
4 Those are guilty if the state has satisfied you beyond a
5 reasonable doubt, or not guilty if the state has failed to
6 satisfy you beyond a reasonable doubt.

7 Whatever that decision is, guilty or not guilty,
8 indicate it in that space provided. Also, sign your name
9 as the foreperson and place the appropriate date on the
10 verdict form. You are the only person that needs to sign
11 the verdict form.

12 Now, I don't know if we have any smokers on the jury.
13 But if we do and you want to smoke, you can. But you have
14 to go outside if you want to smoke. You can't smoke in the
15 jury room during deliberations.

16 However, if a juror is absent for any authorized
17 purpose the deliberations have to stop. They may only be
18 engaged in when all 12 jurors are present so that all may
19 participate.

20 If at any time you have a question about the facts or
21 evidence that relates to the case, I can never answer any
22 questions about the facts or the evidence.

23 Additionally, no more evidence can be received. So if
24 you're wondering if something exists or we can have
25 something else, you can have something else, no evidence

Jury charge

1 may be received.

2 Once you go back to begin deliberating all the
3 evidence is in. No additional evidence can be received
4 even if it does exist. But whether it does or does not, I
5 can't respond to those questions. So I can't answer any
6 questions that relate to the evidence or the facts of the
7 case.

8 If you do have a question and you think that question
9 can be answered by having testimony replayed or reheard in
10 whole or in part, we can make those arrangements for you.

11 We do not have transcripts of any witness' testimony.
12 But if you think it would be beneficial in your
13 deliberations to have testimony replayed, we can bring you
14 back into the courtroom and have some witness' testimony
15 replayed in whole or in part. But if that's the case or
16 you need that, you'll have to let me know.

17 Any time you need to direct some comment or question
18 to me, Madam Forelady, write it down on a piece of paper,
19 give it to the bailiff. He'll provide it to me and I'll
20 respond to it.

21 If at any time during your deliberations you have a
22 question about the law that's applicable, I can always
23 answer those questions. So if you need an additional
24 explanation, you need a better explanation, you need a
25 clarification or some other edification as it relates to

Jury charge

1 the law, I can always answer those questions. So if you
2 have such a question, let me know. I'll respond to it.

3 Now, with that I am going to ask the jurors to please
4 go to your jury room. But do not yet begin deliberating.
5 I've got some matters I'll need to address with the
6 lawyers.

7 If I don't need to bring you back for any purpose I'll
8 send word by way of the bailiff that you may begin
9 deliberating. In that event he'll bring to the jury room
10 all of the exhibits which have been introduced.

11 And to you, Madam Forelady, he'll also bring the
12 verdict form.

13 So please retire, but don't begin discussions until I
14 send you word to do so.

15 (Whereupon, the jury retired to deliberate at
16 4:16 p.m.)

17 THE COURT: Are there any requests for additions to
18 the instruction or any exceptions taken to the instruction
19 by the state?

20 MS. REESE: None from the state.

21 THE COURT: With the exception of the request to
22 charge that was provided pursuant to Arizona vs.
23 Youngblood, does the defendant have any exceptions taken or
24 requests for additions?

25 MS. HODGES: None other than that one, Judge.

Verdict

1 THE COURT: Okay. Let me ask y'all to verify the
2 exhibits before they go back, please.

3 (Pause.)

4 THE COURT: All of the exhibits are accounted for?

5 MS. HODGES: All four of the exhibits appear to be
6 accounted for, yes, sir.

7 THE COURT: All right. Send them back with the
8 indictment and tell the jury to begin deliberating and
9 notify us when they have concluded.

10 (Whereupon, a recess was taken.)

11 THE COURT: I'm told the jury has reached a verdict.
12 Are we ready to receive it?

13 MS. REESE: Yes, Your Honor.

14 MS. HODGES: Yes, sir.

15 THE COURT: Okay. Bring them in.

16 (Whereupon, the jury returned to the courtroom at 4:32
17 p.m. to report its verdict.)

18 THE COURT: Madam Forelady, have you and your fellow
19 jurors reached a unanimous decision?

20 THE FOREPERSON: Yes, sir, we have.

21 THE COURT: Have you indicated that decision on the
22 back of the indictment as requested?

23 THE FOREPERSON: Yes, sir, I have.

24 THE COURT: And did you sign your name and place the
25 date on it?

Verdict

1 THE FOREPERSON: I did.

2 THE COURT: If you will, please hand that verdict form
3 up by way of the bailiff.

4 All right. You may publish the verdict.

5 THE DEPUTY CLERK: County of Spartanburg, General
6 Sessions Court, the State vs. Giles Belcher, Indictment No.
7 2007-GS-42-1673, an indictment for criminal sexual conduct
8 with a minor in the first degree, the verdict is guilty.

9 It is signed by the foreperson and dated today's date.

10 Ladies and gentlemen of the jury, if this is your
11 verdict and still your verdict, please raise your right
12 hand.

13 (Whereupon, all jurors responded in the affirmative.)

14 THE CLERK: So say you-all.

15 THE COURT: Does the defendant wish to have the jury
16 polled?

17 MS. HODGES: Yes, sir, please.

18 THE COURT: Poll the jury, please, ma'am.

19 THE DEPUTY CLERK: Ladies and gentlemen of the jury, I
20 will pose a question to you after which I will ask you to
21 stand individually and answer, my question being is this
22 your verdict and still your verdict.

23 Juror No. 148, Terrance Wilson.

24 THE JUROR: Yes.

25 THE DEPUTY CLERK: Juror No. 97, Gregory Pritchard.

1 JUROR NO. 97: Yes.

2 THE DEPUTY CLERK: Juror No. 52, Debra Hawkins.

3 JUROR NO. 52: Yes, it is.

4 THE DEPUTY CLERK: Juror No. 106, Michael Ruchala.

5 JUROR NO. 106: Yes.

6 THE DEPUTY CLERK: Juror No. 48, David Grace.

7 JUROR NO. 48: Yes.

8 THE DEPUTY CLERK: Juror No. 35, Jennifer Farmer.

9 JUROR NO. 35: Yes.

10 THE CLERK: Juror No. 131, Brian Toler.

11 JUROR NO. 131: Yes.

12 THE DEPUTY CLERK: Juror No. 160, William Lewis.

13 JUROR NO. 160: Yes, it is.

14 THE DEPUTY CLERK: Juror No. 3, Allison Ball.

15 JUROR NO. 3: Yes, it is.

16 THE DEPUTY CLERK: Juror No. 168, Claire Ollinger.

17 JUROR NO. 168: Yes.

18 THE DEPUTY CLERK: Juror No. 154, Dianne Moore.

19 JUROR NO. 154: Yes.

20 THE DEPUTY CLERK: Juror No. 105, Brent Rowe.

21 JUROR NO. 105: Yes.

22 THE DEPUTY CLERK: Your Honor, all affirmative.

23 THE COURT: All right. Any other matters we need to

24 address with the jury present?

25 MS. REESE: No, Your Honor.

Motion and sentence

1 MS. HODGES: No, sir.

2 (Whereupon, the trial jury was excused.)

3 THE COURT: All right. Any matters to be addressed
4 prior to the imposition of sentence?

5 MS. HODGES: Your Honor, the defense would request a
6 new trial based upon our motions that we previously made
7 and that were ruled adversely to us, as well as the jury
8 instruction that we had requested.

9 THE COURT: All right. The defendant's motion for a
10 new trial is denied.

11 MS. HODGES: Your Honor, may I approach?

12 THE COURT: Yes.

13 (Bench conference held off the record.)

14 THE COURT: All right. Anything further on behalf of
15 the state?

16 MS. REESE: No, Your Honor.

17 The victim's mother is here, but I think she would
18 rest on the evidence that we've presented in this trial.

19 Your Honor, there are -- we did want to make the Court
20 aware there were two separate sexual evaluations done of
21 this defendant while he was awaiting trial.

22 One of them did indicate that he had pedophilic
23 tendencies and did suggest that he would be a danger in the
24 future based on his inability to accept what he's done. We
25 do have that here. They're bringing it to me.

Sentence

1 THE COURT: All right. Ms. Hodges.

2 MS. HODGES: Thank you, Your Honor. May it please the
3 Court.

4 Your Honor, Mr. Belcher has been present during the
5 trial of this case. He has been very active in preparation
6 of the defense of his case. He understands, we understand,
7 that the jury has rendered their verdict in this case.

8 He has been in jail continuously since he was actually
9 arrested in the early morning hours of May the 27th of
10 2005.

11 He is present. Also, in support of him we have his
12 brother, Scotty Belcher, that the Court met earlier, as
13 well as his pastor, Gary Long, from the First Wesleyan
14 Church, as well as other members of his church are present
15 in the courtroom as well.

16 I don't know if any of them would like to speak on his
17 behalf, but we would ask the Court to take into
18 consideration the time that he has served, the fact that
19 his prior convictions solely are for fraudulent checks.
20 And we would ask that the Court be as lenient as possible
21 and to base the Court's decision on the evidence that the
22 Court has heard solely as opposed to the reports that I
23 understand the state would like the Court to offer to --

24 MS. REESE: Your Honor, may I approach? I do have
25 these reports, and the defense has been provided copies.

Sentence

1 THE COURT: Okay. These were evaluations that were
2 done at whose request?

3 MS. REESE: The Department of Social Services, Your
4 Honor. I believe one of them was the Department of Social
5 Services, and the second request, I believe, by the
6 defendant's attorney.

7 MS. HODGES: In the D. S. S. action.

8 THE COURT: Is there anything you want to address in
9 these reports, Ms. Hodges?

10 MS. HODGES: No, Your Honor.

11 My understanding is that those were done solely for
12 the purposes of the D. S. S. action, and I have reviewed
13 them. There was nothing in them that indicates to me that
14 we need to do any further evaluation in preparation of this
15 case.

16 THE COURT: All right. Anything further on behalf of
17 the defense?

18 MS. HODGES: No, sir. Thank you.

19 THE COURT: Mr. Belcher, is there anything you want to
20 tell me before I impose a sentence in the case?

21 THE DEFENDANT: Just that I didn't do it, sir. That I
22 didn't do it. And that I would maintain that, sir.

23 THE COURT: All right. On Indictment 2007-1673, an
24 indictment for criminal sexual conduct with a minor in the
25 first degree, wherein you have been found guilty by a jury

Sentence

1 of that offense, the Sentence of the Court is you, Giles
2 Belcher, be confined to the South Carolina Department of
3 Corrections for a period of 30 years.

4 Now, Mr. Belcher, you have a right to appeal the
5 verdict of the jury and the Sentence of the Court. You
6 must file any notice of your intention to appeal those
7 decisions within ten days of today's date. Ms. Hodges will
8 help you with that.

9 END OF REQUESTED TRANSCRIPT OF RECORD

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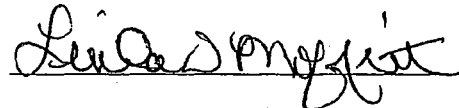
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh 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 introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 7th and 8th days of May 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

November 12, 2007



Linda D. Moffitt
Circuit Court Reporter

WITNESSES

SENTENCE MADE

1. Requiter ☒
Spartanburg Co. Sheriff's Office

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED ☒

6. CHECKED ☒
SPARTANBURG COUNTY SHERIFF'S OFFICE

7. ASSESSMENT FINE CARD ☒

8. TRAFFIC VIOLATIONS COPY ☒

ARREST WARRANT NUMBER

H937238) DI

ACTION OF GRAND JURY

Guy Bell
W. J. D.
For Person of Grand Jury 4-5-07
Date:

VERDICT

guilty

Wm. S. Hawkins
Person of Petit Jury

DOCKET NO. **07-GS-42-1673**

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

APR 09 2007

TERM

THE STATE

vs.

Giles Belcher

Indictment for

CRIMINAL SEXUAL CONDUCT
W/MINOR, FIRST DEGREE

SC Code: 16-03-0655(1)
CDR Code: 0385
Class FEL-C(V)

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2007 APR 11 PM 4:21
MARC KITCHENS

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

APR 05 2007

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, FIRST DEGREE

That Giles Belcher, did in Spartanburg County, between the dates of May 1, 2001 through August 31, 2002, commit the crime of Criminal Sexual Conduct with a minor, in that the defendant did commit a sexual battery upon the minor victim, MINOR who was under eleven (11) years of age at the time of the said incident. Said incident occurred in Spartanburg County, South Carolina, in violation of §16-03-655 (1), *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

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FORM 5

STATE OF SOUTH CAROLINA

County of SpartanburgGiles Belcher, #289817

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2011-CP-42

0462

APPLICATION FOR

POST-CONVICTION RELIEF

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 Broad River Correctional Institution, Congaree 235
4465 Broad River Road, Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Spartanburg County Court of
General Sessions, Spartanburg, S.C. 29306
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) 2007-GS-42-1673, Criminal Sexual Conduct with a Minor, First
(b) _____

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SPARTANBURG COUNTY
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MORRIS BLACKLEY

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 8, 2007, Thirty (30) years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty XXX
- (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. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 8, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2010-UP-112
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

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M. HOPE BLACKLEY

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
- (b) Ineffective Assistance of Appellate Counsel
- (c) Fundamentally Fair Trial Rights Violated
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See: Initial Brief In Support of Application and Grounds
- (b) _____
- (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? No
- (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. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- 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. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

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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) First Time Challenged
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (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?
No

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. Kathleen J. Hodges, of the Spartanburg County Public Defenders
Office, Spartanburg, S.C. 29303
 ii. M. Celia Robinson, Appellate Defender, Office of Appellate
Defense, Columbia, S.C. 29211-1589
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Trial and Sentencing
 ii. Appeal
 iii. _____

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19. State clearly the relief you seek in filing this application:

Vacated or reversed for a new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Giles Belcher, #289817, 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.

Giles Belcher 289817

SWORN to and subscribed before me this 25th day of January, 2011.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires: March 5, 2018

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APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Giles Belcher, #289817, 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.

Giles Belcher
Applicant

SWORN or affirmed to and subscribed before me this

25th day of January, 2011
Susan H. Frye
Notary Public

My Commission Expires

My Commission Expires: March 5, 2018

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of Spartanburg

Case No.: 2007-GS-42-1673

C/A No.: _____

Giles Belcher, 289817 Applicant,

VS.

State of South Carolina, ... Respondent.

Initial Brief Of Applicant

Submitted This 26th Day Of January, 2011.

Respectfully submitted,

Giles Belcher

Giles Belcher #289817
 B.R.C.I. Congaree 235
 4460 Broad River Road
 Columbia, S.C. 29210

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 M. HOPKINS

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Issues Presented

Issue A: Was Counsel ineffective for not challenging Indictment Number 2007-GS-42-1673 before trial as insufficient?

Issue B: Was Defense Counsel ineffective by not moving the Court to dismiss Indictment Number 2007-GS-42-1673 as being invalid?

Issue C: Was Defense Counsel ineffective by not obtaining an independent Mental Evaluation for the Applicant before proceeding to trial?

Issue D: Was Counsel ineffective for failing to object to prejudicial hearsay and other statement's in violation of the Rules of Evidence?

Issue E: Was Counsel ineffective for failing to impeach the State's witnesses with their inconsistent statements made pre-trial and during trial?

Issue F: Was Defense Counsel ineffective for failing to obtain an independent CSC forensic evidence and victim behavioral expert(s) in this case?

Issue G: Was Counsel ineffective for not objecting to the State's prejudicial closing argument?

Issue H: Was Counsel ineffective for not objecting or taking exception to the Court's failure to give the standard direct and circumstantial evidence charge to the Jury?

Issue I: Was Counsel ineffective for failing to investigate, interview witnesses or otherwise adequately prepare for trial?

Issue J: Was Appellate Counsel ineffective for not arguing that the Trial Court erred in admitting the Applicant's statements?

Issue K: Was Appellate Counsel ineffective for not arguing the Directed Verdict Issue on Appeal?

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 SUPERIOR COURT
 IN AND FOR THE
 COUNTY OF
 HARRIS, TEXAS

Statement Of The Case

The Applicant was indicted by the Spartanburg Grand Jury for Criminal Sexual Conduct With A Minor. The Applicant proceeded to trial on May 7, 2007, before the Honorable Judge J. Derham Cole and a Jury, whereas the Jury found him guilty and Judge Cole sentenced the Applicant to thirty (30) years confinement. The Applicant was represented by Kathleen J. Hodges, Esquire, from the Spartanburg County Public Defenders Office, while the State was represented by Susan Shaver Reese and Jennifer A.M. Jordan, Esquire, from the Spartanburg County Solicitors Office.

An Appeal was filed and perfected by M. Celia Robinson, Appellate Defender, from the Division of Appellate Defense. The Appeal was dismissed on February 8, 2010.

Now comes the Applicant by way of Form 5 Post-Conviction Relief Application, with this Initial Brief In Support thereof.

FILED
SPARTANBURG COUNTY
JAN 10 10:11 AM
KATHLEEN J. HODGES

Issue A: Argument

Issue A: Was Counsel ineffective for not challenging Indictment Number 2007-GS-42-1673 before trial as insufficient?

Indictment Number 2007-GS-42-1673 alleges the Applicant did commit a sexual battery (Criminal Sexual Conduct Upon a Minor), between the dates of May 1, 2001 through August 31, 2002. There are many factors by this language which makes this indictment insufficient. According to this indictment, a single act of a sexual battery occurred over a one (1) year, four (4) month period of time. When we consider the language in regards to the single act of a sexual battery versus the time of occurrence, it is obvious that the time of the crime is uncertain and vague which made the indictment insufficient to appraise the Applicant of what he must be prepared to defend against. With the in-between dates of one (1) year and four (4) months language of this indictment, the odds that the Applicant could answer or defend against the charges were very unlikely, if not impossible.

The most significant point here is the logic behind any belief that the Applicant could possibly defend against these serious allegations whether he was actually innocent or not. Trial Counsel should have moved to dismiss or quash this indictment and not to do so was legal error constituting ineffective assistance for the following legal and factual reasons.

Law Analysis

First, an indictment is sufficient if the offense is stated with enough certainty and particularity to enable the Court to know what judgement to pronounce and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction therein. The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet. State v. Ervin, 333 S.C. 351, 510 S.E.2d 220 (1999); S.C. Code, 17-19-20.

The language in regards to the time of occurrence of the criminal act (single sexual assault) was insufficient for the Applicant or anyone else to have to give account to where they were or what they were doing during this

Issue A: Continued

uncertain time frame. There is no way anyone could give clear details or accounts for their whereabouts and any option for an alibi defense would be most likely diminished. Any favorable evidence being preserved over this amount of time or locating witnesses with fresh memories would be null, specifically since this charge was brought against him several years after the alleged incident. It should have been quite obvious to the trained eye of Counsel that the language within the indictment was vague and insufficient on its face and left the Applicant to guess how or what he must prepare for trial or defend against.

The charge or the body of the indictment is the vital part of the indictment and it must contain the necessary elements of the offense and fully inform the accused of the nature and cause of the accusation against him. It is generally not necessary that the time of the commission of the offense be definitely stated except where the time is material either as an element of the offense or affording the accused a bar to the proceeding. However, S.C. Code, §17-19-20 expressly requires that the indictment allege the time. See, also, S.C. Const. Art. 1, §11.

While it is true that the State need not prove the exact date set-forth in the indictment unless time is an essential element of the offense or if time is made part of the description as it is here in this case. With the language of the indictment being so broad and vague in regards to the time of the commission of the singular accusation of the sexual battery, the Applicant could not possibly defend against the offense or could he rely on an alibi defense. Furthermore, the burden of proof of the time of the sexual assault beyond any reasonable doubt was shifted from the State, to upon the Applicant even before a trial could be started and it continued throughout. The language within the indictment does not hold the State to prove the criminal act happened at any particular time, just so they can get close to any time within the one (1) year, four (4) months time frame, then the State could obtain an easy conviction by less than credible evidence, without the Applicant being able to prove any differently or to prevent a later bar against a subsequent conviction. See, State v. Rallo, 403 S.E.2d 653 (S.C. 1991).

A defendant is entitled to be sufficiently apprised of the offense charged so that he can adequately prepare his defense. This did not happen in this

Issue A: Continued

case. State v. Hardee, 279 S.C. 409, 413, 308 S.E.2d 521, 524 (1983). A trial or plea cannot be fair unless the nature of the charges against the defendant are adequately made known to him or her in a timely fashion. See, Strickland v. Washington, 466 U.S. 668 (1984). No principle of procedural due process is more clearly established than that notice of the specific charge and a chance to be heard in a trial of issues raised by the charges, if desired, are among the Constitutional Rights of every accused in a criminal proceeding in all Courts "State or Federal". Rabe v. Washington, 405 U.S. 313, 31 L.Ed.2d 258, 92 S.Ct. 993 (1972). Here, the Applicant did not receive the adequate notice of the charges necessary for a meaningful chance to be heard on the issues raised by the charge against him because of his Counsel's actions not to challenge the sufficiency of the CSC indictment before trial. With a discussion about the dates (time) of occurrence of the alleged sexual battery, Counsel may very well have discovered some information to more adequately prepare his defense, as well as raised issues for appeal purposes.

Without the element of time (dates) of the sexual battery being sufficiently described within the language of the indictment made it inadequate to appraise the Applicant to know what to prepare for a defense against this very serious offense. S.C. Code, §17-19-20; State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952); See also, State v. Perry, 87 S.C. 583, 70 S.E. 304 (1911).

Defense Counsel should always challenge an indictment if the time of occurrence of the alleged crime is in any way uncertain. State v. Wilson, 315 S.C. 289, 433 S.E.2d 864 (1993). Counsel had plenty of time and opportunity, before a jury was sworn, to challenge the sufficiency of this indictment, but failed to do so, which resulted in legal error. See, State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Defense Counsel failed to move the Court for dismissal or to quash the CSC indictment or to argue against it in any manner, which could not have been a sound defensive strategy against this most serious charge, nor could it have been an informed tactical decision by Counsel. Counsel's actions in that regard constituted ineffective assistance of Counsel. Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002); and See, Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988). An attorney's competency is measured according to what an objectively

Issue A: Continued

reasonable attorney would have done under the circumstances existing at the time of his representation. Under the circumstances, an objectively reasonable attorney would have at least challenged the sufficiency of the indictment in question, before allowing her client to receive thirty (30) years confinement for this most serious charge. Savino v. Murray, 82 F.3d 593, 599 (4th Cir. 1996). If not for Counsel's error, there is a reasonable probability that the outcome of the proceedings would have been different. Martinez v. State, 403 S.E.2d at 113 (1991). Counsel could not have been more ineffective had she actually tried to be. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984); U.S. Const. Amend. Six.

This case should be vacated or at least reversed.

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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Issue B: Argument

Issue B: Was Defense Counsel ineffective by not moving the Court to dismiss Indictment Number 2007-GS-42-1673 as being invalid?

The indictment in question, here, charges the Applicant with Criminal Sexual Conduct With A Minor, First Degree. Indictment Number 2007-GS-42-1673 alleges: that Giles Belcher, did in Spartanburg County, between the dates of May 1, 2001 though August 31, 2002, did commit the crime of Criminal Sexual Conduct with a Minor, in that the defendant did commit a sexual battery upon the minor victim, MINOR who was under eleven (11) years of age at the time of said incident. (ROA p. 334-335).

Although the indictment here did allege a sexual battery upon a minor, it failed to describe the type of conduct that constituted the sexual battery involved as stated in S.C. Code Ann. §16-3-655(A)(1), but is required to be proven by S.C. Code Ann. §16-3-655(C)(1). After all, within the crime involved here it is entitled "Criminal Sexual Conduct". There must be a specific finding whether the type of conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. Thus, this would be a fact needed to be in the language of the "CSC with a Minor" indictment, to apprise the accused of what he had to prepare for his defense. U.S. v. Landham, 251 F.3d 1072 (6th Cir. 2001). Without the notice of what type of conduct constituted the sexual battery, Applicant's defense would be impaired (e.g. whether there be a need for a specific type of Expert or Forensic Analyst, or even preservation of some particular evidence at the most earliest possible moment). Therefore, the failure of the indictment to describe or designate the essential ingredient of the type of sexual conduct involved made the indictment invalid and Counsel was ineffective for not at least moving to have it dismissed. Let us review this Law Analysis in regards.

Law Analysis

One of the principle purposes of an indictment is to apprise the accused of the charge or charges against him so he can prepare a defense. U.S. v. Williams, 152 F.3d 294 (4th Cir. 1998). Pursuant to the U.S. Supreme Court's Apprendi and Jones decisions, a fact that increases the penalty for a crime

Issue B: Continued

must be proved to the Jury beyond a reasonable doubt, is an element of the offense that must also be alleged in the indictment. U.S. v. Meshack, 225 F.3d 556 (5th Cir. 2000), cert. denied; Parker v. U.S., 121 S.Ct. 834, 148 L.Ed.2d 716, amended on rehearing in part 224 F.3d 367, and See also, in reference, the Supreme Court decision in Blakely v. Washington, 542 U.S. 296 (2004) and Cunningham v. California, 549 U.S. 270 (2007). The excluded description of the type of sexual conduct in the CSC charge is not only needed in conjunction with the essential elements of this charge, but it can also increase the penalty. See, S.C.Code Ann. §16-3-655(c)(1).

It has long been upheld by our Courts that all elements of the charged offense must be alleged within the indictment in accordance with the well established constitutional rights of the accused. U.S. Const. Amend. Five; S.C. Const. Art. 1, §11; State v. Perry, 87 S.C. 535, 70 S.E. 304 (1911); State v. Sowell, 85 S.C. 278, 67 S.E. 316 (1910). The Indictment Clause of the Fifth Amendment requires that an indictment contain enough of the factual particularity to ensure that the prosecution will not fill in elements of its case with facts other than those considered by the Grand Jury. U.S. Const. Amend. Five; U.S. v. Crowley, 79 F.Supp.2d 138, affirmed in part, reversed in part 236 F.3d 104 (2nd Cir. 2000). Every ingredient of a crime must be charged in the indictment. A general reference to the provisions of the Statute is insufficient. Failure of an indictment to contain the necessary ingredients of a crime is not amenable to harmless error review. U.S. v. Loayza, 107 F.3d 257 (4th Cir. 1997); U.S. v. Spruill, 118 F.3d 221 (4th Cir. 1997); U.S. v. Wicks, 187 F.3d 426 (4th Cir. (S.C.) 1999). An indictment must contain all of the elements of the charged offense and recite the factual circumstances under which the offense occurred to fairly inform the defendant of the charge or charges against him. U.S. v. Davis, 225 F.3d 655 (4th Cir. (S.C.) 1999); State v. Dudley, 364 S.C. 578, 614 S.E.2d 623 (2005).

The validity of an indictment is not affected by the character of the evidence considered by the Grand Jury, if the indictment is valid on its face. State v. Williams, 301 S.C. 369, 392 S.E.2d 181 (1990). An indictment meets the guarantees of the Fifth and Sixth Amendments if it contains elements of the offense charged and fairly informs the defendant of the charge against him which he must defend against, and enables him to plead acquittal or conviction in bar of future prosecutions for the same offense. U.S. v. Wicks, 187 F.3d

Issue B: Continued

426 (4th Cir. (S.C.) 1999). The indictment in question here did not contain the necessary elements to inform the defendant of the charge which he had to defend against, thereby not meeting the constitutional muster to be a valid indictment. Due process requires that a criminal defendant be properly served with a valid indictment. U.S. Const. Amends. Five, Six, and Fourteen. State v. Smalls, 364 S.C. 343, 613 S.E.2d 754 (2005). When an indictment is invalid, the judgement rendered on such indictment is void. Hallums v. Bowens, 428 S.E.2d 894 (1993).

For Counsel not to at least challenge this Indictment for Criminal Sexual Conduct that failed to describe the conduct involved did constitute ineffective assistance of Counsel. There was no strategic tactical decision rendered by Counsel here. Ingle v. State, 348 S.C. 447, 560 S.E.2d 401 (2002).

An objectively reasonable attorney under these circumstances had nothing to lose and everything to gain by moving the Court to dismiss this indictment before trial. Savino v. Murray, 82 F.3d 593 (4th Cir. 1996). Counsel's performance did not reach the range of competence required of attorney's in a criminal case. Turner v. Bass, 753 F.2d 342 (4th Cir. 1985). Counsel's deficient performance prejudiced the Applicant from having a complete defense and fundamentally fair trial, as well as inherently prejudicing him from having a novel and meritorious issue in an appeal if the indictment was not dismissed by motion. Such actions by an attorney must be deemed as ineffective assistance of Counsel. Carter v. State, 301 S.C. 396, 392 S.E.2d 184 (1990); Dandy v. State, 301 S.C. 303, 391 S.E.2d 381 (1990). If not for Counsel's error, there is a reasonable probability that the outcome of this proceeding would have been different. Payne v. State, 355 S.C. 642, 586 S.E.2d 857 (S.C. 2003); Strickland v. Washington, 466 U.S. 668 (1984).

A reversal is warranted for a new trial.

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 JUDICIAL BRANCH

Issue C: Argument

Issue C: Was Defense Counsel ineffective by not obtaining an independent Mental Evaluation for the Applicant before proceeding to trial?

The Applicant was accused of committing a sexual battery upon his own daughter. This was a very serious charge against him, specifically that this child was very young and developmentally delayed. (ROA p. 122, Ln. 11). Defense Counsel allowed the Applicant to proceed to trial upon this very serious charge, in which he ultimately was found guilty of and sentenced to thirty (30) years for. (ROA p. 332 Ln. 3). Applicant's Counsel was well aware of strong indications that the Applicant may very well have suffered from some kind of mental illnesses and for her not to obtain a mental evaluation at the very earliest opportunity was indeed ineffective assistance of Counsel for the following reasons.

The State provided Defense Counsel with some very shocking notes from the D.S.S. Counselor, Meredith Loftis. (ROA p. 48, Lns. 7-25). If Defense Counsel had done her homework here, she would have had to agree that if any of those serious allegations were true, that her client should have had an evaluation. There were more factors known to Defense Counsel that gave serious rise to a need for a Psychological Evaluation.

The Police gave a very extensive Interrogation, involving many different Officers and even a Polygraph, and the Applicant was emotionally upset. (ROA p. 67, Ln. 1 - ROA p. 69, Ln. 11). Defense Counsel asked "Did he ever appear to you to be suffering from mental illnesses?" She already knew that the Applicant cried, was very upset and terrified and suffering from migraine headaches. (ROA p. 69, Lns. 8-11; ROA p. 85, Lns. 4 - ROA p. 8, Ln. 6; ROA p. 102, Ln. 24 - ROA p. 103, Ln. 6; ROA p. 188, Lns. 4-21; and specifically, ROA p. 191, Lns. 1-10; ROA p. 218, Lns. 3-14; ROA p. 252, Lns. 25 - ROA p. 225, Ln. 3). Counsel cannot articulate any valid reasons for not at least making an attempt to have the Applicant examined to see if there was indeed some kind of mental illness existing at the time of this incident, if she had done the necessary investigations in this case before allowing her client to be convicted of this serious charge and sentenced to thirty (30) years confinement. Counsel was ineffective and this Law Analysis follows in that regard.

Issue C: Continued

Law Analysis

Under circumstances of this nature, a Trial Court should order a mental examination whether Counsel requests one or not. It is the Court's duty to insure a fair trial, and that the Defendant is competent to stand trial or otherwise. Due Process of Law under our Constitution requires it.

Under these particular circumstances, operative facts, and nature of the case, there was most certainly a question of competency brought into issue which very well could have been the crucial factor of the Applicant's actions. Therefore, although Counsel did not request a hearing or evaluation, the Trial Court should have ordered one prior to making a mockery out of the Applicant at trial or held this case in continuance until a hearing or mental evaluation was given, and not to do so was indeed a legal error. See: Dusky v. U.S., 362 U.S. 402, 403 (1960).

In this case, by the seriousness of the charge and by the record it should have been obvious that a serious possibility of a mental disorder may have existed within her client and Counsel should have at least requested a mental evaluation to insure that her client was competent to stand trial for this very serious charge. Counsel failed to consider or investigate an insanity or incapacity defense for trial or preparation for a guilty but mentally ill plea and a good plea negotiation. Counsel had a duty to investigate and to investigate the possible defenses that could have arisen from a mental evaluation of her client. Applicant was prejudiced by Counsel's failure to obtain a mental evaluation and to at least investigate any avenues of defense in that regard. See: Pate v. Robinson, 383 U.S. 375, 385 (1966); U.S. v. Haywood, 155 F.3d 764, 680-81 (1998); U.S. v. Mason, 52 F.3d 1286, 1292-93 (4th Cir. 1995); Drope v. Missouri, 420 U.S. 162, 178-82 (1975).

Counsel's performance was deficient and Applicant was prejudiced from having a complete defense or a fair trial. Furthermore, Counsel was ineffective for allowing her client to proceed to trial on this very serious charge without requesting a Blair hearing or obtaining an independent mental evaluation for her client. Wiggins v. Smith, 539 U.S. 510 (2003); Davenport v. State, 389 S.E.2d 649 (1990); Strickland v. Washington, 466 U.S. 668 (1984).

The conviction and sentence should be vacated, reversed for a new trial, or a judgement of acquittal entered.

Issue D: Argument

Issue D: Was Counsel ineffective for failing to object to prejudicial hearsay and other statement's in violation of the Rules of Evidence?

There was a great deal of hearsay, as well as other prejudicial statements made in violation of the Rules of Evidence that was elicited from the State's Witnesses by the Prosecutor in this case. Defense Counsel made no objections or other attempts to have these many highly prejudicial statements excluded from the Jury and allowing the State to use them to impermissibly bolster their weak case and shifted the burden of proof unto Counsel's client. This was ineffective assistance of the worst kind and legal error. Let us review further.

The Solicitor elicited from State's Witness, Kathy Perry, an out-of-Court Statement as to what the alleged Victim and her Mother said to D.S.S. in relation to a very prejudicial and suspicious incident that was used by the State Prosecutor to bolster the elements of a sexual battery. (R.O.A. p. 141, Ln. 3 - R.O.A. p. 142, Ln. 19). The alleged victim had just testified and her Mother was subpoenaed and present for trial, but Defense Counsel nor the State Prosecutor never made any effort to examine her in respect to these statements. These statements were very prejudicial, but there were more.

Department of Social Services for Spartanburg County, Investigator Supervisor, Angela Talley Robinson, testified to statements made by the Applicant.

These statements were tantamount to a confession; or at least the State Prosecutor used the statements in implicating guilt and the Investigating Supervisor, Ms. Robinson was used as a State agent; matter of fact, that is exactly what she was. Even if these statements was not in violation of Miranda, they certainly used to show bad character evidence in violation of Rules 403, 404, and 608, S.C.R.E. (R.O.A. p. 186, Ln. 23 - R.O.A. p. 189, Ln. 14).

It is quite obvious that the State called and used this Witness for the purpose of sarcastically demeaning the Applicant before he had a chance to testify; sort of trashing the water to inflame the Juror's biases and prejudice toward the Applicant. This Witness had no possible way to know if the Applicant was actually suffering from a bad headache or not. He had been put under extreme stress by the State (Spartanburg County Agents). There was

Issue D: Continued

very little probative value here, but plenty of prejudice toward the Applicant. See in Regards (R.O.A. p. 191, Lns. 8-12).

Defense Counsel did object to the very prejudicial description of the house and neighborhood, where the alleged victim was staying at one time. This was only after Witness Kathy Perry had given so much detail in regards of the filthy conditions this child was living in (R.O.A. p. 137, Ln. 11 - R.O.A. p. 139, Ln. 8). This was enough prejudicial testimony given for manipulative purposes. For Defense Counsel not to object to the remaining impermissible hearsay and bad character evidence used as a bolstering weapon by the State to strengthen their weak case, was ineffective assistance of Counsel. Now comes this legal analysis in that regard.

Law Analysis

The Rule against hearsay prohibits the admission of evidence of an out-of-Court statement to prove the truth of the matter asserted unless an exception to the rule applies. There was no exception to the hearsay Rule in this case. Rule 803, S.C.R.E.; Watson v. State, 370 S.C. 68, 634 S.E.2d 642 (S.C. 2006). Not only was there no exception to the hearsay rule in this case, the declarant was very much available for trial here in this case. Rule 804, S.C.R.E.; Riddle v. State, 314 S.C. 1, 443 S.E.2d 557 (1994). Hearsay statements are admissible where the statements bear adequate indicia of reliability. "Reliability" for admission of "hearsay" statements can be inferred where they fall within a firmly rooted "hearsay" exception. There was no exception to the rule nor any other indication given to the reliability of the out-of-Court statements. There was no reliability met in this case to allow for the admission of the statements. See, State v. Burnedette, 335 S.C. 34, 515 S.E.2d 525 (S.C. 1999); State v. Dinkins, 339 S.C. 597, 529 S.E.2d 557 (S.C. App. 2000). Further, reliability of a hearsay declarant's out-of-Court Statement for purposes of determining its admissibility in light of a confrontation clause challenge, absent a showing of particularized guarantees of trustworthiness or a firmly rooted hearsay exception, the evidence must be excluded. When a hearsay declarant is not present for cross-examination at trial, the confrontation clause requires a showing that

Issue D: Continued

they are unavailable; even then, the statement is admissible only if it bears an adequate indicia of reliability. State v. Sanders, 356 S.C. 214, 588 S.E.2d 142 (S.C. App. 2003). The "hearsay" Rule prohibits the admission of testimony or evidence of a statement made out-of-Court and offered in Court to prove the truth of the matter asserted. These statements should not have been admitted by this Court and to do so was an error of law which prejudiced the Applicant to a fair trial. State v. Dennison, 406 S.E.2d 383 (S.C. 1991); Crawford v. Washington, 541 U.S. 36 (2004); Giles v. California, 128 S.Ct. 2678 (2008). Counsel was indeed ineffective for her poor performance regarding these prejudicial hearsay statements and bad character evidence without making an objection or challenge against any of these statements as discussed further.

As a general rule, statements, declarations or bad character evidence are admissible, but such evidence must meet the threshold test of admissibility, namely relevance. Here, the Jury could have inferred that the Applicant was lying and did the crime, because he claimed to have had a severe headache. No one proved he did not have a severe headache and the only relevance to the statements against the Applicant's character was for the State to prejudice the Applicant from the very start of the trial in opening statements, throughout the trial, and in their closing arguments as they did very well. These statements did not possess any relevance to prove guilt and the prejudice far out-weighted any probative value. Rules 403, 404(b), 608, S.C.R.E. State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (S.C. 2000). Even if the statements could be relevant, the probative value, if any, cannot out-weigh the unfair prejudice, the confusion, or the misleading of the Jury that the statements possessed. The statements should have been excluded, because they tended to suggest a decision on a most improper basis. Rule 403, S.C.R.E.; Kennedy v. Griffin, 593 S.E.2d 512 (S.C. App. 2004).

The statements in question did not have any direct bearing upon nor tend to establish, or make more or less probable the matter in controversy because the statements are not admissions of guilt of the crime nor could they prove anything about the crime from the statements. Rule 401, 402, S.C.R.E.; State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (S.C. App. 2004); and See: Rule 404(a)(1) and 404(b), Rule S.C.R.E.; State v. Lyles, 210 S.C. 87, 41 S.E.2d 625 (1947); State v. Varvil, 338 S.C. 335, 526 S.E. 248 (S.C. App. 2000). It

Issue D: Continued

is error to allow the impermissible bad character evidence to be used by the State to shift the burden of proof unto the Applicant through out the trial and specifically influencing the Jury during deliberation; which very well, could have influenced their verdict, because they considered the Applicant as a liar and a bad person, instead of evidence proving the elements of the crime beyond a reasonable doubt as required by Law. The Statements were impermissible Character Evidence. Rules 401, 402, 403, 404(b), and 608 S.C.R.E.; See also: German v. State, 325 S.C. at 25, 478 S.E.2d 687 (1996); State v. Bryant, 356 S.C. 488, 589 S.E.2d 775 (2003); State v. Smith, 357 S.C. 182, 592 S.E.2d 302 (2004); State v. Brown, 344 S.C. 70, 543 S.E.2d 552 (S.C. 2001); State v. Council, 335 S.C. 1, 515 S.E.2d 508 (S.C. 1999). The only real remedy to avoid this prejudice would have been to exclude these highly inflammatory prejudicial statements to ensure Applicant's right to a fair trial. State v. Smith, 290 S.C. 393, 350 S.E.2d 923 (1986); State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (S.C. 2001).

Defense Counsel cannot articulate an informed tactical or strategic decision for not objecting to these highly prejudicial statements; the hearsay and bad character evidence, as she should to at least preserved this Issue for Appeal, if for no other reason. Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988); Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002). Defense Counsel's performance did not reach the range of competence required of Attorneys in criminal cases. Turner v. Bass, 753 F.2d 342 (4th Cir. 1985). If not for Defense Counsel's error here, there is a reasonable probability that the outcome of this proceeding would likely have been different. Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Strickland v. Washington, 466 U.S. 668 (1984); U.S. v. Russell, 221 F.3d 615 (4th Cir. 2000).

Trial Counsel's failure to object to the admission of improper and impermissible character evidence did constitute ineffective assistance of Counsel. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989). Defense Counsel's performance was deficient for not challenging these Statements (Hearsay and Bad Character) used by the State as indication to the Jury as to the Applicant's character and guilt. U.S. v. Breckenridge, 93 F.3d 132 (4th Cir. 1996).

The Conviction and Sentence should be reversed.

Issue E: Argument

Issue E: Was Counsel ineffective for failing to impeach the State's witnesses with their inconsistent statements made pre-trial and during trial?

There were many inconsistencies within the testimony of the State's witnesses in regards to proving the State's allegations against the Applicant in this case. Defense Counsel had many documents with statements also giving different facts and details about the dates of a sexual assault, as well as, different perpetrators of this alleged crime. Counsel had a duty to use these statements to impeach these witnesses or object to the Witnesses testimony as being untrue and illogical or at least brought it to the Judge and Jury's attention of its incompetency.

There was a pre-trial in-camera Motion concerning the other possible perpetrators (Issac Stewart, Darryl and Jerry Riddle). The Court ruled that these alleged disclosures by the alleged victim would be excluded. (R.O.A. p. 41 - R.O.A. p. 49, Ln. 13). However, there were many out-of-court statements made by the State's Witnesses suggesting other perpetrators rather than the one they testified to, (the Applicant). See: (Attachments).

The State's witnesses testified to many different facts than each other and their out-of-court statements differed considerably. Let us review.

Officer Charity Gencarelli testified that she was initially informed about allegations of sexual abuse on October 4, 2002, assumingly from Officer Martin Elderidge's report. (R.O.A. p. 223, Ln. 8 - R.O.A. p. 224, Ln. 23). The State's Experts testified to the following: Meredith Thompson Loftis received her first notice of sexual abuse in August 2003 by some unknown D.S.S. worker who referred MINOR to her. (R.O.A. p. 157, Lns. 5-12). Ms. Loftis never revealed who the D.S.S. worker was. The other Expert, Nancy N. Henderson gave MINOR a physical evaluation after being initially notified by D.S.S. Worker, Nicole Roof. Department of Social Services Supervisor, Angela Talley Robinson claimed to have interviewed the Applicant and his wife about allegations of sexual abuse, but does not give a date. She further claimed to have talked to MINOR on October 4, 2002, when she made a disclosure. Of course, as we know from all other testimony that nobody could understand the child's speech at that time at all. (As previously argued). After review of these testimonies, as well as the many attachments to this Initial Brief, not only were these statements inconsistent to each other, the Witnesses testimonies were the

Issue E: Continued

evolution of second, third, quadruple, etc., information from many D.S.S. Workers. The reliability in their testimony is questionable and Counsel never objected even to the slightest. See: (Attachments A through).

Kathy Perry claimed to have called D.S.S. after MINOR Mother, Joann Belcher told her that she suspected that someone may have sexually assaulted her daughter. (R.O.A. p. 141, Ln. 21 - R.O.A. p. 142, Ln. 19; R.O.A. p. 147, Lns. 1-9). However, Ms. Perry does not know what day she contacted D.S.S. or when she picked MINOR up from her parents. She did not bother getting in touch with D.S.S. when she claimed to have noticed MINOR bottom swollen. (R.O.A. p. 143, Ln. 14 - R.O.A. p. 144, Ln. 15). The question here, is obviously, why not? When we review Ms. Perry's testimony and the Attachment's in regards. It is difficult to imagine why Counsel did not use the available documents with statements in contrast to what the State's Witnesses alleged more during trial, to at least impeach these witnesses and strongly discredit them before the Jury. (See: Attachments:).

Defense Counsel had a duty to review the out-of-Court statements and reports in preparation of cross-examining these Witnesses, even if their testimony amounted to mere suspicion, conjecture, and speculation. Now, let us review this Law Analysis in regards to this vital issue.

Law Analysis

Prior statements of witnesses are subjected to the provisions of S.C. Code Ann. §§19-1-80-100. If a witness admits making the prior inconsistent statement, then the witness has been impeached and no further extrinsic evidence of the statements, including the statements themselves are admissible. State v. Lynn, 277 S.C. 222, 284 S.E.2d 786 (1981); McMillan v. Ridges, 229 S.C. 76, 91 S.E.2d 833 (1956); Rule 613(b), SCRE. Counsel never confronted the witnesses with their prior inconsistent statements and the testimony in regards to them far outweighed any probative value in the trial of this instant case. State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976); State v. Jones, Op. No. 25242 (S.Ct. 2001); 98 C.J.S. Witnesses, §460; Rule 608(b), SCRE.

It is crystal clear that because Counsel did not challenge these many statements, that the State was allowed less than credible testimony which had

Issue E: Continued

to prejudiced the Applicant from having a fundamentally fair trial. State v. Wilson, 345 S.C.1, 5-6, 545 S.E.2d 827, 829 (2001). Further, the State's witness testimony and statements at trial impermissibly bolstered the veracity of a disclosure of a sexual battery occurring at a particular time, and they should not be admitted. Tome v. U.S., 513 U.S. 150, 157, 115 S.Ct. 696, 130 L.Ed.2d 574 (1995). These Witness statements and testimonies in regards should not have been admissible as substantive evidence because, due to Counsel's failure to challenge them, the Applicant was denied effective cross-examination. See, Michigan v. Harvey, 494 U.S. 344 (1990); State v. Pfirman, 300 S.C. 84, 386 S.E.2d 461 (1989). If Counsel would have done her duty here, these inadmissible statements could not have been used to discredit the Applicant and his brother in their testimony. See; James v. Illinois, 493 U.S. 307 (1990).

Cross-examination of government witnesses is important, and a presumption favors free cross-examination by a defendant on possible bias, motive, ability to perceive and remember, and general character for truthfulness. U.S. v. Novation, 271 F.3d 968 (11th Cir. 2001). Furthermore, truthfulness of testimony is vital to a fair trial. "The dignity of the United States Government will not permit the conviction of any person on tainted testimony." The testimony of this case strongly indicates that it is quite tainted. Mesareosh v. U.S., 352 U.S. 1, 1 L.Ed.2d 1, 77 S.Ct. 1 (1956). Moreover, this error was not harmless. Erroneously admitted corroboration testimony is not harmless merely because it is cumulative. On the contrary, it is precisely this cumulative effect which enhances the devastating impact of this improper corroboration by the State's Witnesses to a disclosure of a sexual battery. Jolly v. State, 314 S.C. 17, 21, 443 S.E.2d 556, 569 (1994). Here the State's Witnesses testimony was weak at this point and not particularly credible being it mostly came from second hand information. See, State v. Saltz, 551 S.E.2d 240 (2001). Applicant was prejudiced by Counsel's errors.

Counsel cannot demonstrate any reasonable strategy for not confronting these witnesses with the untruthfulness of their inconsistent statements during cross-examination. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). There is a reasonable probability, if not for Counsel's errors here, the result of this proceeding would have been different. Strickland v.

Issue E: Continued

Washington, 466 U.S. 668 (1984). Counsel's representation fell below the objective standard of reasonableness which prejudiced the Applicant from receiving the necessary cross-examination for a fair trial or to reach a true verdict. Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1984); Tucker v. Ozmint, 350 F.3d 433 (4th Cir. (S.C.) 2003).

A reversal is well warranted in this case.

STATE COURT
SOUTH CAROLINA
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Issue F: Argument

Issue F: Was Defense Counsel ineffective for failing to obtain an independent CSC forensic evidence and victim behavioral expert(s) in this case?

The State alleged that the Applicant committed a sexual battery upon MINOR who was under the age of eleven (11) at the time of the incident. (R.O.A. p. 8). In the State's Opening Statements to the Jury, the Solicitor informed them of MINOR condition of being severely developmentally delayed. (R.O.A. p. 122, Lns. 10-16). Defense Counsel submitted to the Jury the defense theory that the State's case was a lack of evidence with no physical findings and testimony that MINOR was involved in therapy actually several years prior to this trial. (R.O.A. p. 125).

MINOR entire testimony was incredible to prove the elements of the sexual battery or if there was an occurrence, when. (R.O.A. p. 127, Lns. 5-6; R.O.A. p. 128, Lns. 3-11; R.O.A. p. 133, Ln. 13 - R.O.A. p. 134, Ln. 2). This testimony was, at best, confusing. This left the State to call and count on two (2) other witnesses to insinuate guilt of a sexual battery that they were unable to prove. The first was Meredith Thompson Loftis, a therapist that D.S.S. had referred MINOR to for treatment regarding the possibility of sexual abuse, depression, and anxiety related to separation from her biological parents. (R.O.A. p. 150; R.O.A. p. 157, Lns. 2-9). She was qualified as an expert, by the Court, in the field of sexual abuse trauma and treatment (R.O.A. p. 156). There was no scientific or otherwise evidence given by this so-called State's Expert of any probative value, tending to prove that a sexual battery occurred on any particular date by the Applicant. In fact, the therapist could not even understand the alleged Victim, (R.O.A. p. 157, Lns. 10-20; R.O.A. p. 165, Ln. 17 - R.O.A. p. 166, Ln. 21), nor was there any evidence proving that anything actually happened at all. (R.O.A. p. 173, Ln. 11 - R.O.A. p. 174, Ln. 8). This Expert proved nothing.

Next, the State gave it a shot with Dr. Nancy N. Henderson, a pediatrician employed with the Greenville Hospital. (R.O.A. p. 175, Ln. 24 - R.O.A. p. 176, Ln. 3). She was qualified by the Court as an Expert in the field of child sexual abuse diagnosis and treatment. (R.O.A. p. 178, Lns. 6-19). Again, no evidence of probative value tending to prove anything. (R.O.A. p. 179, Ln. 18 - R.O.A. p. 180, Ln. 25; R.O.A. p. 185, Lns. 1-9).

Issue F: Continued

Although neither of these State's Experts proved anything, the State used them to bolster their weak case specifically during the Solicitor's closing arguments. (R.O.A. p. 298 - R.O.A. P. 303). This was highly prejudicial and this very well could have been avoided and should have been, if Counsel had obtained, for her client, an independent CSC forensic evidence and victim behavioral expert(s). Let us review further.

Expert testimony concerning common characteristics of sexual assault victims and the range of responses to a sexual assault encountered by experts is admissible. State v. Weaverling, 337 S.C. 365, 523 S.E.2d 787 (S.C. App. 1999), rehearing denied. Additionally, the Court in Weaverling noted that "when facts of a case raise questions of credibility or accuracy that might not be explained by experiences common to jurors, like reactions of child victims of sexual abuse, expert testimony on general behavioral characteristics of such victims should be admitted. Id. at 794. In this case, the alleged victim's accuracy of the characteristics of a sexual battery was questionable and there was certainly a substantial credibility issue in the suspicious testimony given by the State's witnesses, specifically, Kathy Perry. (R.O.A. p. 143, Ln. 14 - R.O.A. p. 145, Ln. 7). Applicant maintains that independent expert(s) within this field could have shown that the alleged victim did not exhibit the true common behavioral characteristics which could have been used to reinforce the defense's position that no sexual assault occurred, whereas the State's Experts merely produced speculation to a sexual battery occurring.

Some researchers have concluded that sexual abuse/assault is associated with the most adverse psychological effects. Sue Boney McCoy & David Finklehor, Psychological Sequelae of Violent Victimization in a National Youth Sample, 63(5) J. Consulting & Clinical Psychol. 726 (1995). Moreover, while the psychological science encompassing sexually abused children (Battered Child Syndrome, (BCS)) is subject endless variables and must be taken into consideration with numerous factors, an extensive review of research in the area of sexual abuse and its impact on children suggest that "the variables most consistently associated with more adverse impact are longer duration of abuse, force or violence accompanying the abuse, and father or father figure as the perpetrator. Penelope K. Trickett & Frank W. Putman, Developmental

Issue F: Continued

Consequences of Child Sexual Abuse, in Violence Against Children In The Family And The Community 49 (1998). The State's Expert(s) never made reference to (BCS) or studies in relation to this syndrome.

The two most common diagnosis associated with sexual abuse are Post-Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD). Faigman, Kaye, Saks, & Sanders, Modern Scientific Evidence, Volume 2, pages 93-97 (2002). Both diagnosis contain systems unattributable to the alleged victim in the present case; hypervigilance, leaned helplessness, distressing recollections (images, thoughts, perceptions), hallucinations, dissociative flashbacks, hyper arousal, making efforts to avoid activities, places, or people who arouse recollections of trauma, diminished interest or participation in significant activities, feeling detached or estranged from others, irritability or outbursts of anger, exaggerated startled responses, etc...Id., Volume 1, pages 159-162. The Expert for the State was a therapist who was trained in treating sexually abused children and Dr. Henderson was a Pediatrician; although qualified by the Court as an Expert in the field of child sexual abuse diagnosis and treatment, offered only testimony of a physical examination of the child's body which indicated no proof of sexual assault. The tests given by Expert Meredith Loftis discussed the basic non-diagnostic Child Sexual Abuse Accommodation Syndrome (CSAAS), only as a descriptive syndrome. It is quite obvious that the State's case should have been put to the test under these circumstances. Counsel made no effort in attempting to research this case of Sexual Abuse and its true diagnosis or to obtain an Expert(s) in regards. This constituted ineffective assistance as we discuss further.

To prove that Counsel was ineffective, the Applicant must show that Counsel's performance was deficient and there is a reasonable probability that, but for Counsel's errors, the result of the trial (proceeding) would have been different, a "reasonable probability" is a probability sufficient to undermine the confidence in the outcome of the trial. Evan v. State, 363 S.C. 495, 611 S.E.2d 510 (2005); Strickland v. Washington, 466 U.S. 668 (1984).

In Frasier v. State, 306 S.C. 158, 410 S.E.2d 572 (1991), the Court held that Counsel was ineffective for failing to call an Expert to examine DNA evidence presented at trial. The Court held that where the record indicated

Issue F: Continued

that Counsel vigorously cross-examined the State's expert; Counsel's failure to call an expert will not necessarily raise to the level of deficiency. In this case, the State's Expert's failed to cover the more reliable and accepted diagnosis in the field of childrens sexual abuse cases, therefore Counsel could not vigorously cross-exam the State's Expert in that regards. Counsel cannot articulate a valid reason for not researching these syndromes and analysis and/or obtaining her own Expert(s) in that field to put the State's weak case to a meaningful test, particularly the credibility of the witnesses. Experts in these fields would have been better equipped to explain any falsehoods as opposed to leaving the State's entire case basically untested, but left conjecture, speculation, and suspicion in the minds of the Jury.

In light of the absence of a strong presence of guilt and there is a requirement that the alleged sexually assaulted victim be personally interviewed or examined by the expert before the expert can give behavioral evidence testimony. Counsel's failure to obtain an independent expert to at least testify, in and of its own, cannot be deemed "reasonable trial strategy", as well as a lack of performance by Counsel which cannot be deemed harmless error in a case where credibility was a key factor in the verdict against the Applicant. Weaverling, supra at 794; Strickland, supra.

Where only evidence of a sexual battery was alleged victim's inapt, confusing, and incompetent testimony and no corroborating physical evidence presented proving the time or year of any sexual assault, Counsel provided ineffective assistance in failing to obtain these experts to refute that no assault occurred. Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (S.C. 1998). Counsel had a duty to make a reasonable investigation or to make a reasonable investigation unnecessary, which Counsel did not do in this case. Strickland, supra. Counsel had an additional obligation to investigate possible methods for impeaching the prosecution's witnesses. Tucker v. Ozmint, 350 F.3d 483 (4th Cir. (D.S.C.) 2003).

Counsel's failure to investigate any and all avenues of defense in a case where the alleged victim has alleged sexual assault and the defendant has denied such and where the State's expert was void of credible information that merely indicated suspicion, speculation, and conjecture and where credibility is a key issue cannot be said to rise to the level of attorney's practicing

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Issue F: Continued

under the prevailing professional norms. Strickland, supra.

Independent experts and their documents associated with their conclusions to the CSC victim behavioral diagnosis were vital to the position of the defense that no sexual assault (battery) occurred and failure to produce either, prejudiced the Applicant from receiving a fundamentally fair trial. Without Counsel's error here, the result of the proceeding would have been different. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1994).

A reversal is well warranted in this case.

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Issue G: Argument

Issue G: Was Counsel ineffective for not objecting to the State's prejudicial closing argument?

The State gives their closing argument to the Jury. (R.O.A. p. 294, Ln. 11 - R.O.A. p. 310, Ln. 20). These sixteen or so pages are full nothing more than the very prejudicial remarks that our constitutions have forbidden for years, yet Counsel stood by and allowed the State Prosecutor to inflame the biases and prejudices of the Jury, vouch for witnesses, pit the testimony of the State's witnesses against the Applicant, seeked sympathy for the alleged Victim, mislead the Jury about the evidence, and impermissibly bolster their weak case of suspicion, conjecture, and speculation. Let us take note to some prejudicial comments by the Solicitor.

The State began their summation with sensationalizing to lessen the State's burden. (R.O.A. p. 294, Ln. 13 - R.O.A. p. 295, Ln. 8). A prosecutor should never even attempt to give the law or define "reasonable doubt", specifically, as it relates to the evidence. (R.O.A. p. 295, Lns. 9-19). This is the Court's duty, not the prosecution. The State's set the pace for misrepresenting the facts in relation to the essential elements of a sexual battery occurring. (R.O.A. p. 295, Ln. 20 - R.O.A. p. 298, Ln. 6). This is very suspicious, but it is not proof of a sexual battery. The alleged victim never did voluntarily disclose anything. (R.O.A. p. 157, Lns. 5-16; R.O.A. p. 162, Lns. 8-10; R.O.A. p. 173 - R.O.A. p. 174; R.O.A. p. 159, Lns. 2-24; R.O.A. p. 161, Ln. 1 - R.O.A. p. 162, Ln. 10; R.O.A. p. 179, Lns. 2-13). No one was able to understand what the alleged victim said and she could not disclose anything.

The State seriously eclipsed any chance of an acquittal with its extensive vouching for their witnesses. (R.O.A. p. 298, Lns. 10-23). The State continues to bolster their case by inappropriate means, such as pitting testimonies, vouching for witnesses, seeking sympathy for the alleged Victim and calling the Defendant (Applicant) a flat out lie. There were physical or mental exams of the Applicant, but the State Prosecutor misrepresented so many facts that were not facts at all. (R.O.A. p. 303-310). Actually the State's entire closing argument was no more than the State bolstering a case that was not proven, but by very unethical, impermissible, and unconstitutional means

Issue G: Continued

and Counsel cannot demonstrate a valid reason for not objecting. Let us review this Law Analysis in that regards.

Law Analysis

The Prosecution did not live up to their obligation of fairness to the Defendant, which included their duty to refrain from improper methods calculated to produce this wrongful conviction. U.S. v. Campo, 419 F.3d 1219 (11th Cir. 2005). The Solicitor's closing argument was both inherently prejudicial and a flagrant disregard for fairness and justice. Rule 407, SCACR. A prosecutor may not make suggestions, insinuations, and assertions calculated to misled the Jury. A prosecutor may argue that evidence gives rise to inference, but suggested inference must be drawn reasonably from the facts in evidence, not the Prosecutor's unreasonable suggestions. U.S. v. Wilson, 135 F.3d 291 (4th Cir. 1998). The Solicitor interjected her personal opinion to both the facts and Applicant's guilt. By doing so, the Solicitor insinuated that she had possession of personal knowledge of facts offered in evidence and presupposed the Applicant's guilt, when such comments have long been held improper. It is not only improper for the Solicitor to interject her personal beliefs about the evidence into closing arguments, but it is impermissible to do so. Matthews v. State, 565 S.E.2d at 766 (2002); Gilchrist v. State, 350 S.C. 221, 565 S.E.2d 281 (2002). Further, a Solicitor may not vouch for the credibility of a State's witness based on her personal knowledge. State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001). Prosecutors may not place the prestige of the State behind a State's witness. State v. King, 561 S.E.2d 640 (2002); State v. Gathers, 369 S.E.2d 140 (1988); Mincey v. State, 314 S.C. 355, 444 S.E.2d 510 (1994).

It is crystal clear that the Solicitor's bolstering by inappropriate means allowed the Jury to reach a verdict based upon mere speculation, conjecture, and suspicion more so than fact. The Solicitor's conduit was highly improper, constitutionally impermissible and prejudicially affected the Applicant's substantial due process rights so as to deprive him of a fair trial. U.S. v. Golding, 168 F.3d 700, 702 (4th Cir. 1999). The Solicitor's actions eclipsed any possible defense theory of the case by attacking and pitting the

Issue G: Continued

credibility of the defendant against the alleged Victim, the Police Officers and the State's (so-called) Expert witnesses testimony. The State's prosecutor hit well below the belt, here, specifically the comment she made in reference to the Applicant's health. The Solicitor states: "Most men in the world, you ask them if they sexually molested their daughter, they would know the answer to that. But if you are going to ask Giles Belcher, you better have a "medicine cabinet" and a "Seeing Eye dog", because he is going to avoid the question. He's not going to answer. And then when he does, its going to be somebody else's fault." This was totally uncalled for. No one never inquired into the Applicant's health problems that have persisted since his childhood. The State prosecutor should never stoop to this type of attack or inflammatory comments at all. State v. Rudd, 355 S.C. 543, 586 S.E.2d 153 (2004); State v. Kelsey, 502 S.E.2d 63 (S.C.1998); State v. Sapps, 295 S.C.484, 369 S.E.2d 145 (1988).

The Solicitor's actions in this case have been universally held to be improper and highly impermissible by our Courts. U.S. v. Young, 470 U.S. 1, 18, 105 S.Ct. 1038 (1985); U.S. v. Hawkins, 76 F.3d 545 (4th Cir. 1996); State v. Jones, 466 S.E.2d 733-34 (1996). The verdict in this case could very well have been based upon the improper comments made in the closing argument of the Solicitor. It cannot be said that the burden of proof was not shifted upon the Applicant at trial by the Solicitor's improper and inherently prejudicial remarks. Sandstrom v. Montana, 442 U.S. 510, 514 (1979); U.S. v. Loayza, 107 F.3d 257, 261 (4th Cir. 1997).

The evil lurking from the State's actions is the possibility that the Defendant (Applicant) was convicted for reasons wholly irrelevant to his guilt or innocence. Jurors may be persuaded by such appeals to believe that, by convicting a defendant will assist in solving pressing social problems. The amelioration of society's woes is far too heavy a burden for the criminal defendant to bear. State v. Liberty & Sims, 336 S.C. 648, 521 S.E.2d 744 (S.C. App. 1999).

The Solicitor's conduct is not at all harmless beyond a reasonable doubt. U.S. v. Golding, 168 F.3d 700, 702 (4th Cir. 1999). For Defense Counsel not to object to such highly impermissible bolstering, which is so inherently prejudicial, as to be an error of law constituting ineffective assistance of

Issue G: Continued

Counsel and must be deemed as such; as the credibility of the State's Witnesses was so crucial to the State's case-in-chief. State v. Kelly, 540 S.E.2d 851 (2001); State v. Shuler, 545 S.E.2d 805 (2001). This could not be a sound strategy or informed tactical decision by Counsel here. Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002); Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988). If not for Counsel's error here, there is a reasonable probability that the outcome of the trial would have likely been different. Thrift v. State, 397 S.E.2d 523 (1990). The State Prosecutor's closing arguments consisted of practically every kind of impermissible comment that our Constitutions forbid and yet Counsel did not object. Counsel's deficient performance highly prejudiced the Applicant from receiving a fundamentally fair trial by an impartial Jury. Counsel's performance was deficient; Applicant was prejudiced and Counsel was ineffective. Strickland v. Washington, 466 U.S. 668 (1984).

The conviction and sentence should be reversed for a new trial.

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Issue H: Argument

Issue H: Was Counsel ineffective for not objecting or taking exception to the Court's failure to give the standard direct and circumstantial evidence charge to the Jury?

There were some direct evidence, but a substantial amount of circumstantial evidence produced at this trial. However, the Trial Court's instructions in that regard was totally void, and thereby making the Court's instructions erroneously prejudicial to the Applicant receiving a fundamentally fair trial by an impartial jury, as well as, being burden shifting and eclipsing the Applicant's defense. (R.O.A. p. 310, Ln. 21 - R.O.A. p. 325, Ln. 10). The Court inquired into whether the defense had any exceptions or requests to be added. Defense Counsel had only requested for the Arizona v. Youngblood, but nothing in regards to the direct evidence or circumstantial evidence. (R.O.A. p. 325, Lns. 21-25). For Counsel not to request a charge on direct and circumstantial evidence under these circumstances was inconceivable. This could not have been sound strategy or tactic by Counsel. Counsel was indeed ineffective in that regard. Let us review further in this Analysis.

Law Analysis

As a threshold matter, the law to be charged is determined from the evidence presented and dictated by law of the case at trial. State v. Burris, 334 S.C. 256, 513 S.E.2d 104 (1999); State v. Wharton, 367 S.C. 71, 624 S.E.2d 654 (2005). The State's case-in-chief consisted mostly on circumstantial evidence, with doubtful or questionable credible direct evidence; as the defense had only the direct evidence from the Applicant's rebuttal testimony. It has been held that where direct evidence of identity and conduct are presented, there is no right to a circumstantial evidence charge where circumstantial evidence concerns intent or is merely corroborative. See e.g., State v. Carrol, 277 S.C. 306, 286 S.E.2d 382 (1982); State v. Simmons, 269 S.C. 649, 239 S.E.2d 656 (1977). Despite these authorities, some elements of a crime are so important that a circumstantial evidence should be given even though conduct and identity are based on direct evidence, because of the need

Issue H: Continued

that requires a circumstantial evidence charge for proper focus on a particular element. State v. Needs, 333 S.C. 134, 508 S.E.2d 587 (1999). It is vitally important to point out that the State's only witness giving testimony in regards to a sexual battery being committed came from the alleged Victim, which had a mental disorder ". Even the State's Expert verified that the alleged Victim could not distinguish dates and times correctly (). In fact, the alleged victim's entire testimony was too incredible to prove the elements of a sexual battery and/or the time of occurrence and the remainder of evidence in that regard was circumstantial, if not incompetent. Therefore, it was imperative that both the direct and circumstantial evidence charges be given, whereas, neither was remotely given and Defense Counsel did request it be given. It simply would have been the correct charge to give to the Jury under the circumstances of the evidence and law of this case. See, State v. Needs, 333 S.C. 134, 508 S.E.2d 857 (1999); and State v. Gripon, 327 S.C. 79, 489 S.E.2d 462 (1997).

A clear reading as a whole, the Court's instruction on reasonable doubt without instructing the Jury on a direct and circumstantial evidence was highly impermissible and unconstitutional. The Court's instructions were in error and allowed a finding of guilt below the standard required by the Due Process Clause of the Fourteenth Amendment. The U.S. Supreme Court recognized that the prosecution must prove each and every element of the crime charged beyond a reasonable doubt. In Re Winship, 397 U.S. 158 (1970); Jackson v. Virginia, 443 U.S. 307 (1979); Fiore v. White, 121 S.Ct. 712 at 714 (2001). The burden of proof on any element cannot be shifted to the defense, because it decreases the State's burden of proving the crime beyond a reasonable doubt. See, Mullaney v. Wilbur, 421 U.S. 684 at 701 (1975); Sandstrom v. Montana, 442 U.S. 510 (1979). The Constitutional question, "is whether there is a reasonable likelihood that the Jury understood the instruction to allow conviction based on proof insufficient to meet the Winship "standard". Victor v. Nebraska, 114 S.Ct. 1239 (1995). There is a reasonable likelihood that without the direct and circumstantial charge the Jury found the Applicant guilty based upon proof insufficient of the necessary "standard of proof" that is required by due process. U.S. Const. Amends. Five and Fourteen.

Taking the instruction as a whole, there is a very reasonable likelihood

Issue H: Continued

that the jurors in this case actually understood the Court's charge to allow conviction on a diminished standard. When the Court erred by not giving a direct and circumstantial evidence charge, are taken as a whole, it is clear cut that the Applicant was prejudiced by being denied a fundamentally fair trial and Counsel was ineffective for not requesting the much needed changes. U.S. Const. Amend. Six.

Here, Defense Counsel simply stood by allowing the burden of proof to be shifted from the State onto the Applicant. That very action denied the Applicant effective assistance of Counsel at a most critical stage of the trial. Dandy v. State, 301 S.C. 303, 391 S.E.2d 381 (1990); Carter v. State, 301 S.C. 396, 392 S.E.2d 184 (1990); Chaulk v. State, 313 S.C. 25, 437 S.E.2d 19 (1993). This could not be considered sound strategy for a defense against this serious charge or an informed tactical decision by Counsel. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002); Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988).

Counsel's failure to place an objection, take exception, or request the necessary direct and circumstantial evidence charge to at least preserve a good issue for Appeal, constituted ineffective assistance of Counsel. High v. State, 300 S.C. 88, 386 S.E.2d 463 (1989). If not for Counsel's error here, there is a reasonable probability that the outcome of this trial would likely have been different. Webb v. State, 281 S.C. 237, 314 S.E.2d 839 (1984). The Applicant was severely prejudiced by Counsel's deficient performance that falls well below the standards for competent criminal attorneys. Strickland v. Washington, 466 U.S. 668 (1984). Based upon the record, Counsel was ineffective for not objecting to the erroneous burden shifting instructions. Tate v. State, 351 S.C. 418, 570 S.E.2d 522 (2002).

A reversal is well warranted in this particular case.

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Issue I: Argument

Issue I: Was Counsel ineffective for failing to investigate, interview witnesses or otherwise adequately prepare for trial?

[Note: The Applicant will use the operative facts within Issues A through H, as well as the facts stated in this issue itself in support thereof.]

Defense Counsel was or should have been fully aware of the serious nature of this charge and the amount of legal research, investigation, interviewing of witnesses and preparation for trial would most likely be an enormous task, specifically to develop a complete defense and to ensure her client of a fundamentally fair trial. It should be quite obvious by the case records that the Applicant's Counsel did not have her client's best interests in mind. Counsel's actions and lack of action allowed the State prosecutor to demean and belittle her client into a fiasco for an easy guilty verdict without putting the State's weak case to a meaningful adversarial test. Counsel was indeed ineffective as revealed here in this Issue, as well as the previous Issues.

The State presented, MINOR the alleged victim to a CSC involving her own father. As previously argued, she was unable to provide any competent evidence due to her disability and condition of being developmentally delayed. The State's two so-called Experts proved no more than the child did. The State relied heavily on the prejudicial effect of testimony of Kathy Perry and the Applicant's out-of-Court statements. Let us review further.

Kathy Perry was Jamie Belcher's girlfriend in August of 2002. Jamie was helping his brother (Applicant) and his family move when Kathy suggested that the child stay with them. So, the Applicant and his wife Joann Belcher allowed them to keep MINOR the alleged victim, for a while until they got straightened out some. (R.O.A. p. 136 - R.O.A. p. 138, Ln. 10). She described MINOR condition at the time as being dirty with body lice all over her. She also stated that MINOR could not carry on a conversation. (R.O.A. p. 139, Lns. 5-10). She further described that while she was trying to bathe her, she noticed that her bottom was swollen, but she never took her to a hospital. (R.O.A. p. 141, Lns. 15-20; R.O.A. p. 143, Ln. 22 - R.O.A. p.

Issue I: Continued

144, Ln. 1). Kathy said they went to D.S.S. after the child's Mother, Joann Belcher told her that she suspected something may have happened. (R.O.A. p. 141, Ln. 23 - R.O.A. p. 142, Ln. 11; R.O.A. p. 147, Lns. 1-10). Also, Kathy had claimed that MINOR was in bed with her and Jamie, when MINOR grabbed Jamie's Penis and said "suck". This is what Kathy claimed to be why she decided to call D.S.S. (R.O.A. p. 140, Ln. 7 - R.O.A. p. 141, Ln. 14).

The State's witness testimony here was unreliable, but due to Counsel's inadequate preparation, the reliability went for the most part unnoticed. Not only did Counsel fail to use the subpoenaed Witness (Joann Belcher) to refute this, she allowed hearsay in regards. Joann gave the following statement in regards. See: (Attachment:).

Counsel also failed to enforce the subpoena for Chris Price. See, Also, (Attachment:). In fact, there were many facts to this picture that were left out and never brought to the Jury's attention. Neither of the biological grand-parents were called or interviewed for testifying for the defense. Counsel's willingness to accept the State's version of the facts here certainly calls Counsel's representation into serious question of adequacy. (R.O.A. p. 329, Ln. 16 - R.O.A. p. 330). U.S. v. Matos, 905 F.2d 30 (2nd Cir. 1990). There were so very many possible witnesses that the Defense could have defused the improper bolstering of suspicion by the State. See, (Attachments through). These documents were right before the Counsel's eyes and yet, it is quite obvious that she never bothered to look at most of them.

Dr. Nancy N. Henderson testified that the source of intake was Nicole Roof as the referral source for MINOR evaluation, however, Ms. Roof is never subpoenaed by Defence Counsel. (R.O.A. p. 185, Ln. 12 - R.O.A. p. 186, Ln. 7). The State relied on Angela Talley Robinson's testimony to ridicule the Applicant and comment on second hand information from another D.S.S. Worker's. (R.O.A. p. 187 - R.O.A. p. 188, Ln. 7), and See: (Attachments:). More of the same was elicited from State's Witness Officer Charity Gencarelli. See: (R.O.A. p. 223 - R.O.A. p. 224), but, see: (Attachments). There were inconsistencies to her reports and other Officer's reports, as well as testimony. (R.O.A. p. 225 - R.O.A. p. 229). The most puzzling aspect to this vital issue is why didn't Defence Counsel interview and subpoena Investigator Ritchie McSwain, when it was obvious that he had something to do with the Applicant giving a Statement to the Officer's interrogation. (R.O.A. p. 236,

Issue I: Continued

Ln. 23 - R.O.A. p. 237, Ln. 25; R.O.A. p. 103, Ln. 16 - R.O.A. p. 104, Ln. 25).

Defense Counsel never had her client examined or investigated about the Applicant's poor physical conditions as he had complained of since birth. The State used this to demean and belittle the Applicant in her closing arguments. (R.O.A. p. 304, Ln. 22 - R.O.A. p. 305, Ln. 18). There is nothing in the record that shows that Counsel investigated, researched the charge or adequately prepared for this trial. The State's weak case was not tested and Counsel was ineffective. Let us review this Law Analysis in that regard.

Law Analysis

To prove that Counsel was ineffective the Applicant must show that Counsel's performance was deficient and that there is a reasonable probability that, but for Counsel's errors, the result of the proceeding would have been different, with a "reasonable probability" being a probability sufficient to undermine confidence in that proceeding. Payne v. State, 355 S.C. 642, 586 S.E.2d 857 (2003); Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (2005).

Defense Counsel's failure to investigate her options and make a reasonable choice between them foreclosed any "strategic decision" that may have existed, specifically, that Counsel never interviewed Ritchie McSwain's contribution to a tainted out-of-Court statement made by the Applicant, used by the State as a confession. Jackson v. Herring, 42 F.3d 135 (4th Cir. 1995); See, also, Crisp v. Duckworth, 743 F.2d 580 (7th Cir. 1984). Counsel cannot articulate a valid reason for not acquiring this Officer's testimony in lieu of the Officer Gencarelli's testimony that after the Applicant's first statement of denying involvement in a sexual assault, she decided to give him a polygraph and then this Officer mysteriously appears and talks to the Applicant, whereas another statement is given admitting guilt. Counsel's conduct should be deemed ineffective. Legare v. State, 333 S.C. 275, 509 S.E.2d 472 (S.C. 1998). Reliance on a State Court record tainted by ineffective assistance of Counsel is unacceptable. Grier v. State, 299 S.C. 321, 384 S.E.2d 722 (1989).

Trial Counsel had an obligation to investigate possible methods for impeaching the prosecution's witnesses. Tucker v. Ozmint, 350 F.3d 433 (4th Cir. (S.C.) 2003). There could not have any "reasonable trial strategy" by

Issue I: Continued

Counsel's failure to adequately investigate and prepare for trial. This deficient performance cannot be deemed harmless error in this case where credibility was a key factor in the verdict. State v. Weaverling, 337 S.C. 365, 523 S.E.2d 787 (1999).

Counsel's poor performance prejudiced the Applicant from having a complete defense, a fundamentally fair trial and preserving a very strong meritorious "Miranda Violation" Issue for Appeal purposes, even if the trial was not successful. In fact, if not for Counsel's errors, there is a reasonable probability that the outcome of the proceedings would have been different. Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). Trial Counsel's failure to do basic legal research, to review the testimony of key witnesses, including that of her own client, and to be familiar with readily available documents necessary to the understanding of their client's case, constituted ineffective assistance of Counsel.

A reversal is well warranted in this case.

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Issue J: Argument

Issue J: Was Appellate Counsel ineffective for not arguing that the Trial Court erred in admitting the Applicant's statements?

Defense Counsel motioned the Court for Jackson v. Denno hearing to suppress the Applicant's Statements (R.O.A. p. 50, Ln. 3 - R.O.A. p. 109, Ln. 7). The trial court found that based on the testimony and evidence presented and after a consideration of the totality of the circumstances, the Applicant's statements were voluntary and thereby admissible (R.O.A. p. 108, Ln. 28 - R.O.A. p. 109, Ln. 4). This is a very serious error of law and abuse of discretion by the trial court for the many following reasons.

First, the trial Court was only partially correct in its analysis. The Government bears the burden of showing by a preponderance of the evidence, and by the totality of the circumstances, that a confession is voluntary. U.S. v. Lopez, 437 F.3d 1059 (10th Cir. 2006); State v. Neely, 271 S.C. 33, 244 S.E.2d 522 (S.C. 1978). By review of the record, the Government agencies in this case failed greatly in meeting their burden that the statements were voluntary. Let us review this further.

There were Four or more different Officers from the Spartanburg County Sheriff's Office that assisted each other in finally obtaining a confession from the Applicant during a very extensive interrogation lasting over six (6) hours and using outlawed techniques. (R.O.A. p. 51, Lns. 1-18; R.O.A. p. 57, Ln. 1 - R.O.A. p. 60, Ln. 20; R.O.A. p. 62, Lns. 4-19; R.O.A. p. 64, Lns. 2-8; R.O.A. p. 66, Ln. 19 - R.O.A. p. 69, Ln. 19; R.O.A. p. 74, Ln. 2 - R.O.A. p. 75, Ln. 18; R.O.A. p. 76, Lns. 1-14; R.O.A. p. 77, Ln. 7 - R.O.A. p. 80, Ln. 24; R.O.A. p. 85, Lns. 1-15; R.O.A. p. 86, Lns. 3-9; R.O.A. p. 103, Ln. 7 - R.O.A. p. 104, L. 25).

There are several factors that made the Applicant's statements involuntary and in violation of Miranda. One, is the fact that the officers gave such a very extensive and exhaustive interrogation. Secondly, the officers used the polygraph to elicit the statements. (R.O.A. p. 51, Lns. 4-16; R.O.A. p. 56, Lns. 11-14; R.O.A. p. 62, Lns. 4-13; and specifically, R.O.A. p. 65, Ln. 25 - R.O.A. p. 67, Ln. 1). Let us point out the interesting fact that neither Officer Woodcock or Gencarelli agreed that Officer Woodcock was the only officer in the polygraph room when the Applicant gave his first statement. (R.O.A. p. 56, Ln. 11 - R.O.A. p. 57, Ln. 10; compared to, R.O.A. p. 67, Lns.

Issue J: Continued

8-22). Thirdly, Officer Gencarelli testified that Applicant became upset during the very extensive interrogation and gave a second statement. (R.O.A. p. 68, Ln. 10 - R.O.A. p. 69, Ln. 10). The Applicant was also having physical problems as well. (R.O.A. p. 59, Ln. 17 - R.O.A. p. 60, Ln. 20; R.O.A. p. 99, Ln. 7 - R.O.A. p. 101, Ln. 23). Another factor and perhaps the most significant in the coercion that went into obtaining a second and inculpatory statement was that after the Applicant had become tired, upset, and angry and asked the Officers to stop. (R.O.A. p. 102, Ln. 24 - R.O.A. p. 103, Ln. 12). This happened directly after Officer Ritchie McSwain elicited information from the Applicant (R.O.A. p. 103 - R.O.A. p. 105, Ln. 4). The second statement was asserted as a confession. (R.O.A. p. 220, Ln. 3 - R.O.A. p. 221, Ln. 9). However, during the trial, the cat was let out of the bag by Officer Charity Gencarelli. Not only was the Applicant persuaded by Officer McSwain but the Applicant was never Mirandized for the second and actual statement thereafter. (R.O.A. p. 68, Ln. 25 - R.O.A. p. 70, Ln. 24; R.O.A. p. 233, Ln. 1 - R.O.A. p. 237, Ln. 11). The last factor to the involuntary confession is also revealed by Officer Gencarelli. There was a video tape of the entire interrogation process that was destroyed; obviously in bad faith. See also, (R.O.A. p. 77, Ln. 24 - R.O.A. p. 79, Ln. 22; See, specifically, R.O.A. p. 80, Ln. 3 - R.O.A. p. 83, Ln. 4; R.O.A. p. 199, Ln. 16 - R.O.A. p. 200, Ln. 7; R.O.A. p. 202, Ln. 12 - R.O.A. p. 205, Ln. 24; R.O.A. p. 236, Ln. 3 - R.O.A. p. 237, Ln. 11). It should have been quite obvious to the Trial Court that the Officers in this case were not being totally honest about this videotape, nor the voluntariness of the Applicant's statements and confession and for the Court to rule in favor of admitting them was an error of law and abuse of discretion. By the preponderance of the evidence, it is crystal clear that the Applicant's statements were certainly not voluntary and Appellant Counsel should have argued this strong meritorious Issue on Appeal. Now comes this Analysis in regards.

Law Analysis

Prior to any custodial interrogation, (that is, questioning initiated by Law Enforcement Officers after a person is taken into custody or otherwise deprived of his freedom in any significant way), the person must be warned:

Issue J: Continued

(1) That he has a right to remain silent; (2) That any statement he does make may be used against him; (3) He has the right to the presence of an attorney; (4) that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.

Unless and until these warnings or a waiver of these rights are demonstrated at the trial, no evidence in the interrogation may be used against the accused. Miranda v. Arizona, 384 U.S. 436, 444, 478, 479, 86 S.Ct. 1602, 1612, 1630, 16 L.Ed.2d 694 (1966). There was no warning or waiver given by the Law Enforcement Officers before the second interrogation and statement. (R.O.A. p. 68, Ln. 25 - R.O.A. p. 70, Ln. 24; R.O.A. p. 233, Ln. 1 - R.O.A. p. 237, Ln. 11). Therefore, the statement could not be voluntary.

Furthermore, involuntary confession is one induced by hope, promise, fear, violence, torture, or threat. Lyons v. State, 140 P.2d 248. A voluntary confession is one made spontaneously by a person accused of a crime, free from the influence of any extraneous disturbing case, (e.g. Officer Ritchie McSwain's disturbance prior to the Applicant's second statement used as a confession), and in particular, not influenced, or extorted by violence, threats, or promises. A voluntary confession is the product of an essentially free and un-constrained choice by its maker. Interest of Ruth, 239 Pa.Super. 453, 360 A.2d 922, 923; and is made with full knowledge of the nature and consequences of the confession. Martinez v. State, Okl. Cir. 496 P2d 416, 421. Waivers of Constitutional rights not only must be voluntary, but must be knowing and intelligent acts done with sufficient awareness of the relevant circumstances and its likely consequences. Gibson v. State, 514 S.E.2d 320 (1999), and See: Gustine v. State, 325 S.C. 123, 127-28, 480 S.E.2d 444, 446 (1997). It should be obvious that the Applicant did not knowingly or intelligently waive his Miranda rights to the second statement (confession) as Officer Gencarelli never acquired one from the Applicant.

For a confession to be voluntary, and thus admissible, the Government must prove by a preponderance of the evidence that his will was not overborne and that the confession was the product of a rational intellect. In resolving this Issue, the Court must consider the totality of the circumstances. U.S. v. Babb, 448 Supp. 794 (D.C.S.C. 1978); Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Due process requires inquiry into whether the Defendant's will was overborne by the circumstances surrounding the giving of the confession.

Issue J: Continued

Dickerson v. U.S., 530 U.S. 428, 120 S.Ct. 2326, 147 L.Ed2d 405 (2000). It should have been quite obvious to any prudent mind that there were circumstances existing that established that the Applicant's will had been overborne and his capacity for self-incrimination was critically impaired. State v. Crawley, 349 S.C. 459, 562 S.E.2d 683 (S.C. App. 2002). The Applicant was crying and sobbing and asking them to leave him alone; Officer Mcswain telling Applicant, inbetween the first and second interrogation, to tell the truth; the destroying of the tape; and the very extensive interrogation process of six (6) hours or longer was coercive and overreaching and overborne the accused's will and caused the confession, thereby making it involuntary. Hill v. Anderson, 300 F.3d 679 (6th Cir. 2002). Furthermore, when the Applicant cried for Officer Gencarelli to leave him alone, Miranda required her to scrupulously honor that request and to stop the interrogation. Michigan v. Mosley, 423 U.S. 96, 104 (1975); Davis v. U.S., 512 U.S. 452 (1994); State v. Reed, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998).

Interrogation is the expressed questioning, or its functional equivalent which includes words or actions on the part of the police...that the police should know are reasonably likely to elicit an incriminating response. Rhode Island v. Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 1690 (1980). The police very well should have known their actions here would reasonably likely elicit an incriminating response from the Applicant. State v. Binney, 362 S.C. 353, 608 S.E.2d 418 (S.C. 2005). In fact, it was obvious that the Law Enforcement Officer was not willing to settle with Applicant's first "exculpatory" statement as they would not let up until he gave a confession in violation of Miranda v. Arizona, cf. State v. Council, 335 S.C. 1, 515 S.E.2d 508, 516 (1998). By the preponderance of the evidence and totality of the circumstances, the Applicant's confession was not voluntarily made. Here, there could be no affirmative finding that the alleged statements were voluntarily contained under Miranda and therefore, there was no implicit recognition that Miranda had been complied with in regard to them. State v. Evans, 354 S.C. 579, 582 S.E.2d 407 (2003). The alleged statements were admitted into evidence in violation of Miranda. Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880 (1981).

For these reasons, the Trial Court's failure to suppress the alleged

Issue J: Continued

statements constituted legal error that shifted the burden of proof unto the Applicant and prejudiced the Applicant at trial because the State used them extensively throughout and during closing arguments to inflame the Jury's passions and biases to receive an easy guilty verdict. State v. Evans, 354 S.C. 579, 582 S.E.2d 407 (2003); Oregon v. Elstad, 105 S.Ct. 1285 (1985).

Defense Counsel was correct for her grounds to exclude the Applicant's statement because they were not voluntarily made. In fact, she made sure that this Issue was well preserved for Appellate review and she made contemporaneous and renewed objections throughout. (R.O.A. p. 216, Lns. 10-13; R.O.A. p. 220, Lns. 3-12; R.O.A. p. 245, Lns. 9-13). This was a very serious error here and Appellate Counsel was certainly ineffective for not bringing this Issue on Appeal. This Issue consisted of a very strong arguable basis in law and fact. It stood an excellent opportunity for success on Appeal. McLean v. U.S., 566 F.3d 391, 399 (4th Cir. 2009); See also, Neitzke v. Williams, 490 U.S. 319, 325 (1989). This was not at all a logical strategic or tactical decision by Appellate Counsel to overlook such a strong Issue for appeal. Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988). Appellate Counsel had a duty to argue this meritorious issue in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S.Ct. 746, 765, 145 L.Ed.2d 750 (2000); Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). Applicant was entitled to more effective assistance of Counsel on Appeal. Evitt v. Lucey, 469 U.S. 387 (1985).

Appellate Counsel's decision not to bring this vital Issue on Appeal prejudiced the Applicant from receiving a fundamentally fair proceeding. Counsel's performance was deficient. Gilchrist v. State, 364 S.C. 473, 612 S.E.2d 702 (S.C. 2005). If not for counsel's error here, there is a reasonable probability that the outcome of the Appeal proceedings would have been different. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 at 836 (1999); quoting, Strickland v. Washington, 466 U.S. 668 (1984).

The appropriate remedy for ineffective assistance of Appellate Counsel is reversal for a new trial. Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (S.C.2001).

A new trial is required in this case.

Issue K: Argument

Issue K: Was Appellate Counsel ineffective for not arguing the Directed Verdict Issue on Appeal?

At the end of the State's presentation, Defense Counsel Motioned the Court for a directed verdict because the State failed to establish evidence proving that a sexual battery occurred on the dates alleged in the indictment. Counsel was correct, in fact, the State never proved the date of occurrence altogether. The State argued that Kathy Perry took the alleged victim to stay with her in August, 2002 and that's when she began to disclose. Actually, she never disclosed to any specific date nor was there any competent evidence given to support that the Applicant performed a sexual battery upon the alleged victim at any date. The Court denied the Motion. Counsel renewed her previous objections. (R.O.A. p. 244, Ln. 4 - R.O.A. p. 245, Ln. 13). Counsel again renewed the Motion for a directed verdict on the charge, preserving the issue for further review. Again, the Trial Court denied the Motion. This was an error by the Court and Appellate Counsel was ineffective for not bringing this non-frivolous issue on appeal. Let us review further.

The State's first witness was the alleged victim to a sexual assault occurring between May 1, 2001 and August 31, 2002. MINOR the Applicant's daughter and alleged victim, has a condition of being severely developmentally delayed. (R.O.A. p. 122, Lns. 10-16). MINOR entire testimony was too incredible to prove the elements of a sexual battery occurring at any particular date. (R.O.A. p. 127 - R.O.A. p. 134, Ln. 2). The State's two Expert's could not give any scientific evidence or otherwise of any probative value tending to prove that a sexual battery occurred on any particular date by the Applicant. In fact, they could not even understand what the alleged victim was saying. (R.O.A. p. 157, Lns. 10-20; R.O.A. p. 165, Ln. 17 - R.O.A. p. 166, Ln. 21; and See, R.O.A. p. 173, Ln. 11 - R.O.A. p. 174, Ln. 8; R.O.A. p. 179, Ln. 18 - R.O.A. p. 180, Ln. 25; R.O.A. p. 185, Lns. 1-9). Actually, the State prosecutor had misrepresented the facts to the Court in regards to MINOR disclosing to Kathy Perry. According to Kathy's testimony the alleged victim grabbed her boyfriend's penis and said "suck". (R.O.A. p. 140, Ln. 7 - R.O.A. p. 142, Ln. 19). Let us point out that her boyfriend, as well as a host of others, were suspects of sexual assault of

Issue K: Continued

Taylor, but just like the Applicant, it was only accusations without proof (mere suspicion). See (Attachments A through).

The State introduced a statement that was used as a confession by the Applicant of guilt. (It is the Applicant's position, that this statement was not voluntary and was in violation of Miranda and it should have been excluded: See Issue: J). However, this statement did not expressly indicate or admit to a sexual assault upon Taylor at any date; nor did it give any specifics as to anything happening. See: (R.O.A. p. 220 - R.O.A. p. 221, Ln. 9) and See: (R.O.A. p. 222, Lns. 11-15).

There was no credible evidence produced by the State here, that tended to prove the crime charged, specifically any date of assault and the Court erred in not granting the directed verdict. Further, Appellate Counsel had this well preserved issue before them and chose not to bring it on appeal. There is a reasonable probability that if Appellate Counsel argued this issue in this light, it would have yielded success and a new trial. Counsel was ineffective for not doing so. Now comes this Law Analysis in regards.

Law Analysis

The evidence presented does not, at all, prove the allegations of the indictment and the Trial Court should have granted a directed verdict by the facts, if any, presented. State v. McKnight, 352 S.C. 635, 642, 576 S.E.2d 168, 171 (2003); State v. Brown, 103 S.C. 437, 88 S.E. 21 (1916). The State's evidence in this case was far from being overwhelming, even with the Applicant's statements. In fact, there was not any clear and convincing evidence that a sexual assault even occurred, nevertheless did the State prove the date of any sexual assault by the Applicant. The fact of a Criminal Sexual Conduct occurring between May 1 and August 31, 2002 was not proven by any relevant competent evidence having a legitimate tendency to support the accusation. State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (S.C. 1989).

If there is any direct or circumstantial evidence reasonably tending to prove the guilt of the accused, the Court must find the case is properly submitted to the Jury. State v. Harris, 351 S.C. 643, 653, 572 S.E.2d 267, 273 (2002). There was no reasonable evidence tending to prove guilt or that guilt maybe fairly and logically deduced. See, State v. Pinckney, 339 S.C. 346, 349,

Issue K: Continued

529 S.E.2d 526, 527 (2000). An extra-judicial confession standing alone cannot constitute proof that a sexual assault occurred on the dates alleged. The State must produce proof of the corpus delicti from a source other than the out-of-court confession of a defendant. State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1987). It is not clear if the State presented enough evidence of corpus delicti of the crime charged, however, the State failed to produce evidence of the offense charged within the indictment and the Applicant was entitled to a directed verdict. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 31 (2001); State v. Padgett, 354 S.C. 268, 271, 580 S.E.2d 159, 161 (2003); State v. Perry, 358 S.C. 633, 595 S.E.2d 883 (2004).

The Trial Court erred and the conviction on the charges should have been reversed on Appeal because of the State's failure to establish these critical essential elements of the crime charged beyond a reasonable doubt. State v. Heath, 370 S.C. 326, 635 S.E.2d 18 (2006); In re Winship, 397 U.S. 158 (1970). However, due to Appellate Counsel's overlooking this vital issue, the Applicant was unable to have an opportunity for that reversal. Further, the Trial Court should have granted a directed verdict where the evidence presented merely raised conjecture, speculation, and suspicion as to the essential elements of the charge in this case. State v. Horne, 324 S.C. 372, 379, 478 S.E.2d 289, 293 (1996); State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004); State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 452 (1984). "Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Hyder, 242 S.C. 372, 131 S.E.2d 96 (1963); State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004). Suspicion, however strong, is not enough to sustain this conviction. State v. Lyles-Gray, 328 S.C. 458, 492 S.E.2d 802 (1997); Sellers v. State, 362 S.C. 182, 607 S.E.2d 82 (2005). The evidence presented by the State does not support the conviction here. State v. Bethea, 120 S.E.2d 239 (1923); State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004).

The scenario of the facts presented do not support a logical or reasonable hypothesis of guilt arising from the doctrine of chances that the facts charged are likely to be true. State v. Manis, 214 S.C. 99, 51 S.E.2d at 371 (1949); State v. Martin, 340 S.C. 597, 533 S.E.2d 572 (2000); State v. Sweat, 70 S.E.2d 234 (1952). The Trial Court is not required to find that the

Issue K: Continued

evidence inferred guilt to the contrary of any other reasonable hypothesis. Cherry, 361 S.C. at 594, 606 S.E.2d at 478. Furthermore, the State failed to prove its Case-in-Chief by the evidence presented of every essential element of the crimes charged beyond a reasonable doubt by any clear or convincing credible evidence. Evans-Smith v. MINOR 19 F.3d 899, 906 (4th Cir. 1994); Fiore v. White, 121 S.Ct. 712 at 714 (2001).

Defense Counsel was correct on the grounds for a directed verdict. Trial Court committed reversible error and Appellate Counsel was ineffective for not arguing this Issue on Appeal. The Directed Verdict Issue certainly consisted of a strong arguable basis in law and fact. It also stood an excellent chance for success, maybe more so than the Issue Appellate Counsel argued on Appeal. McLean v. U.S., 566 F.3d 391, 399 (4th Cir. 2009); See, also, Neitzke v. Williams, 490 U.S. 319, 325 (1989). For Appellate Counsel to overlook this Directed Verdict that would have have at least made the odds more in favor of a successful appeal, rather than just bringing the one issue on appeal, was not at all a logical strategic or tactical decision. Stone v. State, 294 S.C. 286, 363 S.E.2d 903 (1988). Appellate Counsel has a duty to argue the meritorious issues in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S.Ct. 746, 756, 145 L.Ed.2d 756 (2000); Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). Applicant was entitled to more effective assistance on Appeal. Evitt v. Lucey, 469 U.S. 387 (1985).

Appellate counsel's decision not to argue this vital and meritorious issue on Appeal prejudiced the Applicant from receiving a fundamentally fair proceeding. Counsel's performance was deficient. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (S.C. 2005). Furthermore, Appellate Counsel was ineffective and Applicant was inherently prejudiced by Counsel's poor performance. If not for Counsel's error here, there is a reasonable probability that the outcome of this Appeal proceedings would have been different. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 at 836 (1999); gouting, Strickland v. Washington, 466 U.S. 688 (1984). The appropriate remedy for ineffective assistance of Appellate Counsel is reversal for a new trial. Ezell v. State, 345 S.C. 312, 548 S.E.2d 852 (S.C. 2001).

A new trial is required in this particular case.

Conclusion

For the legal reasons and principles cited in this Post-Conviction Relief Application, with an Initial Brief, the conviction and sentence should be vacated, reversed for a new trial, or a judgement of acquittal entered.

Respectfully submitted,

Giles Belcher

Giles Belcher #289817
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STATE OF SOUTH CAROLINA

County of Spartanburg

IN THE COURT OF COMMON PLEAS

Case No.: 2007-GS-42-1673

C/A No.: _____

Giles Belcher, 289817, ... Applicant,

VS.

State of South Carolina, ... Respondent.

Motion To Address All Issues

Now comes the Applicant, Giles Belcher #289817, by and through his court appointed attorney, who ask this Honorable Court to require the attorneys involved in this Post-Conviction Relief Action and any amendment thereof to be meticulous in the preparation of any Order prepared in this matter.

Specifically, the Applicant request that each and every Issue in the Post-Conviction Relief Application and any amendment thereof, at the hearing, be addressed in the order of the Court at the conclusion of the Evidentiary Hearing in this matter.

The Applicant request this Motion pursuant to S.C. Code Ann. §17-27-80. Citing Pruitt v. State, 423 S.E.2d 127 (S.C. 1992); Bryon v. State, 493 S.E.2d 500 (1997).

Wherefore, the Applicant request this Motion be granted.

Sworn to and Subscribed before me
this 26th day of January 2011.

Susan H. Frye (L.S.)

Notary Public for South Carolina

My Commission Expires: _____

Respectfully submitted,

Giles Belcher

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STATE OF SOUTH CAROLINA
County of Spartanburg

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State of South Carolina, ... Respondent.

Certificate Of Service

I, the Applicant in the above captioned matter, do hereby under oath and penalty of perjury, certify that I have served copies of the same documents upon the below listed parties upon the below notarized date.

Mr. Henry D. McMaster
Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549

Ms. M. Hope Blackley
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, S.C. 29304-3483

Sworn to and Subscribed before me
this 31 day of January, 2011.

Susan H. Frye (L.S.)
Notary Public for South Carolina
My Commission Expires: March 15, 2018

Respectfully submitted,

Giles Belcher
Giles Belcher #289817
B.R.C.I. Congaree, 239
4460 Broad River Road
Columbia, S.C. 29210

FILED
CLERK OF COURT
SPARTANBURG COUNTY
JAN 31 AM 11:43
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMONS PLEAS
CASE NO: 2011-CP-42-462

Giles Belcher SCDC# 289817,
Applicant,

AMENDMENTS TO
POST CONVICTION
RELIEF APPLICATIONS

vs.

THE STATE OF SOUTH CAROLINA,
Respondent.

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

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SPARTANBURG COUNTY
2011 JUN 22 PM 12:49
MICHELE B. CACKLEY

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

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M. HOPE LACKLEY

15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were or whether or not I understood exactly what the term "criminal" element" actually meant.
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with

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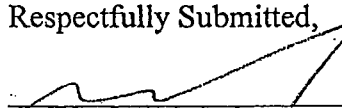
any adversarial litigation.

27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,


 Rodney Richey
 Richey and Richey, P.A.
 Post Office Box 10916
 Greenville, South Carolina 29606
 Attorney for the Applicant

June 21, 2011

MSHOPE BLACKLEY

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 SPARTANBURG COUNTY

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Giles Belcher SCDC# 289817,)

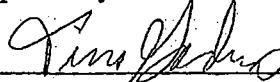
vs.)

THE STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMONS PLEAS
CASE NO: 2011-CP-42-462**AFFIDAVIT OF SERVICE**

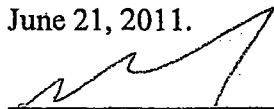
I certify that I have served the PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on June 21, 2011, addressed to their attorney of record, Suzanne White, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:



Tina Garduno, paralegal
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603

Sworn to before me on
June 21, 2011.



Notary Public of South Carolina

My Commission Expires: 2/18/12

FILED
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SPARTANBURG COUNTY
2011 JUN 22 PM 12:49
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

County of SpartanburgIn the Court of Common Pleas
Amended; 2011-CP-42-0462Giles Belcher, #289817
Full name and prison number (if any) of Applicant.

vs.

State Of South Carolina
Name of Respondent.APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken *in forma pauperis*, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Broad River Corr. Inst., 4460 Broad River Rd,
Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Spartanburg County Court of
General Session, Spartanburg, S.C. 29306
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-GS-42-1673, CSC with Minor, First
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 8, 2007, 30 years
 - (b) _____
 - (c) _____

5. 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 _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court Of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. February 8, 2010

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2011-UP-112

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance Counsel

(b) Denied Fundamentally Fair Trial and Defense

(c) Prosecutorial Misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See Amended Brief In Support Of Amended Application

(b) 1) 1) 1) 1) 1) 1) 1) 1)

(c) 1) 1) 1) 1) 1) 1) 1) 1)

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) First time raised and Non-appealable Issues

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(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? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

i. Kathleen J. Hodges, of the Spartanburg County Public Defenders Office, Spartanburg, S.C. 29303

ii. M. Celia Robinson, Appellate Defender, Office of Appellate Defense, Columbia, S.C. 29211-1549

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing

ii. Appeal

iii. _____

18. State clearly the relief you seek in filing this application.

Vacated or reversed for a new trial

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of Spartanburg

VERIFICATION

I, Giles Belcher, # 289817, 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.

Giles Belcher #289817

SWORN to and subscribed before me this 26

day of Jan19 2012

Eugene Keith (L.S.)
Notary Public

My Commission Expires:

My Commission Expires April 4, 2016

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Giles Belcher, # 289817, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Giles Belcher #289817
Applicant

SWORN or affirmed to and subscribed before me this

26day of Jan19 2012

Eugene Keith
Notary Public

My Commission Expires My Commission Expires April 4, 2016

COPY

FORM 5

Original
Amended

STATE OF SOUTH CAROLINA

County of SpartanburgGiles Belcher #289817

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

Amended; 2011-CP-42-0462

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
SPARTANBURG COUNTY
MAR 28 PM 3:51
HOPE BLACKLEYINSTRUCTIONS - 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 Broad River Corr. Inst., 4460 Broad River Rd., Columbia, S.C. 29210
2. Name and location of Court which imposed sentence Spartanburg County - Court of General Session, Spartanburg, S.C. 2930
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) 2007-GS-42-1677

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 8, 2007 30 years
- (b) _____
- (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (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. South Carolina Court of Appeals
- ii. _____
- iii. _____

(b) the result in each such Court to which you appealed:

- i. Appeal dismissed
- ii. _____
- iii. _____

(c) the date of each such result:

- i. February 8, 2010
- ii. _____
- iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Unpublished Opinion No. 2011-UP-112
- ii. _____
- iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

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SPARTANBURG COUNTY
2012 MAR 28 PM 3:51
M. JOE BLACKLEY

(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
 (b) Denied Fundamentally Fair Trial and Defense
 (c) Prosecutorial Misconduct

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Amended Brief in support of Amended Application
 (b) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 (c) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-conviction 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. N/A
 ii. _____
 iii. _____
 iv. _____

- (b) the name and location of the Court in which each was filed:

- i. N/A
 ii. _____
 iii. _____

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 JEFFERSON COUNTY
 2012 MAR 28 PM 3:51
 M. HOPE BAILEY

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each disposition:

i.

ii.

iii.

iv.

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SPRINGBURG COUNTY
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M. HOPE BLACKLEY

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) First time raised and non Direct appealable issues.
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (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? NO

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 SPARTANBURG COUNTY
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 M. DEBBIE BACKLEY

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. Kathleen J. Hodges, of the Spartanburg County Public Defenders Office, Spartanburg, S.C. 29303
 ii. M. Celia Robinson, Appellate Defender, Office of Appellate Defense, Columbia, S.C. 29211-1589
 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:

Vacated or reversal for a new trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 MAR 28 PM 3:56
M. HOPE BLACK

I, Siles Belcher #289817

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.

Siles Belcher #289817

SWORN to and subscribed before me this 28
day of Feb 2012.

Eugene Keck (L.S.)
Notary Public

My Commission Expires: My Commission Expires April 4, 2018

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Giles Belcher # 289817, 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.

Giles Belcher
Applicant

SWORN or affirmed to and subscribed before me this
28 day of Feb, 2017

Eugene Keoff
Notary Public

My Commission Expires: My Commission Expires April 4, 2016

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SPARTANBURG COUNTY
2017 FEB 28 PM 3:51
M. HOPE B. CCKLEY

State Of South Carolina
County Of Spartanburg

In The Court Of Common Pleas
C/A No: Amended 2011-CP-42-0462

Giles Belcher, 289817,

Applicant,

VS,

State Of South Carolina,

Respondent.

Amended Brief Of Applicant

FILED
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SPARTANBURG COUNTY
2012 MAR 28 PM 3:52
M. HOPE BLACKLEY

Submitted This 26 Day Of January, 2011.

Respectfully Submitted,

Giles Belcher #289817

Giles Belcher #289817

B.R.C.I., Congaree 235

4460 Broad River Road

Columbia, S.C. 29210

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Sabbachak, Celebrezze, 345 F.2d 509 (4th Cir. (S.C.) 1965)		<u>20</u>
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M. HOPE BLACKLEY

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SHERIFF'S OFFICE
BURG COUNTY

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M. HOPE BLACKLEY

2012 MAR 28 PM 3:52

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CLERK OF COURT
SPARTANBURG COUNTY

Issues Presented

Issue A: Was Trial Counsel ineffective in failing to object to the hearsay and bolstering testimonies which corroborated the alleged victim's testimony as being true?

Issue B: Was Applicant denied a fundamentally fair Trial and a complete defense in violation of the Six and Fourteenth Amendments to the U.S. Constitution?

Issue C: Did the Solicitor commit Prosecutorial Misconduct pursuant to the Donnelly v. DeChristoforo Standard of due process?

FILED
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SPARTANBURG COUNTY
MAR 28 PM 3:52
HOPE BLACKLEY

Statement Of The Case

The Applicant was indicted by the Spartanburg Grand Jury for Criminal Sexual Conduct With A Minor. Applicant proceeded to trial on May 7, 2007, before the Honorable J. Derham Cole and a Jury, whereas the Jury found him guilty as charged and Judge Cole sentenced him to thirty (30) years confinement. The Applicant was represented by Kathleen J. Hodges, Esquire, from the Spartanburg County Public Defenders Office, while the State was represented by Susan Shaver Reese and Jennifer A. M. Jordan, Esquire, from the Spartanburg County Solicitors Office.

An Appeal was filed and perfected by M. Celia Robinson, Appellate Defender, from the Division of Appellate Defense. The Appeal was dismissed on February 8, 2010. Applicant then filed a Post-Conviction Relief Application, with Initial Brief and Motion In Support Of on January 31, 2011. Now Comes this Amendment to C/A NO: 2011-CP-47-04.

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Issue A: Argument

Issue A: Was Trial Counsel ineffective in failing to object to the hearsay and bolstering testimonies which corroborated the alleged victim's testimony as being true?

The State alleged Applicant committed a sexual battery upon a minor under the age of eleven at the time of the occurrence. The Solicitor informed the Jury during Open Statements that the alleged victim was severely developmentally delayed. (ROAp. 122, Lns. 10-16). Defense Counsel argued to the Jury that State's Case lacked any physical evidence or testimony that the alleged victim was involved in any therapy prior to 2003; thereby, making the allegations the Indictment of a CSC occurring between May 1, 2001 through August 31, 2002 untrue. (ROAp. 125).

The alleged victim's entire testimony was too incredible to prove the essential elements of a sexual battery or if there was occurrence at all. (ROAp. 127, Lns. 5, 6; ROAp. 128, Lns. 3-11; ROAp. 133, Ln. 13-ROAp. 134, Ln. 2). The Solicitor elicited out-of-court statements from three (3) witnesses as to what was said by the alleged victim and her Mother. The State relied upon the corroborating hearsay testimonies of Kathy Perry and two (2) Experts to bolster and rehabilitate the alleged victim's confusing testimony as the truth and fact of a sexual battery occurring with the Applicant. Otherwise, the State's case would have been seen by the Jury as weak and lacking of evidence of every element of the charged

Issue A: Continued

offense beyond a reasonable doubt.

The State relied heavily upon the prejudicial effect of the corroborating hearsay testimony of Kathy Perry of three (3) suspicious instances of what the alleged victim had said, as well as hearsay from the alleged victim's Mother that was used to corroborate the alleged victim's testimony by giving explicit details of a sexual assault upon the alleged victim by the Applicant. (ROAp. 139, Ln. 11-ROAp. 140, Ln. 25; ROAp. 141, Ln. 23-ROAp. 142, Ln. 2). This Witness also gave hearsay testimony about what was said by an unidentified D.S.S. Worker. (ROAp. 142, Lns. 3-11)

The State, then, used the prestige of two (2) State Experts to impermissibly bolster a sexual battery with their corroborating hearsay testimony as to disclosures by the alleged victim of assault. First, Meredith Thompson Loftis, was called by the State as an expert witness that the D.S.S. had referred the alleged victim to her for assistance in this case. Ms. Loftis testified that the alleged victim had communicated disclosures of sexual abuse. (ROAp. 163, Ln. 2-ROAp. 164, Ln. 6). She further testified that the alleged victim had every single symptom of a child that had suffered sexual abuse by a biological parent (Applicant) by her disclosures. (ROAp. 164, Ln. 10-ROAp. 167, Ln. 10).

Dr. Nancy N. Henderson, a pediatrician with the Greenville Hospital System, was qualified as an expert in the field of child sexual abuse diagnosis and treatment. (ROAp. 176, Lns. 1-3; ROAp. 178, Lns. 6-17). Dr. Henderson testified also of disclosures shared to her by the alleged victim about the sexual abuse.

Issue A: Continued

(ROAp.179, Lns. 2-13). After her exam and the disclosed information revealed by the alleged victim, Driftenderson stated her findings were consistent with a report of a sexual battery (penetration). (ROAp.182, Lns. 1-4; ROAp.183, Ln. 23-ROAp.184, Ln. 5). The disclosed information given to Driftenderson by the alleged victim was no more cleverly disguised corroborative hearsay bolstering that a sexual battery had occurred. See, (ROAp.178, Ln. 21-ROAp.179, Ln. 1). There was a great deal of hearsay in regards to a sexual battery, in detail, by the Applicant upon the alleged victim in this case. These testimonies by the State's Witnesses was used by the State to impermissibly bolster their, otherwise, weak case and shifted the burden of proof onto the Applicant. The Applicant had no opportunity to rebound from these shots alone. This was certainly ineffective assistance of Counsel. Now, let us review this legal analysis in that regard.

Law Analysis

In Jolly v. State, the Supreme Court found Trial Counsel ineffective for failing to object to the Social Worker's testimony that the child victim had discussed her sexual abuse by Jolly. 314 S.C. 1720, 443 S.E.2d 566, 568 (1994). The Court reversed the PCR Court's denial of relief after there was a "reasonable probability" that the Social Worker's testimony affected the outcome of Jolly's Trial. Id. at 214, 33 S.E.2d at 569.

Under Rule 80(d)(1), SCRE, corroborative witness testimony is limited to time and place of the alleged assault.

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Issue A: Continued

The Corroborative testimony cannot include "details or particulars" regarding the assault. Dawkins v. State, 346 S.C. 151, 156, 551 S.E.2d 260, 262. Here, the Supreme Court found Trial Counsel ineffective for failing to object to the admission of inadmissible corroborative hearsay and this error fell below an objective standard of reasonableness. Id. at 156, 551 S.E.2d at 263. Furthermore, the Court disagreed with the PCR Court's finding that no prejudice had resulted from the corroborative testimony, because Petitioner was prejudiced by Counsel's deficient performance because improper corroboration testimony that is mere cumulative to the victim's testimony cannot be harmless.... "It is precisely this cumulative effect which enhances the devastating impact of improper corroboration." Id. at 156-57, 551 S.E.2d at 263 (quoting Jolly, 314 S.C. at 21, 443 S.E.2d at 569). Here, in this case, the corroboration had the cumulative effect which bolstered (enhanced) the unreliability of the alleged victim's testimony, specifically, where as the alleged victim was much younger and more difficult to understand at the time of the out-of-court statements than she were at trial.

Hearsay statements are admissible where the statements bear adequate indicia of reliability. "Reliability" for admission of "hearsay" statements can be inferred where they fall within firmly rooted "hearsay" exception. The Rule against hearsay prohibits the admission of evidence of an out-of-court statement to prove the truth of the matter asserted unless an exception to the rules apply. Rule 803, S.C.R.E.

Issue A: Continued

There was no exception to the Rule nor was there any indication given to the reliability of the out-of-Court corroborating statements. There was no reliability met in this case to allow for the admission of the statements. See State v. Burndette, 335 S.C. 34, 515 S.E.2d 525 (S.C. 1999); State v. Dinkins, 339 S.C. 597, 529 S.E.2d 557 (S.C. App. 2000).

Trial Counsel did not have a valid strategic reason for not objecting to the impermissible hearsay because testimony of the three (3) witnesses relaying what the alleged victim told them regarding her alleged sexual abuse to bolster her credibility. The improper corroboration of the alleged victim's allegation of sexual abuse by several witnesses had a "devastating impact" on the Applicant's Trial. Dawkins, 346 S.C. at 157, 551 S.E.2d at 263. In Dawkins, four witnesses testified without objection regarding the victim's out-of-Court conversations with them the alleged abuse, and each witness repeated the victim's identification of Dawkins, as the perpetrator. Id. at 154, 551 S.E.2d at 261. Let us point out here, in this case there was a pretrial in-camera Motion concerning the other possible perpetrators (Issac Stewart, Darryl and Jerron Riddle). The Court ruled that those alleged disclosures by the alleged victim would be excluded. (ROAp. 41-ROAp. 49, Ln. 13) Therefore, there can be no doubt that the State's witnesses testimonies could not have been suggesting anyone other than the Applicant as the perpetrator of alleged ~~the~~ sexual abuse.

Issue A: Continued

If not for Defense Counsel's error here, there is a reasonable probability that the outcome of this proceeding would likely have been different. Tucker V. Ozmint, 350 F.3d 433 (4th Cir. (S.C.) 2003). Counsel's failure to object to the poisonous hearsay testimonies rendered the trial fundamentally unreliable. The State's case was not put to any meaningful adversarial test here. Counsel could not have been any more ineffective in this case, even if she had tried to be. Strickland V. Washington, 466 U.S. 668 (1984).

This case should be reversed for a new trial.

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Issue B: Argument

Issue B: Was Applicant denied a fundamentally fair trial and a complete defense in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution?

I. Favorable and Exculpatory Evidence Withheld From The Defense

There was a pre-trial In-Camera Motion Hearing regarding disclosures made of other possible perpetrators (Issue Stewart, Darryl and Jerry Riddle). The Court ruled that these alleged disclosures by the alleged victim would be excluded. (ROAp. 41-ROAp. 49, Ln. 13). There was a Jackson V. Denno hearing also held in this case in regards to Applicant's statement. There were several factors making these statements involuntary. First, the Officers drolled the Applicant with a very extensively exhaustive interrogation while, secondly, the Officer used a Polygraph to break his will and over bore his better judgment to elicit the involuntary statements (ROAp. 50, Ln. 3-ROAp. 104, Ln. 25). There was a videotape of this entire interrogation process, including the polygraph tests. This videotape was withheld from the defense or destroyed by the State, obviously in bad faith. See, (ROAp. 77, Ln. 24-ROAp. 79, Ln. 25) specifically, ROAp. 80, Ln. 3-ROAp. 83, Ln. 4; ROAp. 199, Ln. 16-ROAp. 200, Ln. 27; ROAp. 205, Ln. 24; ROAp. 236, Ln. 3-ROAp. 237, Ln. 11).

The excluded and withheld evidence here tended to make it less probable the Applicant as the perpetrator of the alleged sexual assault or it could have proven him innocent of the sexual assault altogether. It is well settled that evidence is relevant and should be admitted if it tends to establish or make more or less probable some matter in issue and to bear directly or indirectly thereon. The evidence

Issue B. Continued

need not be sufficient in itself to establish the whole or any portion of a party's contention, State v. Finley, 300 S.E.2d 196, 199, 387 S.E.2d 88, 89 (S.C. 1989). This excluded evidence critically wounded the Applicant's ability to challenge the State's weak case and the incredible and incompetent evidence adduced from the testimony of the State's witnesses (These testimonies will be discussed further within this Issue). Not only was the Applicant highly prejudiced by this withholding of evidence during trial, his efforts in obtaining DVD's of the actual interviews of disclosures made by the alleged victim of sexual batteries and other possible perpetrators have been futile. See (Attachments A-C).

2. Incredible and Incompetent State's Evidence Allowed At Trial

We argued within Issue A of this "Initial Brief" the State's use of the many hearsay statements in this case. However, there were so many other prejudicial statements testified to by the State's witnesses which violated the Rules of Evidence, or otherwise lacked the reliability necessary to be considered as credible or competent evidence to prove any matter at issue in this case. Let us review further.

The alleged victim was unable to provide any competent evidence of a sexual battery being committed by the Applicant because of disabling condition of "developmentally delayed". Her testimony was confusing at best. (RO Ap. 127, Lns. 5-6; RO Ap. 128, Lns. 3-11; RO Ap. 133, Ln. 13-RO Ap. 134, Ln. 2). As the State relied heavily upon corroborative hearsay testimony from Kayla Kathy Perry and two Experts to establish a sexual battery from the alleged victim and her Mother, they also relied just as heavily

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Issue B, Continued

We should review the following Trial page lines in regard (ROAp.139, Ln.11-ROAp.140, Ln.25; ROAp.141, Ln.23-ROAp.142, Ln.2; ROAp.163, Ln.2-ROAp.164, Ln.6; ROAp.164, Ln.10-ROAp.167, Ln.10; ROAp.179, Lns.2-13; ROAp.178, Ln.21-ROAp.179, Ln.1; ROAp.182, Lns.1-4; ROAp.183, Ln.23-ROAp.184, Ln.5). Let us note, Pediatrician, Dr. Nancy Henderson determined, from her physical exam of the alleged victim, the exam was normal for a female her age with no physical damage to her vagina or rectum areas (ROAp.180, Lns.6-25), yet, she further claimed her exam to be consistent with penetration (ROAp.183, Ln.2-ROAp.184, Ln.4). Where is the reliability here?

Department of Social Services Supervisor, Angela Talley Robinson stated she interviewed the Applicant and his wife about allegations of sexual abuse. She also claimed to have talked to the alleged victim on October 4, 2002, when she made a disclosure (ROAp.187, Ln.10-ROAp.188, Ln.7). Ms. Robinson also testified to statements made by Applicant that were used as tantamount to a confession and/or bad character evidence to suggest to the jury that the Applicant was a bad lying perpetrator of the alleged crime, as well as ridiculing the Applicant without verification of whether he did have the serious illnesses in which had complained of having during her interview. Even if these statements were not in violation of Miranda, they were certainly used to show bad character evidence in violation of Rules 403, 404, and 608, S.C.R.E. (ROAp.186, Ln.23-ROAp.189, Ln.14). Officer Charity Geniarelli testified to more of the same (ROAp.225-ROAp.229).

Issue B: Continued

None Of the State's many Witnesses were able to produce any competent scientific or otherwise evidence with any reliability or probative value proving a sexual battery had occurred as the State alleged. In fact, these Witnesses could not understand what the alleged victim was saying. (ROAp. 157, Lns. 10-20; ROAp. 165, Ln. 17 - ROAp. 166, Ln. 21; and See: ROAp. 173, Ln. 11 - ROAp. 174, Ln. 8; ROAp. 179, Ln. 18 - ROAp. 180, Ln. 25; ROAp. 185, Lns. 1-9). After review of these testimonies, it is crystal clear they were inconsistent to each other, as well as the product of second, third, quadruple etc., information from many D.S.S. Workers which in turn evolved from the alleged victim. This would be Hearsay Within Hearsay in violation of Rule 805, S.C.R.E. Any reliability of the State's evidence here is void.

3. The State's Coerced Use Of The Unreliable Polygraph By Law Enforcement/More Reliable Scientific Evidence Available

Law Enforcement Officers used a Polygraph to place fear in the mind of the Applicant to coerced a confession from him in this case. This allowed for the Applicant's will and better judgment to be impaired enough for the Officers to extract the involuntary statements. (ROAp. 51, Lns. 4-16; ROAp. 56, Lns. 11-14; ROAp. 62, Lns. 4-13; and specifically, ROAp. 65, Ln. 25 - ROAp. 67, Ln. 1). The Officers did not know if there were one or more officers present during this polygraph testing. (ROAp. 56, Ln. 11 - ROAp. 57, Ln. 10; compared to, ROAp. 67, Lns. 8-12). There was a video-tape of this entire process, however, the Officers either destroyed

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Issue B: Continued

or suppressed this crucial tape that could show exactly what took place that day. The Officers' actions appeared to have been done without good faith. See, ROAp. 77, Ln. 24-ROAp. 79, Ln. 22; See, specifically, ROAp. 80, Ln. 3-ROAp. 83, Ln. 4; ROAp. 149, Ln. 16-ROAp. 200, Ln. 7; ROAp. 202, Ln. 12-ROAp. 205, Ln. 24; ROAp. 2 Ln. 3-ROAp. 237, Ln. 11. The use of questionable Lie Detector by Law Enforcement has been increasing nation wide for same and similar purposes as Law Enforcement used the unreliable polygraph test for in this case. The State Agencies should not be allowed to use the polygraph for those purposes because of the following legal and logical reasoning.

Generally, two types of devices are used as lie detectors, polygraphs and voice analyzer systems. Polygraphs are not admissible as evidence in criminal prosecutions in most States or in Federal Court, though test results can be introduced by stipulation or at the discretion of the Court in some cases. The use of polygraph results in Court is governed by the Daubert Standard, which requires that scientific evidence must be both relevant and reliable. See: Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579 (1993). It is the "reliable" part that has proven problematic for polygraph tests.

In 1998 the Supreme Court held, "To this day, the scientific community remains extremely polarized about the reliability of polygraph techniques. Opponents consider the Polygraph as low as 65% accuracy, whereas Proponents claim about 90 percent. Some studies have concluded that polygraph tests overall are accurate and reliable, whereas others found that polygraph tests assess truthfulness significantly less accurately."

Issue B, Continued

The Supreme Court upheld the Air Force Code of Criminal Procedure's blanket exclusion of polygraph evidence against a defendant who wanted to use the government's test results to bolster his claims of innocence regarding drug use. See: U.S. v. Scheffer, 523 U.S. 303, 118 S.Ct. 1261, 140 L.Ed. 2d 413 (1998).

Both polygraphs and voice analyzers are used by Law Enforcement, prison and parole officials to intimidate suspects during questioning. Although an interrogator screaming at a subject that he failed a lie detector test and needs to "come clean" may result in some legitimate confessions from the guilty, there is also the danger of coercing innocent suspects who are vulnerable, stressed and confused into confessing their "guilt" for crimes they did not commit. This is precisely the scenario of this case, as the State would not stop pushing the Applicant until they had enough to fabricate suspicion into a guilty verdict. See, (All Issues Presented). There are numerous cases of detectives and examiners using polygraphs and voice analyzers as tools to coerce innocent suspects into confessing. A false confession and a wrongful conviction still amounts to a "solved case".

A recent increase in the use of polygraphs and voice analyzers is due to the supervision of a growing number of probationers, parolees and registered sex offenders. A recent Second Circuit decision allowed the use of polygraphs to verify that sex offenders are complying with the terms of their probation. While the Appellate Court acknowledged that studies had questioned the reliability of polygraph tests, since "the bottom range [of test accuracy] is still more likely than not," therefore, polygraph testing was permissible because it "produces an incentive to tell the truth, and thereby advances the sentencing goals". Not discussed

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Issue B: Continued

was the high percentage of false positives and false negatives in polygraph tests. See: U.S. v. Johnson, 446 F.3d 272 (2nd Cir. 2006), certiorari denied.

In the Case of State of Ohio v. Sharma, 143 Ohio Misc.2d 27,875 N.E.2d 1002 (Ohio Com. Pl., 2007), the prosecutors objected to the introduction of polygraph results - including a test conducted by a polygraph examiner regularly used by the State - that indicated the defendant was being truthful about his innocence. The inadmissibility of polygraphs in Court can cut both ways; some defendants, as in Scheffer, want to use the tests to show they are being truthful and innocent. Due to the risk of false positive polygraph results, however, that may not be a wise course of action.

There is yet another form of Lie Detection, with familiarity that boasts a remarkable 99-100% accuracy and has been used to seek convictions in Military for years. The "Scopolamine" (Truth Serum) test meets the Daubert Standards requiring scientific evidence to be both relevant and "reliable". In fact, there is no other known method or science that can be considered more accurate in determining the truth of a disputed matter, which is the purpose and reason in which makes a trial necessary. However, if we are allowed to use the Scopolamine Test, then a trial could be avoided altogether. This scientific evidence certainly meets our evolving standards of society and is more reliable than anything put forth in this case by

Issue B: Continued

the State. Now let us finish with this Law Analysis in regards to this vital issue.

Law Analysis

An extra-judicial confession standing alone cannot constitute proof that a sexual assault occurred on the dates alleged. The State must produce proof of the corpus delicti from a source other than the out-of-court confession of a defendant, State v. Owens, 293 S.C. 161, 359 S.E.2d 275 (1987). The State's incompetent evidence presented in this case merely raised conjecture, speculation, and suspicion as to the essential elements of the charge in this case, State v. Arnold, 361 S.C. 386, 390, 605 S.E.2d 529, 531 (2004). "Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof," State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004). Suspicion, however strong, is not enough to sustain a conviction, Sellers v. State, 362 S.C. 818, 601 S.E.2d 82 (2005). The evidence presented by the State did not support the conviction here, State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004).

The fact of a crime may be proven by any relevant competent evidence having a legitimate tendency to support the accusation, State v. Childs, 299 S.C. 471, 388 S.E.2d 839 (S.C. 1989). Let us point out that the State's witnesses' testimony and evidence was not contradicted by the defense in this case. However, this does not make the State's evidence competent. Furthermore, uncontradicted testimony or evidence need not be accepted by the trier of facts as true where there is something in the evidence or the fact, itself, which furnishes a basis for discrediting it because of its inherent improbabilities.

Issue B: Continued

Johnson V. Painter, 279 S.E. 390, 307 S.E. 2d 860 (1980); Sabbach V. Celebrezze, 345 F.2d 509 (4th Cir. (S.C.) 1965). Any evidence the defense could have used to contradict the State's unreliable Witnesses testimonies had already been excluded before the trial began. The State's Experts Testimony was from state second hand information and violated the Hearsay Rules and should not have been admissible in Court. See; Rules 801(d)(1); 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000. S.E. 2d 493 (S.C. App. 2003).

A criminal defendant in this State is guaranteed the right to notice, confrontation, and compulsory process necessary so he may answer his accusation through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and orderly introduction of evidence. State V. Gillian, 360 S.C. 433, 60 S.E. 2d 62 (Ct. App. 2004). U.S. Const. Amend. Six. The State Constitution affords a criminal defendant these very same due process guarantees essential to defend against criminal charges in a meaningful manner, as well having a fair trial. U.S. Const. Amend. Six and Fourteen. The Fifth Amendment requires the same. See also, S.C. Const. Art. I, §§ 3, 14. The fundamental rights are so vitally essential for a complete defense and a fair trial.

The Due Process Clause of the Fourteenth Amendment affords

Issue B: Continued

criminal defendants a meaningful opportunity to present a complete defense. California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528 (1984); see also, State v. Hutton, 358 S.C. 622, 631, 595 S.E.2d 876 (Ct. App. 2004); State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) ("Due Process requires that a criminal defendant be given a reasonable opportunity to present a complete defense"). The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State's accusations. Chambers v. Mississippi, 410 U.S. 284, 93 S.Ct. 1038 (1973). The Applicant did not receive a fair opportunity to use favorable evidence available to defend against the State's accusation as it was excluded from the defense altogether. However, nothing stood in the way of State's use of their witnesses' questionable testimonies that lacked the necessary reliability to even be considered as anything but incompetent evidence. Confrontation and cross-examination are fundamental mechanisms for testing the reliability of adverse witness' testimony; therefore, the Sixth Amendment accuracy is an element of due process and is obligatory on the States. Pointer v. Texas, 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). These elements were denied to the Applicant when the Court ruled not to allow any testimony inquiring into disclosures involving the other suspects of a sexual battery perpetrated upon the alleged victim in the case. This case should be reversed for the Court's denial of the Applicant's right to confront these witnesses, by itself. See, Delaware v. Van Arsdall, 106 S.Ct. 1431 (1986). The Applicant was further denied a fundamentally fair trial. Let us discuss further.

Issue B: Continued

The assurance of a fair and impartial trial is a basic ingredient of the due process of law guaranteed by the Fifth and Fourteenth Amendments. Central to the notion of a fair trial is the requirement that the defendant's guilt be established on the basis of evidence developed inside the courtroom and on the witness stand where the defendant is protected by Counsel and has an opportunity for cross-examination. Parker v. Gladden, 385 U.S. 363, 87 S.Ct. 468, 17 L.Ed. 2d 420 (1966). The "due process" provision of Amendment Fourteen, just as the Fifth, was intended to guarantee procedural standards adequate and appropriate to protect "at all times" those charged with or suspected of crime by those holding positions of power and authority. Chambers v. Florida, 309 U.S. 227, 60 S.Ct. 472, 84 L.Ed. 716 (1940). There were no adequate or appropriate procedures taken in this case to protect Applicant's liberty interests or his other Fifth, Sixth, and Fourteenth Amendment rights to a fair trial. A criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the materials integral to building an effective defense. Mason v. Mitchell, 320 F.3d 604 (6th Cir. 2003). It was impossible for the Applicant to build an effective defense or to receive a fair trial when his every means he had to defend against the accusation was stripped from him, whereas the ^{State} was allowed to present questionably reliable evidence as proof of the accusation against Applicant.

In this particular case, it appears that the only possible opportunity for a fair trial would have been to actually use the accurate scientific evidence as discussed earlier within this

Issue B: Continued

(Issue B), Stipulation of the Scopolamine (Truth Serum) Test indeed, would have, by far, been the best Method and most accurate form of lie detection science the defense or the State could have used to prove the issues in this case. This Test would determine if the Applicant was guilty or innocent of the alleged crime and to see whether the State held any ulterior motives or committed misconduct in any way. After all, ninety nine to one hundred percent accuracy would be difficult to refute or contradict by any other form of evidence. Interestingly enough, this stipulation still could be had for the benefit of a meaningfully reliable Post-Conviction Hearing. Whether a Scopolamine Test is used or not, the structural errors, here, involved the most essential components to a fair trial and called into question the very accuracy and reliability of the trial process and is not amenable to harmless error analysis, but specifically, requires automatic reversal. Quintero V. Bell, 256 F.3d 409 (6th Cir. 2001); Shaw V. Alaska, (9th Cir. 2000).

This case should be reversed for a new trial.

Issue C: Argument

Issue C: Did the Solicitor commit Prosecutorial
Misconduct pursuant to the Donnelly V.
DeChristoforo, Standard of due process?

The State's Prosecutor intentionally prejudiced the Applicant from receiving a fair trial and to obtain an easy guilty verdict in this case. The State used a very coercive polygraph procedure to gather incriminating statements from the Applicant. The procedure over bore the Applicant's will and against his better judgment, Applicant gave the incriminating statements the State was fishing for so the Solicitor could indict her charges against him. FILED
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2012 MAR 28 PM 5:06 enough, there was a videotape of these illegal proceedings that was suppressed or destroyed by the State. (ROAp. 56, Ln. 11-ROAp. 57, Ln. 10; ROAp. 67, Lns. 8-22; ROAp. 68, Ln. 10-ROAp. 69, Ln. 11; ROAp. 77, Ln. 24-ROAp. 79, Ln. 22; ROAp. 80, Ln. 3-ROAp. 83, Ln. 4; ROAp. 194, Ln. 16-ROAp. 200, Ln. 7; ROAp. 202, Ln. 12-ROAp. 205, Ln. 24; ROAp. 236, Ln. 3-ROAp. 237, Ln. 11). Once the Solicitor had what she needed to draw up the indictment, she alleged an indefinite time of occurrence of sexual assault happening between May 1, 2001 through August 31, 2002. This allowed the State to obtain a conviction without meeting its burden of proof of every essential element of the crime, charged beyond a reasonable doubt as required by the State and Federal Constitutions. This also made the odds of the Applicant to defend against the charge insurmountable, if not impossible. The Solicitor did not stop there.

As previously discussed within Issues A and B of this Amended Brief, the Court would not allow any testimony regarding other

Issue C: Continued

The Court stated: "So the relevance of him being in the home - I don't understand. And there's been no allegations against him (Issac Stewart) by this purported victim, and so it seems to me that evidence relating to him being in the residence would serve no useful purpose." Defense Counsel stated: "Mr. Stewart did live in the home at the time these allegations are alleged to have happened and Joann Belcher (the alleged victim's Mother) was the one that initially accused Mr. Stewart of being the person that perpetrated it." The Court further stated: "It would not be probative on any point, and it might result in allowing some jurors or a number of jurors to speculate as to any contact he may have had." The Court granted the State's Motion To Exclude the evidence (ROAp. 43, Ln. 12 - ROAp. 44, Ln. 1). Let us review "Why" this evidence should have been admitted.

First, Issac Stewart was the first suspect reported in this case to D.S.S. and yet, there was no investigation by the D.S.S. or anyone else, into the allegation. (ROAp. 42, Lns. 5-16). During the Motion hearing, the Solicitor informed the Court that the alleged victim is not very verbal and is developmentally delayed. (ROAp. 42, Lns. 22, 23). She also stated: "And never at any time has she alleged that Issac in a properly (sic), inappropriately touched her. It's our position that this information is only being used to raise a mere suspicion that he might be a perpetrator, and we think that would be unfair in this case." (ROAp. 43, Lns 6-10). Secondly, the alleged victim could not sufficiently or competently testify to a disclosure during trial, when she was eight (8) years of

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Issue C: Continued

age. It is very unlikely she would have been able to make any understandably reliable disclosures outside her Mother, who would also been the one with any first hand knowledge of disclosures at that time; if anyone.

Defense Counsel further argued, during the course of her 2005 therapy up until the arrest warrants were sought, and after the alleged victim's ability to articulate, speak and to be understood increased, she also disclosed sexual abuse by Darryl and Jerry Riddle. (ROAp. 44, Ln. 13-ROAp. 45, Ln. 4). The Solicitor stated that in October, 2002 she disclosed sexual assaults, by the defendant, to some person at D.S.S., however, this some person is never revealed through the hearing or trial. Furthermore, the indictment alleged that Applicant committed a sexual battery upon the victim between May 1, 2001 and August 31, 2002 afterwards.

[For the sake of Judicial Economy and to eliminate Repetition Applicant has used the operative facts within Issues A and B in the remainder of this Issue C]

The State prosecutor purported unreliable and incompetent corroborative hearsay testimony from second hand disclosures. The State's witnesses lacked any personal knowledge of these disclosures which barely reached the level of suspicion. These testimonies in regards to any disclosure should not have been allowed at all. The Prosecutor intentionally elicited this corroborative hearsay to prejudice the Applicant, before the Jury, by misrepresentation of the facts. The State Prosecutor actions throughout investigation and the accusation (indictment) stages, as well as, Pretrial Motions were intended to prejudice the Applicant at the earliest point of this case as possible. The prejudice

Issue C: Continued

was further expounded by the Solicitor's bolstering evidence to produce a very easy guilty verdict from the State's unreliable incompetent evidence. Otherwise, the State would not even had a Case-in-Chief at all, let US review even further.

In Opening Statements, the State's Prosecutor states: "My name is Susan Reese and I'm an assistant solicitor with the 7th Circuit Solicitor's Office. And my job is to prosecute child abuse cases, child sexual abuse cases." (ROAp.12, Ln. 12-14). She further stated, "We ask that you give the defendant a fair trial. We ask you give the state a fair trial." (ROAp.122, Lns. 24-25). She continued: "It is your job to return a verdict that speaks the truth, and we have every confidence that once you hear the evidence you'll be able to do that and you'll be able to find this defendant is guilty of sexual battery. Thank you." (ROAp.123, Lns. 6-10)

The State Prosecutor set the pace here to what turned out to be anything but a fair trial or a fair verdict, and the Solicitor put the prestige of the Government to the beginning of the State's case of conjecture, speculation, and suspicion produced by incompetent evidence, used during trial. The Solicitor then, really, poor it on during closing arguments in using everything to bolster the essential elements of a sexual battery committed by the defendant. (ROAp. 295, Ln. 20-ROAp. 298, Ln. 6). Actually, the alleged victim did not voluntarily

Issue C: Continued

disclose, whereas she could not possibly been understood by anyone. (ROAp. 157, Lns. 5-16; ROAp. 162, Lns. 8-10; ROAp. 173-R p. 174; ROAp. 159, Lns. 2-24; ROAp. 161, Ln. 1-ROAp. 163, Ln. 10; ROAp. 179, Lns. 2-13). Of Course, a Prosecutor should never attempt to give the law or define "reasonable doubt" specifically as it relates to the evidence. (ROAp. 295, Lns. 9-19). This is the Court's duty, not the prosecution. Any chance of an acquittal was totally eclipsed by the Solicitor's extensive vouching for her witnesses. (ROAp. 298, Lns. 10-23). The Solicitor misrepresents so many facts not testified to during trial, specifically, in regards to the incriminating statements elicited by the unreliable polygraph process. See (ROAp. 303-ROAp. 310). The State's Prosecutor entire closing argument was no more than the State bolstering a case that was not proven, but by very unethical, impermissible, and unconstitutional means. This Trial was poisoned by the improper actions of the Solicitor from the investigation stage throughout trial and all the way to a unfair verdict. This prejudiced the Applicant from receiving a fair trial and now comes the Law Analysis in regards to this Prosecutorial Misconduct of the Donnelly Standard.

Law Analysis

The Solicitor's actions in this case have been universally held to be improper and highly impermissible by our Courts, U.S.V. Young, 470 U.S. 118, 105 S.Ct. 1038 (1985); U.S.V. Hawkins, 76 F.3d 545 (4th Cir. 1996). Moreover, while a prosecutor may

Issue C: Continued

strike hard blows, they are not at liberty to strike foul ones, such as the ones struck here, Berger V. U.S., 295 U.S. 78, 55 S.Ct. 629, 79 L.Ed. 1314 (1935). The duty of a Solicitor is not to see that a Defendant is convicted, but to see that Justice is done, State V. Durden, 246 S.C. 86, 212 S.E. 2d 587 (1975). The Solicitor's duty is to see that no conviction takes place except in strict conformity with the law; that an accused is not deprived of any constitutional rights, and nothing is done to prevent an accused from obtaining a fair trial under the law, State V. King, 222 S.C. 108, 71 S.E. 2d 793 (1952), Rule 407, SCACR. Here, in this case, it is obvious that the Solicitor was determined to get a conviction regardless of the procedures necessary to obtain it.

The evil lurking from the State's actions is the possibility that defendant (Applicant) will be convicted for reasons wholly irrelevant to his guilt or innocence, State V. Albert & Sims, 336 S.C. 648, 521 S.E. 2d 744 (Ct. App., 1999). The Solicitor's conduct here was intentionally designed and deliberately calculated with full intentions to prejudice the Applicant and to obtain an easy verdict. It is the duty of the Solicitors as Officers of the Court to uphold justice, not just obtain a conviction. If this duty is not performed by our Government prosecutors, then the accused due process rights to a fair trial has been violated, and reversal is necessary. Donnelly V. Dechristoforo, 416 U.S. 637 (1974).

This case should be reversed for a new trial.

Conclusion

For the legal reasons and principles cited in this Amended Post-Conviction Relief Application, with an Amended Brief, the Conviction and Sentence should be vacated, reversed for new trial, or a judgment of acquittal entered.

Giles Belcher #289817
S/ Giles Belcher #289817

Respectfully Submitted,
B.R.C.I., Congaree 235
4460 Broad River Road
Columbia, S.C. 29202

FILED
CLERK OF COURT
SALAMBURG COUNTY
MAR 28 PM 3:53
HOPE BLACKLEY

State Of South Carolina
County Of Spartanburg

In The Court Of Common Pleas
C.P.N.O. Amended, 2011-CP-42-0462

Giles Belcher, #289817

Applicant.

VS.

State Of South Carolina

Respondent.

Motion To Address All Issues

Now comes the Applicant, Giles Belcher, #289817, by and through his Court Appointed Attorney, who ask this Honorable Court to require the Attorneys involved in this Post Conviction Relief Action and any amendment thereof, to be meticulous in the preparation of any Order prepared in this matter. Specifically, the Applicant request that each and every Issue in the Post-Conviction Relief Application and any amendment thereof, at the hearing, be addressed in the Order of the Court at the conclusion of the evidentiary hearing in this matter.

The Applicant request this Motion pursuant to S.C. Code Ann. §17-27-80. Cf. Pratt V. State, 423 S.E.2d 127 (S.C. 1992); Bryan V. State, 493 S.E.2d 500 (1997).

Wherefore, the Applicant request this Motion be granted.

Sworn To Before Me, This
26 Day Of Jan, 2011,
Notary Public For South Carolina,
Eugene Bell
My Commission Expires:

Respectfully Submitted
Giles Belcher 289
Giles Belcher, #289817
BRI, Conaree 235
4460 Broad River Road
Columbia, S.C. 29210

SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG SC 29303

TELEPHONE (864) 596-2561

FAX (864) 596-2284

May 19, 2011

Mr. Giles Belcher
SCDC # 289817
Broad River Correctional Institution
4460 Broad River Road
Columbia, South Carolina 29210

(Attachment A)

Re: Your file

Dear Mr. Belcher:

Because Ms Hodges is no longer with the Public Defender's Office, she has asked me to respond to your letter to her of November 24, 2010. Ms Hodges has advised me that she provided you a copy of your file on April 23, 2009. She has also advised me that she did not provide you copies of 9 CDs of jail telephone calls and 2 DVDs of interviews at the Child Advocacy Center. She has advised you that we are prohibited by court order from providing clients copies of the DVDs of interviews with children at the Child Advocacy Center; therefore, we are not able to comply with your request for your own copy of them. Also, she advised you that the Department of Corrections, as we understand it, will not allow you to have copies of CDs or DVDs; therefore, we are not able to provide you those items as well. Please be assured that these items will remain with your file for any other attorney representing you to review.

You also asked for copies of transcripts of all proceedings. Normally, this office does not request transcripts during our representation of clients. You can obtain copies of your trial transcript from your appellate attorney or PCR attorney.

In summary, Ms Hodges has provided you copies of everything from your file that we are allowed to give you at this time.

Sincerely,

Clay T. Allen
Circuit Public Defender

CTA:

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SPARTANBURG, SOUTH CAROLINA
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M. HOPE BLACKBURN

(Attachment B1)

State Of South Carolina
County Of Spartanburg

In The Court Of Common Pleas
Case NO. 2011-CP-42-462

Giles Belcher, #289817,
Applicant,

V.
State Of South Carolina,
Respondent.

Request For Court-Appointed
Counsel To Represent Applicant And
Perform The Necessary Functions As
Required By Rule 71.1, SCRPC And
South Carolina Code §§ 17-27-10-150

The Applicant, in the above captioned matter, do hereby respectfully and specifically request Court Appointed Counsel, Rodney W. Richey, to: Serve Subpoenas, Perform Interrogatories, Depositions, and Sworn Affidavits upon Any/All Witnesses necessary to prove Applicant's allegations with in his Initial Brief In Support Of Application For Post Conviction Relief. Further requested, for Counsel to: Conduct a Thorough Discovery pursuant to Rules 26-36, SCRPC, and re-investigation, interview possible Witnesses, and prepare for the upcoming "PCR Hearing" in this case, pursuant to Rule 71, SCRPC, the South Carolina Uniform Post Conviction Procedures Act (S.C. Code, §§ 17-27-10-150, specifically 17-27-80); Rules 407, SCACR; Rules 602, 601, 608, SCACR, SCACR.

Applicant further request Counsel to obtain Applicant's entire and Complete Defense Case File in relation to Case NO. 2007-GS-42-1673 and all/any other charges, prior to, or pending, involving the Applicant, from the moment of arrest through and up to this current date. This file should (is to) include but not limited to: All Material, Documents, and Information in existence from Pre-Arrest, Arrest, Detention For Trial, Pre-Trial, Pleas, Trial and Sentencing, and Post-Trial; All Pleadings, Motions, Objections, Jury Charge Request(s) and any/all Briefs thereof [Filed and prepared but not filed with any/all Courts and state Agencies]; All Exhibits (Trial or Otherwise); All Rule 5/Brady Material; All Notes, Letters and Correspondences in regard to this case; All photographs, Images, Recordings (Visual and/or Audio), Videotapes and/or CDs... etc; All Rule 6/Chain Of Custody, Chemical Analysis, and Chain Of Evidence Logs;

(Attachment: B-2)

All Transcribed Material (Transcripts) of All Proceedings, whether these proceedings are: Bonds Hearings, Competency Hearings, Plea Hearings, Trial and Sentencing, Preliminary Hearings, or otherwise; All Witness List; All Grand Jury Proceedings Minutes involving All charges presented for True Bill or any other sufficient equivalent.

Applicant would also request the same Materials, Documents, And Informations / The Complete Appellate Case File be obtained from Appellate Defender, M.C. Robinson, of The Division Of Appellate Defense.

This request is further made pursuant to Rules 11, 32, S.C.S. Ct. R. Citing, In re Clark, 300 S.E.2d 595 (1983); In Matter Of Haddock, 283 S.C. 116, 321 S.E.2d 601 (S.C. 1984); Griffin V. Illinois, 351 U.S. 12 (1956); Douglas V. California, 372 U.S. 353 (1963); U.S. V. Tyler, 943 F.2d 420 (4th Cir. 1991); and S.C.D.C. Policy PS-10.08, §§ 5.5, 5.5.2, S.C.D.C. Policy and Procedures Manual, May 1, 2008. (regarding the viewing and reception of Videotapes and

Wherefore, Applicant in this matter, makes this specific request for Court-Appointed Counsel to obtain and provide Applicant with true copies of the requested Materials at the below listed address as it is needed for further preparation of PCR Issues and Applicant's Record and for a full and fair PCR Hearing. U.S. Const. Amend One (Redress Of Grievance)

Respectfully,

Giles Belcher

Giles Belcher #2878
BRCI, Congaree-235
4460 Broad River Road
Columbia, S.C. 29210

State Of South Carolina
County Of Spartanburg

(Attachment B-3)

In The Court Of Common Pleas
Case NO: 2011-CP-42-462

Giles Belcher, #289817,
Applicant,

v.
State Of South Carolina,
Respondent.

Certificate Of Service

I, the Applicant in the above-captioned matter, do hereby under oath and penalty certify that I have served a "Letter Of Request, For Court-Appointed Counsel To Represent Applicant And Perform The Necessary Functions As Required By Law" to below listed parties upon this same date.

(1) Mr. Alan Wilson
Attorney General
P.O. Box 11549
Columbia, S.C. 29211

(2) Rodney W. Richey
Attorney at Law
P.O. Box 10916
Greenville, S.C. 29603

(3) Clerk Of Court
Spartanburg County Courthouse
180 Magnolia Street
P.O. Box 348
Spartanburg, S.C. 29304

Sworn To Before Me, This
5 Day Of July, 2011,
Notary Public For South Carolina:

Eugene Keith
My Commission Expires:

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

Respectfully,

Giles Belcher 289817

Giles Belcher, #289817
BRCI, Congaree-235
4460 Broad River Road
Columbia, S.C. 29210

(Attachment: C)

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503; 1-888-882-4878 Toll Free
(864) 467-0646 FAX

July 11, 2011

Giles Belcher SCDC# 289817
Broad River Correctional Institute
4460 Broad River Road
Columbia, SC 29210

Re: Giles Belcher SCDC# 289817 vs. State of South Carolina
Case No: 2011-CP-42-462

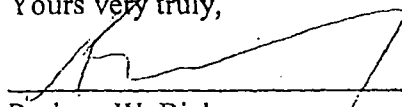
Dear Mr. Belcher:

This letter is in response to your Request for Court Appointed Counsel document. You asked for several items. I may not be able to get all the items. For example; you asked for minutes of the Grand Jury hearings. These minutes may not be available. You requested bond hearing and other hearing transcripts. You are entitled to have your trial transcript paid by the State. However, I do not know if this applies to other court transcripts or just the trial. You may be required to pay for the transcripts. I will review your file and determine if the transcripts are necessary. Once I have all the information from the Attorney General's Office, I will forward a copy to you.

You requested I return a telephone form to you. Please be advised my office does not accept collect calls as we have no means to pay for the calls. Please have a family member call my office on a conference call or three way call with you and I will discuss any issues with you. I will answer your letters in a timely manner so you can write to me as well.

RICHEY AND RICHEY, P.A.

Yours very truly,


Rodney W. Richey

RWR/tlg

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

State Of South Carolina
County Of Spartanburg

Giles Belcher, 289817,

State Of South Carolina,

VS.

In The Court Of Common Pleas
Amended; 2011-CP-42-0462

Applicant,

Respondent.

Certificate Of Service

I, the Applicant in the above-captioned matter, do hereby under oath and penalty certify that I have served copies of the same documents upon the below listed parties upon this same date.

(1) Mr. Alan Wilson
Attorney General
P.O. Box 11549
Columbia, S.C. 29211-1549
29211

(2) Ms. Hope Blackley
Clerk Of Court
Spartanburg County
P.O. Box 3483
Spartanburg, S.C. 29304-3483

(3) Rodney W. Rohe
P.O. Box 10916
Greenville, S.C.
29603

Sworn To Before Me, This
26 Day Of Jan, 2011,
Notary Public For South Carolina,

Eugene Keefe
My Commission Expires April 1, 2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 MAR 28 PM 3:53
MS HOPE BLACKLEY

Respectfully Submitted,
S / Giles Belcher #289817
Giles Belcher, #289817
BRCI, Congaree 235
4460 Broad River Road
Columbia, S.C. 29210

Jeani Bishop

Mr. Long

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Giles Belcher, #289817,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUITJeani was accused again
Revealed -
2011-CP-42-0462

RETURN

- ② Gary Long
② Jeani Belcher
③ Bruce Rine
④ Tanny Anderson
⑤

Issac
Bruce

In response to the post-conviction relief application filed on January 31, 2011, and amendment filed June 21, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Applicant was indicted at the April 2007 term of the Spartanburg County Grand Jury for criminal sexual conduct with a minor - 1st degree (2007-GS-42-1673). Kathleen J. Hodges, Esquire, represented the Applicant at trial. On May 8, 2007, the Applicant was convicted of this charge by a jury. The Honorable J. Derham Cole presided over the Applicant's trial and sentenced Applicant to confinement for thirty years.

A timely Notice of Appeal was timely filed and an Anders brief was submitted on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Belcher, Op. No. 2010-UP-112 (filed February 8, 2010). The Remittitur was returned on February 26, 2010.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the

Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post conviction relief and amendment, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to challenge the indictment as insufficient prior to trial,
 - b. Counsel failed to move to dismiss indictment as invalid,
 - c. Counsel failed to obtain independent mental evaluation for Applicant before proceeding to trial,
 - d. Counsel failed to object to prejudicial hearsay and other statements,
 - e. Counsel failed to impeach State's witnesses with inconsistent statements made pre-trial and during trial,
 - f. Counsel failed to obtain independent forensic evidence and victim behavioral experts for the case,
 - g. Counsel failed to object to the State's prejudicial closing argument,
 - h. Counsel failed to object to Court's failure to give the direct and circumstantial evidence charge to the jury.
 - i. Counsel failed to do investigate, interview witnesses, and otherwise adequately prepare for trial,
2. Ineffective assistance of appellate counsel, in that;
 - a. Appellate counsel failed to argue that the trial court erred when it admitted the Applicant's statements,
 - b. Appellate counsel failed to argue the directed verdict issue on appeal,
3. Fundamentally fair trial rights violated.

III.

Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 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. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668, 104 S. Ct. 2052. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland v. Washington. 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, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that 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. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate

counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate 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. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant further alleges that his rights to a fundamentally fair trial were violated. The Respondent interprets Applicant's allegation as a claim of infringement of his rights under the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these 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." S.C.

Code § 17-27-50 (2003). 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.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel and appellate counsel were ineffective.

Respectfully submitted,

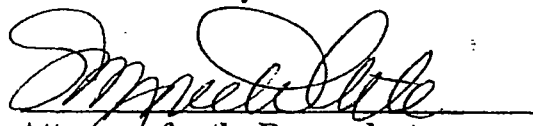
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


Attorneys for the Respondents
P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

February 15, 2012.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

} COURT OF COMMON PLEAS NONJURY

3
4 GILES BELCHER,

5 APPLICANT,

6 vs.

7 STATE OF SOUTH CAROLINA,

8 RESPONDENT.

TRANSCRIPT

OF

RECORD

2011-CP-42-462

9
10 June 15th, 2012
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.
15

16 A P P E A R A N C E S:

17 RODNEY W. RICHEY
18 ESQ.

Attorney for the Applicant

19 ASHLEIGH R. WILSON
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the Respondent
22

23
24 PAMELA E. GREEN
Circuit Court Reporter
25 Seventh Judicial Circuit

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P R O C E E D I N G S

THE COURT: All right. The State may call the first case.

MS. WILSON: Thank you, Your Honor.

Ashleigh Wilson for the State.

The next case is Giles Belcher versus the State.
Docket Number 2011-CP-42-0462.

Mr. Belcher was charged and originally indicted for criminal sexual conduct with a minor, and he proceeded to trial and was convicted and was sentenced to 30 years. He makes several allegations in his, in his post-conviction relief application, in an amended application.

They're very lengthy. I can read them on the record if Your Honor would like.

THE COURT: Please put them on.

MS. WILSON: I will. In addition to that -- I'll read them. I just wanted to bring to your attention the scrivener's error on the State's return. The date the applicant's PCR was filed, as stated in the return, is June 21st, 2011.

THE COURT: Right.

MS. WILSON: And that date should be January 31st, 2011.

THE COURT: Thank you.

1 MS. WILSON: Your Honor, I'll read on the read, read
2 into the record the issues presented in the applicant's
3 original PCR application as well as the ones in the---

4 THE COURT: I note there was an amended one.

5 MS. WILSON: Right.

6 Okay: would you just like for me to read the ones that
7 have been amended?

8 THE COURT: Well, are those the ones that you're
9 proceeding on?

10 Mr. Richey, maybe you can help me with that.

11 MR. RICHEY: If the Court would like I will tell the
12 Court the issues.

13 THE COURT: Well, why don't we just let him state the
14 grounds that he's going forward on.

15 MS. WILSON: That's fine. Thank you, Your Honor.

16 THE COURT: That would be the easiest thing to do.

17 Mr. Richey, how are you today?

18 MR. RICHEY: I'm doing good, Your Honor. Thank you.

19 THE COURT: Good.

20 All right. Could you go over, tell us please the
21 grounds that Mr. Belcher wishes to proceed on today.

22 MR. RICHEY: Yes, Your Honor.

23 The first ground will be for not challenging the
24 indictment. Two is for not obtaining an individual, an
25 independent medical evaluation. The next one is ineffective

1 assistance of counsel for failing to object to hearsay and
2 other statements that we believe are a violation of his
3 constitutional rights, and object, and object, not objecting
4 to some of the issues in the prosecutor's closing argument,
5 and by failing to impeach the State's witnesses.

6 We'll probably mention the closing argument. Failing
7 to obtain an independent forensic for the evidence in the
8 CSC case, and failing for not objecting to excepting the
9 Court's failing to give standard direct and circumstantial
10 evidence charges, and for failing to investigate and
11 interview witnesses, and the other issue he's addressing is
12 appellate counsel's failure to argue the Trial Court erred,
13 erred in admitting the statements, and that would be the
14 issues, Your Honor.

15 THE COURT: Thank you.

16 Are you ready to proceed at this time?

17 MR. RICHEY: Yes, sir. Yes, sir.

18 THE COURT: You may call your first witness.

19 MR. RICHEY: We call Mr. Belcher.

20 THE COURT: Mr. Belcher, if you'll come forward please.

21 Do you need some documents?

22 (Mr. Belcher nods affirmatively.)

23 THE COURT: Bring those with you.

24 Sir, if you'll step up to my left please, and place
25 your left-hand on the Bible and raise your right to the best

Giles Belcher - Direct examination
by Mr. Richey

1 of your ability.

2 GILES BELCHER, having been first
3 duly sworn, testified as follows:

4 THE COURT: Have a seat please. Once you're seated
5 state your name for me.

6 WITNESS: Giles Belcher.

7 THE COURT: Thank you.

8 Mr. Richey, it's your witness.

9 MR. RICHEY: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q Mr. Belcher, are you currently incarcerated?

14 A Yes, sir.

15 Q And where are you incarcerated?

16 A I'm currently at the Broad River Correctional
17 Institution Congaree Unit. Dorm 118.

18 Q Okay. Are you -- what are you in prison for?

19 A Criminal sexual conduct with a minor.

20 Q Okay. And what was your sentence?

21 A Thirty years.

22 Q And did you receive that sentence in Spartanburg
23 County?

24 A Yes, sir.

25 Q And who represented you on those charges?

Giles Belcher - Direct examination
by Mr. Richey

1 A Kathleen Hodges.

2 Q Okay. And you have filed an application for
3 post-conviction relief, is that correct?

4 A Yes, sir.

5 Q And you believe that your attorney did not properly
6 represent you or were, or was ineffective, is that correct?

7 A Yes, sir.

8 Q And what -- and, and what were you charged with again?

9 A Criminal sexual conduct with a minor.

10 Q Okay. All right. You, you, you raised several issues.
11 The first issue would be that you believe that your lawyer
12 was ineffective for not challenging the indictment.

13 Is that correct?

14 A Yes, sir.

15 Q Can you tell me why you believe that?

16 A Because of the broad time span involving the date and
17 the time and the place.

18 Q So, it's your position the indictment did not set forth
19 a specific time when this incident occurred, correct?

20 A Basically it, it was just too broad of a time span. It
21 wasn't specific --

22 Q Right.

23 A -- in its regards according to statutes.

24 Q So, the indictment alleges open time, and it's your
25 position that it should of been narrowed?

Giles Belcher - Direct examination
by Mr. Richey

1 A (Witness nods affirmatively.)

2 Q You got to answer.

3 A Yes, sir.

4 Q Okay. And you believe your lawyer was ineffective for
5 not challenging that indictment?

6 A Yes, sir.

7 Q And was -- and let me ask you a little bit.

8 Do you believe that your lawyer properly investigated
9 the case?

10 A No, sir.

11 Q Did you have any witnesses that you could of brought to
12 Court for your side of the case?

13 A There were several that I had originally put down, but
14 they were never called.

15 Q Okay. And, and do you believe these witnesses would
16 have benefited your case?

17 A Some would of, but the others would not. They would of
18 been hostile considering they were family members as well.
19 But they were also around during the time of things that was
20 going on.

21 Q Okay. And you -- do you believe they could of shed
22 light on the facts of the case that would of been favorable
23 to you?

24 A It could have.

25 Q Okay. And, and what were those facts?

Giles Belcher - Direct examination
by Mr. Richey

1 A Basically that other people were accused in the
2 beginning, and that they was, they was not allowed to be
3 even pulled to even bring that forth.

4 Q Okay. So, in this case the child had accused other
5 adults of this activity, correct?

6 A No, she didn't accuse at first. The first thing that
7 happened was that my wife at the time, JoAnn Belcher, said
8 that her brother had done it --

9 Q Okay.

10 A -- originally.

11 Q Okay. And, and that information that she got of the
12 brother, where did, where did that come from?

13 A That come from her herself.

14 Q Well, when you say her, who is her?

15 A JoAnn.

16 THE COURT: Is that the child or is that the wife?

17 MR. RICHEY: That's, that's the wife.

18 THE COURT: Thank you.

19 WITNESS: That's the wife.

20 Q And you also believe that, that counsel was ineffective
21 by not getting an independent medical evaluation, mental
22 evaluation, is that correct?

23 A Yes, sir.

24 Q And why is that?

25 A Because at the time of things going on that when I was

Giles Belcher - Direct examination
by Mr. Richey

1 being interrogated by the police, I, I just had problems and
2 I wasn't thinking clearly. I was under a lot of stress.

3 Q And you, and you hadn't been sleeping well, is that
4 correct?

5 A Yes, sir.

6 Q And, and had you gone long periods of time without
7 sleeping?

8 A I had.

9 Q Okay. And did, and did you and your lawyer talk about
10 that, how it affects your case?

11 A We talked some about it.

12 Q And did you have any history of mental, mental illness?

13 A Other than basically when I was at Perry I was just
14 having a lot of problems under stress with being there
15 incarcerated and D.S.S. sending records and such to me and
16 trying to get me to come and do what I need to do. But I'm
17 sitting there at Perry. Couldn't do anything.

18 Q Okay.

19 THE COURT: Was this a previous incarceration where
20 he's saying he was under a lot of stress at the time?

21 MR. RICHEY: Yes, sir.

22 THE COURT: Thank you.

23 Q And you, you believed that, at your trial, your counsel
24 was ineffective for failing to impeach the State's
25 witnesses?

Giles Belcher - Direct examination
by Mr. Richey

1 A Yes, sir.

2 Q And why do you believe that?

3 A Because basically when it come to a certain point that
4 when I was having to testify before then she told me, when
5 we was in recess, that she didn't ask questions that needed
6 to be answered.

7 Q Okay. When you say, when you---

8 A She didn't ask questions.

9 Q Questions of who?

10 A Of MINOR

11 Q Okay. And who is MINOR

12 A That's my daughter.

13 Q Okay. And that's the one that made the allegation
14 against you?

15 A Yes, sir.

16 Q And, so, you believed that the cross-examination of the
17 child was not proper, is that correct?

18 A Yes, sir.

19 Q And it's your testimony that counsel actually told you
20 that?

21 A Yes, sir.

22 Q Told you what?

23 A Told me that she didn't ask questions that needed to be
24 answered, that when she had interviewed MINOR previously,
25 she never asked those questions.

Giles Belcher - Direct examination
by Mr. Richey

1 Q So, you're saying the lawyer talked to the child prior
2 to the Court date?

3 A Under investigation with the Child Advocacy Center I
4 assumed.

5 Q You are, you are, you are saying that you're not guilty
6 of this charge, is that correct?

7 A Yes, sir.

8 Q And that was -- do you believe that counsel failed to
9 object to hearsay in this case which hurt, that hurt you?

10 A Yes, sir.

11 Q And what was that?

12 A The fact that Kathy Perry stated---

13 Q Who is Kathy Perry?

14 A She is Jamie Belcher's girlfriend at the time. Jamie
15 Belcher is my brother.

16 Q Uh-huh. (Affirmative).

17 A She had MINOR for a time when the incident said it was
18 to have happened. That Kathy Perry had said that JoAnn had
19 told her that she -- basically that JoAnn had told Kathy
20 Perry that she believed Issac had molested MINOR and that
21 there was an incident while MINOR was being with Kathy
22 Perry and Jamie, that MINOR had reached over and grabbed
23 Jamie's penis and said suck.

24 Q And, and those are the folks who had the child for a
25 while, is that correct?

Giles Belcher - Direct examination
by Mr. Richey

1 A Yes, sir.

2 Q The child was removed from your home and went to live
3 with them, correct?

4 A That -- we had agreed for MINOR to stay at the time
5 because we was getting evicted.

6 Q And you believed that your lawyer was ineffective for
7 failing to obtain an independent forensic examiner or victim
8 behavior expert?

9 A Yes, sir.

10 Q And why is that?

11 A Because of the generalities of MINOR saying that she
12 was acting out. She was under a lot of anger. Basically
13 making statements, just her different behavior.

14 Q So, it's your position counsel hired somebody to,
15 independent of the D.S.S. and the State people, to look at
16 the child and interview the child and determine whether
17 those, those actions were consistent with sexual assault---

18 A Yes, sir.

19 Q ---correct?

20 A Yes, sir.

21 Q Did you talk to your lawyer about that?

22 Did y'all have any conversations about it?

23 A It was never mentioned.

24 Q The prosecutor in this case gave a closing argument and
25 you believed that some of the stuff that was said in that

Giles Belcher - Direct examination
by Mr. Richey

1 closing argument was prejudicial to you, is that correct?

2 A Yes, sir.

3 Q And can you tell me what you believe was prejudicial to
4 you?

5 A Where she had talked to where that I had needed a
6 medicine cabinet to tote around.

7 Q Uh-huh. (Affirmative).

8 A And that she also inferred to the fact that when she
9 said that she was 12 years old her, her dad --- that her and
10 her father would do things basically inferring to herself
11 into the issue.

12 Q I think one of the -- was one of the things about the
13 Perry Mason deal in the closing argument?

14 Is that---

15 A That too.

16 Q That too?

17 And, and that essentially says the prosecutors said
18 that she use to get up at night and watch Perry Mason with
19 her daddy, right?

20 A Uh-huh. (Affirmative).

21 Q You got to answer me.

22 A Yes, sir.

23 Q Okay. And you believe counsel should of objected to
24 that?

25 A Yes, sir.

Giles Belcher - Direct examination
by Mr. Richey

1 Q And you believe that counsel, counsel should of
2 objected to the judge's, for, should of objected for the
3 judge not giving the standard direct or circumstantial
4 evidence charge?

5 A Yes, sir.

6 THE COURT: What was that?

7 Q Do you believe that would of had a difference in---

8 THE COURT: What was that question again?

9 MR. RICHEY: Does he believe that counsel was
10 ineffective for not objecting or taking exception to the
11 Court's failure to give the standard direct and
12 circumstantial evidence charge.

13 And you think that counsel -- I touched on this a
14 little bit before, but you believe counsel was ineffective
15 for not interviewing witnesses or preparing witnesses?

16 A Yes, sir.

17 Q And can you explain that to me?

18 A Basically that she had come to me on three different
19 occasions, and we briefly talked on things, but as far as
20 going over the actual testimony in trial with me it never
21 happened.

22 Q Okay. And did counsel go over your testimony that you
23 had at trial?

24 Were you -- did y'all discuss that and go through that?

25 A No, sir.

Giles Belcher - Direct examination
by Mr. Richey

1 Q And you believe counsel was ineffective for not arguing
2 that the trial judge erred in admitting your statements?

3 A Yes, sir.

4 Q And you believe, you believe appellate counsel should
5 of argued that?

6 A Yes, sir.

7 Q And you believe -- if, if all this had been done, do
8 you believe it would have made a difference in your trial?

9 A Yes, sir.

10 Q And what do you think the outcome would have been?

11 A I would of been proven not guilty.

12 Q And it is your testimony today here that you did not do
13 these things to your daughter?

14 A Yes, sir.

15 Q Did anybody else know about this supposed Isaac guy
16 doing this to the child?

17 A Basically JoAnn had mentioned it to Kathy Perry and
18 that it was also mentioned, in the fact finding mission,
19 that we went to D.S.S. in, August 27th of '02.

20 Q Thank you. Answer questions the attorney general has
21 for you.

22 THE COURT: Yes. Yes, ma'am, you may proceed.

23 CROSS-EXAMINATION

24 BY MS. WILSON:

25 Q Mr. Belcher, you say that you, you requested of your

Giles Belcher - Cross-examination
by Ms. Wilson

1 attorney to try to get certain witnesses to speak on your
2 behalf at the trial?

3 A Yes, ma'am.

4 Q Okay. What -- whom -- who did you ask her to call?

5 A I asked her to call Pastor Gary Long. I asked her to
6 call JoAnn Belcher. I asked her to call Bruce Fine. I
7 asked her to call Tammy Armstrong, and there was several
8 others. I can't remember who.

9 Q What would these witnesses have testified at trial?

10 A Basically, with JoAnn, cause she was around when a lot
11 of things were said and done because that she was accused as
12 well in the beginning by our daughter, and that she had also
13 testified -- she had also told people that her brother had
14 done it as well, but it never was brought forth. And that
15 Reverend Long, knowing me as he had, he would testify to the
16 fact I've been honest and truthful with him.

17 Q Okay. Do you recall, prior to your trial, your
18 attorney making a motion to the Court to get in testimony
19 about this -- were you referring to Isaac Stewart?

20 Is that who you were referring to?

21 A Isaac Stewart, yes, ma'am.

22 Q Okay. Do you recall, at trial, your attorney trying to
23 get in, making a motion to the judge before trial to get in
24 testimony about Mr., Mr. Stewart being in the home?

25 A I do remember a mention, but that's about all I can

Giles Belcher - Cross-examination
by Ms. Wilson

1 tell you about that, ma'am.

2 Q And you recall her mentioning that to the Court?

3 A Yes, ma'am.

4 Q You say that your trial counsel should have requested
5 an independent mental evaluation for you, is that correct?

6 A Yes, ma'am.

7 Q What would that mental evaluation have shown?

8 A Basically that I was under a lot of stress at the time
9 that I was interrogated and that I was being just completely
10 told that I had done things and I hadn't. They just kept
11 asking and asking and asking. I kept denying and denying,
12 and they just kept on. They bringing in different officers,
13 and they just kept asking you need to tell the truth, you
14 need to tell the truth. I been telling you the truth. I
15 haven't done anything.

16 Q Okay. Had you ever been diagnosed with a mental
17 illness?

18 A No, other than when I was at Perry when I was in a
19 depression.

20 Q So, you were diagnosed with depression after you were
21 charged with these, with this crime?

22 A It was before.

23 Q So, you were incarcerated, incarcerated prior to being
24 charged with this crime?

25 A I was incarcerated in 2003 at Perry for bad checks.

Giles Belcher - Cross-examination
by Ms. Wilson

1 Q You also testified that your trial counsel should have,
2 should have gotten you an independent forensic examiner.

3 Is that what, is that what you testified to?

4 A Yes, ma'am.

5 Q And what would that independent expert have testified
6 to at trial?

7 A Basically would of refuted what Nancy Henderson had
8 said over the fact that when she done her forensic exam on
9 MINOR that MINOR was normal and unbroken. But yet there
10 was signs of penetration and sexual abuse.

11 Q Okay. You make, you make different allegations about
12 the solicitor's closing and the statements that you made in
13 closing.

14 A Yes, ma'am.

15 Q Specifically that her and her father use to watch Perry
16 Mason when she was a child, and also you said -- she said
17 something about you needed a medicine cabinet, is that
18 correct?

19 A Yes, ma'am.

20 Q How is that prejudicial to you?

21 A Basically she was putting me down, demeaning me.
22 Basically pitting and trying to aggravate me. Basically
23 inflaming the jury to do what they was, to make a guilty
24 plea, a guilty verdict.

25 Q Okay. You also testified about, about your attorney

Giles Belcher - Cross-examination
by Ms. Wilson

1 not putting in evidence about how you were pressured in
2 interrogation, how you felt pressured in the interrogation
3 by the officers that were interrogating you at the police
4 department?

5 A Yes, ma'am.

6 Q Did you recall, at trial, having a Jackson v. Denno
7 hearing?

8 Maybe I can, can explain it a little better.

9 Do you recall, prior to the trial, having a hearing
10 with just the judge, the jury wasn't present yet, and you
11 testified on the stand about your interrogation and how you
12 felt?

13 A Yes, ma'am.

14 Q Do you recall that?

15 A I do now that you bring it to mind.

16 Q And did you appeal this conviction?

17 A Yes, ma'am.

18 Q And do you recall your appellate counsel filing an
19 Anders brief?

20 A Yes, ma'am.

21 MS. WILSON: No further questions, Your Honor.

22 THE COURT: Mr. Richey, anything further---

23 MR. RICHEY: No questions.

24 THE COURT: ---from this witness?

25 MR. RICHEY: No, sir.

Gary Long - Direct examination
by Mr. Richey

1 THE COURT: Sir, you may step down.

2 You may call your next witness.

3 MR. RICHEY: Pastor Long.

4 THE COURT: Sir, if you'd come forward to my left.

5 GARY LONG, having been first duly
6 sworn, testified as follows:

7 THE COURT: Have a seat please, and once seated, state
8 your name for me.

9 WITNESS: My name is Pastor Gary Long.

10 THE COURT: Thank you.

11 Mr. Richey, it's your witness.

12 MR. RICHEY: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MR. RICHEY:

15 Q Mr. Long, where are you a pastor at?

16 A I pastor the Spartanburg First Wesleyan Church.

17 Q And do you know Mr. Belcher?

18 A Yes, I do.

19 Q And how do you know him?

20 A I met him a few years back. This was after he was
21 accused of this incident.

22 Q Okay. And you don't have any knowledge of what
23 happened in this incident, correct?

24 A That's right.

25 Q But did you have an opportunity to be around Mr.

Gary Long - Direct examination
by Mr. Richey

1 Belcher?

2 A Yes, I had.

3 Q And being around him, did, did you have an opportunity
4 to judge whether he was truthful or not in your capacity
5 dealing with you?

6 A To my knowledge, my first meeting with Les, he came and
7 spoke with me at my office and he told me, at that time,
8 exactly what he was facing. He even bought up the fact of
9 him being incarcerated before because of the bad checks that
10 had been passed, and, to my knowledge, he did not hide
11 anything from me. He did not ask anything as some would
12 from the church for any particular thing but for
13 encouragement and help and spiritual guidance, and, and, to
14 my knowledge, you know, he, he pursued that.

15 He, over the next months and years, he was very close
16 to the family of the church and different things that he
17 would do with them and help in many ways with other people
18 and stuff. We never saw any evidence that he had this
19 tendency.

20 Q So, at the time he was arrested until the case actually
21 came to Court was sometime?

22 A Yes.

23 Q And, so, during that time is it your testimony he was
24 consistently involved with the church?

25 A Yes.

Gary Long - Cross-examination
by Ms. Wilson

1 Q Okay. Thank you. Answer any questions the attorney
2 general has for you.

3 THE COURT: Ms. Wilson.

4 CROSS-EXAMINATION

5 BY MS. WILSON:

6 Q Pastor Long, you testified that you didn't know Mr.
7 Belcher prior to him being charged with this crime, is that
8 correct?

9 A That is correct.

10 Q So, you didn't interact with him or his -- well, did
11 you interact with him personally prior to that time?

12 A That's correct.

13 Q So, at trial, you couldn't really testify to his
14 character for truthfulness prior or for the, at the time he
15 was charged with the crime and prior?

16 A That's right.

17 Q Okay. No further questions. Thank you.

18 THE COURT: Mr. Richey, anything further?

19 MR. RICHEY: No other questions at all.

20 We call Mrs. Bishop.

21 THE COURT: Sir, you may step down. Thank you very
22 much.

23 Mrs. Bishop, come forward.

24 GENIE BISHOP, having been first
25 duly sworn, testified as follows:

Genie Bishop - Direct examination
by Mr. Richey

1 THE COURT: Have a seat please, ma'am. And once you're
2 stated, state your name for me.

3 WITNESS: Genie Belcher Bishop.

4 THE COURT: Jenny Bishop?

5 WITNESS: No, my name is Genie L. Belcher Bishop.

6 THE COURT: Thank you.

7 You may proceed, Mr. Richey.

8 MR. RICHEY: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. RICHEY:

11 Q Ma'am, do you know Giles Belcher?

12 A Yes, sir, he's my brother.

13 Q Okay. And you understand that he's been convicted of a
14 crime in Spartanburg County, is that correct?

15 A Yes, sir.

16 Q And during the time of this case was going did you have
17 any knowledge about the case?

18 A Yes.

19 Q And what was that?

20 A Well, I mean I, I was around my brother and JoAnn and
21 the little girls when they was little and I---

22 Q Okay. Hold on.

23 Who's JoAnn?

24 Let's---

25 A JoAnn was his wife.

Genie Bishop - Direct examination
by Mr. Richey

1 Q Okay. And you were around your brother and his wife?

2 A Uh-huh (affirmative), and the two girls.

3 Q And the, the -- one of the children, MINOR who's in
4 this case, you were around that family unit, is that
5 correct?

6 A Uh-huh. (Affirmative).

7 Q Okay. You got to answer yes or no so she can take it
8 down.

9 A I'm sorry. Yes.

10 Q That's fine.

11 Okay. Do you know any information about this alleged
12 crime that was, occurred against MINOR

13 A Well, only from what I've heard that MINOR said that
14 Issac did it and---

15 MS. WILSON: Objection, Your Honor. Hearsay.

16 THE COURT: I'll sustain the objection.

17 MR. RICHEY: Judge, we made a failure to investigate
18 claim, and it's our position that this allegation out, was
19 out there and counsel should of investigated it. So, we're
20 not offering it for the truth of the matter asserted. We're
21 offering it just that the child -- there was information out
22 there that the child accused Mr. Issac. So, we're not
23 offering it for the truth or not.

24 THE COURT: All right. Counsel.

25 MS. WILSON: But, Your Honor, she testified that she

Genie Bishop - Direct examination
by Mr. Richey

1 couldn't speak to that directly. Only what she had heard.

2 MR. RICHEY: We're not offering it for that. We're
3 not, we're not offering it---

4 THE COURT: I understand that. I'm gonna allow you to
5 go into it because it's not being offered for the truth of
6 the matter asserted. Simply that the information -- that
7 would of been her belief at that time, and that he's saying
8 that perhaps the attorney should have investigated her
9 beliefs.

10 MS. WILSON: Thank you, Your Honor.

11 Q And did you -- did you talk -- I'm sorry.

12 Excuse me, Your Honor.

13 THE COURT: You may proceed.

14 MR. RICHEY: Thank you.

15 THE COURT: Yes, sir.

16 Q Ma'am, did you ever talk to Mr. Belcher's lawyer?

17 A Hu huh. (Negative).

18 Q You got to answer yes or no.

19 A No.

20 Q Okay. Were you available to talk to her?

21 A Yeah.

22 Q Okay. Did you ever go to her office or anything?

23 A I didn't know who his lawyer was.

24 Q Okay. Did you tell your brother about this, about
25 this?

Genie Bishop - Direct examination
by Mr. Richey

1 Did you tell your brother about the information you
2 knew, your brother, Mr. Belcher, Giles?

3 A Yeah. Yeah, I talked to my brother about it. I'm
4 sorry.

5 Q No, just take your time.

6 A I've never been in court before.

7 Q I understand.

8 A So, I'm nervous.

9 Q I understand. I understand. That's fine. I
10 understand.

11 So, you did have some interaction with your brother
12 about this incident?

13 A Yes.

14 Q Right?

15 A Yes, sir.

16 Q Okay. And were you available to come to court?

17 A Yes.

18 Q Okay. And were you willing to come to court?

19 A Yes.

20 Q Okay. And you did have time around your brother and
21 the child, correct?

22 A Yes, sir.

23 Q And during your interaction with your brother and his
24 child, did you notice any conduct that would lead you to
25 believe that he had done something to her?

Genie Bishop - Cross-examination
by Ms. Wilson

1 A No, sir.

2 Q Thank you. Answer any questions the attorney general
3 has for you.

4 THE COURT: You may proceed, Ms. Wilson.

5 MS. WILSON: Thank you.

6 CROSS-EXAMINATION

7 BY MS. WILSON:

8 Q Mr. Belcher, how did you say you are related to the
9 applicant again?

10 A He's my brother.

11 Q And were you there every time the, Mr. Belcher was
12 there with his daughter?

13 A Yes, ma'am.

14 Q Every time?

15 A Yes.

16 Q Every single day you were with Mr. Belcher?

17 A My brother, yes.

18 Q Did you live with them?

19 A No.

20 Q Did you stay overnight every night?

21 A No, we just had cookouts or dinners or something.

22 MS. WILSON: Thank you. No further questions from me,
23 Your Honor.

24 THE COURT: You may step down unless Mr. Richey has
25 another question.

Scottie Belcher - Direct examination
by Mr. Richey

1 MR. RICHEY: No other questions, Your Honor.

2 WITNESS: Thank you.

3 THE COURT: All right. You may step down. Thank you.

4 MR. RICHEY: We'd call Scottie Belcher.

5 THE COURT: Come forward, sir.

6 SCOTTIE BELCHER, having been first
7 duly sworn, testified as follows:

8 THE COURT: Have a seat please.

9 (Witness complies.)

10 THE COURT: State your name.

11 WITNESS: Eric Scott Belcher.

12 DIRECT EXAMINATION

13 BY MR. RICHEY:

14 Q Mr. Belcher, you're -- are you related to Giles
15 Belcher?

16 A Yes, sir, I am.

17 Q And how are you related to him?

18 A He's my brother.

19 Q Okay. And you were around -- were you around him when
20 all this stuff occurred or supposedly occurred, the trial,
21 the incident, and all that?

22 A Yes, sir.

23 Q You had contact with your brother?

24 A Yes, sir.

25 Q Okay. And, and were you available to testify at trial

Scottie Belcher - Direct examination
by Mr. Richey.

1 on his behalf?

2 A Yes, sir, I was. But his lawyer never picked me.

3 Never.

4 Q Were you at the courthouse?

5 A Yes, sir.

6 Q Okay. And do you know anything about this incident?

7 A Some of it. I know some of it.

8 Q Okay. Did -- do you know any information on who the
9 perpetrator was?

10 A Isaac Stewart.

11 Q Okay. Was that, was that information prevalent in your
12 family?

13 A Yes, sir.

14 Q Was it commonly known in your family?

15 A Yes, sir.

16 Q And did you talk to the lawyer about that?

17 A No, sir.

18 MR. RICHEY: Okay. One moment, Your Honor, please.

19 THE COURT: Yes, sir.

20 (Pause.)

21 Q There was a birthday party in this case, is that
22 correct?

23 Do you remember the big birthday party everybody talked
24 about?

25 A Yes, sir.

Scottie Belcher - Direct examination
by Mr. Richey

1 Q And were you there at that party?

2 A Yes, sir, I was.

3 Q Was MINOR the child, there?

4 A Yes, sir.

5 Q Did the child say anything about the incident?

6 A Well, she come up to me running up to me. He was
7 saying that Isaac---

8 MS. WILSON: Objection, Your Honor. Hearsay.

9 MR. RICHEY: Your Honor, we're offering this not for
10 the truth, that counsel should of investigated that the
11 child made an allegation. I won't say what he's gonna say,
12 but it's not---

13 THE COURT: Well, the first thing I want, I want you to
14 do, and I'm gonna sustain the objection at this time, and
15 the reason is I don't know the time frame in which this
16 birthday party occurred, whether it was before or after the,
17 the, the applicant was charged.

18 MR. RICHEY: Yes, sir.

19 THE COURT: So, don't know if that information was
20 available before or after the, the charge took place. So,
21 I'm gonna ask you to set a foundation for when this all
22 occurred, and in what context it occurred, and then we'll
23 address whether or not you can go into what you want to go
24 into once we determine the context.

25 Q This birthday party that we're referring to occurred in

Scottie Belcher - Direct examination
by Mr. Richey

1 2003, is that correct?

2 A Yes, sir.

3 Q And this happened prior to your brother being charged,
4 correct?

5 A Yes, sir.

6 Q And at this birthday party there were some issues going
7 on about something being -- there was some things that had
8 been done to this child, correct?

9 A Yes, sir.

10 Q And at that time the child then came to you and
11 discussed this incident, correct?

12 A Yes, sir.

13 Q And from those discussions did you derive your brother
14 didn't do this, is that correct?

15 A Yes, sir.

16 Q And those discussions were with the child?

17 A Yes, sir.

18 Q Okay. Thank you, sir. No other questions.

19 THE COURT: Ms. Wilson.

20 CROSS-EXAMINATION

21 BY MS. WILSON:

22 Q Mr. Belcher, were you always around your brother when
23 he was interacting with his daughter?

24 A Yes, ma'am.

25 Q Did you live in the home with him?

Scottie Belcher - Cross-examination
by Ms. Wilson

1 A Before he got married and stuff he stayed, he lived
2 with us.

3 Q Okay. And after he got married, did you live in the
4 home with him and his family?

5 A No, ma'am.

6 Q Do you recall, you know, receiving something in the
7 mail telling you, a subpoena, telling you to show up to
8 Court on, the your brother's trial?

9 Do you recall receiving that?

10 A Yes, ma'am, I did.

11 Q And you showed up that day and decided to be present at
12 your brother's trial?

13 A Yes, ma'am.

14 Q How exactly -- you stated that you knew that Issac
15 Stewart was the perpetrator.

16 How did you know that?

17 A MINOR come up to me and saying that Isaac touched me
18 down here and molested me and---

19 Q Okay.

20 A ---all of that, all that stuff.

21 Q Okay. And she told you that after your brother had
22 already been charged?

23 A Yes, ma'am.

24 Q Thank you.

25 THE COURT: Anything further from this witness?

Scottie Belcher - Redirect examination
by Mr. Richey

1 MR. RICHEY: Just one question.

2 REDIRECT EXAMINATION

3 BY MR. RICHEY:

4 Q That birthday party was in 2003, correct?

5 A Yes, sir.

6 Q And was that before or after your brother was charged?

7 Do you recall?

8 A It was kind of in the process I guess.

9 Q Do you know whether he had been arrested at that point?

10 A I can't really recall that.

11 Q Okay. Thank you, sir.

12 THE COURT: Anything further, ma'am?

13 MS. WILSON: Nothing further, Your Honor.

14 THE COURT: You may step down. Thank you very much.

15 MR. RICHEY: We call Mrs. Hodges.

16 THE COURT: Come forward please, ma'am.

17 WITNESS: Yes, sir, Your Honor.

18 KATHLEEN HODGES, having been first
19 duly sworn, testified as follows:

20 THE COURT: Have a seat please, and state your name for
21 me.

22 WITNESS: My name is Kathleen Johnson Hodges.

23 THE COURT: Sir?

24 (WHEREUPON, Mr. Belcher stands up.)

25 MR. RICHEY: No just sit down. I'll come back over

Kathleen Hodges - Direct examination
by Mr. Richey

1 there.

2 Thank you.

3 APPLICANT: Sorry, sir.

4 THE COURT: All right. Your witness, Mr. Richey.

5 DIRECT EXAMINATION

6 BY MR. RICHEY:

7 Q Ma'am, do you recall representing Mr. Belcher?

8 A Yes, sir, I do.

9 Q And at the time of his representation where were you
10 working?

11 A At the Spartanburg County Public Defender's Office.

12 Q And, so, Mr. Belcher was appointed or assigned to you
13 to represent?

14 A That's correct.

15 Q Okay. And you are aware that he went to trial,
16 correct?

17 A That's correct.

18 Q And he got convicted?

19 A Yes, he did.

20 Q Okay. You were in the courtroom when we went through
21 these allegations with Mr. Belcher, correct?

22 A I was.

23 Q Okay. I'm gonna kind of go through them in a different
24 way,

25 You realize that Mr. Belcher made a claim that you

Kathleen Hodges - Direct examination
by Mr. Richey

1 failed to investigate this case?

2 A That's correct.

3 Q And one of the issues that he alleges is that you
4 failed to interview witnesses, correct?

5 A Right.

6 Q Do you ever recall talking to his brother?

7 A I do.

8 Q And, and did his brother relay to you that this Issac
9 guy had did the incident?

10 A He did.

11 Q Okay. And did you, did you make a decision to call him
12 at trial or not call him at trial?

13 A I did make a decision whether to call him at trial. I
14 did subpoena Mr. Scottie Belcher. Actually I subpoenaed not
15 only Mr. Scottie Belcher, but also Gary Long and Tammy
16 Armstrong, and the investigator, one of the investigators in
17 the Public Defender's Office at the time, Wendy Alley. They
18 were on the list of the defendant's potential witnesses.

19 Prior to trial, after jury selection, but prior to
20 testimony being taken, one of the motions that I made was to
21 be allowed to get in the fact that the child had made claims
22 not only that Mr. Belcher had committed the incidents that
23 he was charged with, but that the Issac Stewart had also --
24 she also claimed that Issac Stewart had made those, had made
25 claims against him. The trial judge did not allow that

Kathleen Hodges - Direct examination
by Mr. Richey

1 testimony.

2 Q Let me ask you, after the child accused -- the child
3 testified, correct?

4 A Yes, sir.

5 Q Okay.

6 A The child did testify.

7 Q And the child did allege that, that Mr. Giles did this
8 stuff, correct?

9 A She did.

10 Q Did you believe, at that point, that his brother's
11 testimony could be admissible as a prior inconsistent
12 statement to, to impeach the child?

13 A It, it might of been, but the judge had, had already
14 ruled that any testimony was, was not admissible as to that.
15 So, I don't know that, that I actually -- I don't remember
16 considering proffering Mr. Scottie Belcher's testimony at
17 that time as a prior inconsistent statement.

18 Q I believe the, the transcript reflects that the judge
19 had said that there was no testimony that the child actually
20 said that this Mr. Bruce had done this stuff. I think
21 that's what the transcript reflects.

22 A I mean I'm relying on what the transcript is, yes, sir.

23 Q Okay. And, so, if his brother had direct evidence that
24 the child, in fact, said this Mr. Issac had done this, do
25 you believe that would be admissible to impeach the child?

Kathleen Hodges - Direct examination
by Mr. Richey

1 A It might have been, you know, but I don't remember
2 thinking of that as a strategy at the time, to, to, to
3 proffer that testimony.

4 Q Okay. And, and this was a case of credibility, the
5 child's credibility?

6 A Yes.

7 Q Okay. All right. I'm gonna go through these things.
8 Do you believe that the, that you should of challenged
9 the indictment?

10 A No.

11 Q And why is that?

12 A The indictment states that the incident occurred I
13 believe between May the 1st of 2001 and I believe it was
14 August, the end of August of 2002. That's approximately an
15 18, 15 to 18 month time frame. It's not, in my experience,
16 that's not necessarily overly broad.

17 Q And, so, is that why you did not make a motion to
18 dismiss this indictment for being violated?

19 A That's correct.

20 Q Okay. Do you believe that you have, should of sought
21 out an independent medical evaluation for Mr. Belcher?

22 A An independent medical?

23 Q Mental.

24 A Mental evaluation.

25 Q Mental. I'm sorry.

Kathleen Hodges -- Direct examination
by Mr. Richey

1 A Mr. Belcher -- I was looking for the face sheet to
2 determine if he had indicated to us if he had any mental
3 health issues. I believe that I knew that he had suffered
4 from depression. But in all of my conversations with Mr.
5 Belcher, in terms of the mental evaluation that I would of
6 sought, it would of been able to determine whether, you
7 know, he had any sort of mental illness or impairment, that
8 would impede his ability to proceed to trial to be able to
9 help me determine whether he was competent, to determine
10 whether he's able to know right from wrong.

11 Nothing in my conversation, several conversations with
12 him ever gave me the indication that he could not either
13 assist me at trial, didn't understanding what was going on,
14 that he understood right from wrong. So, I did not feel,
15 based on my experience with him, that he needed a mental
16 evaluation.

17 Q Okay. In this case, was there any physical evidence
18 against Mr. Belcher?

19 Do you recall?

20 A In terms of like DNA or something like that?

21 Q Right.

22 A No, there wasn't -- the allegation by the child of the
23 incident and then testimony from the forensic
24 professionals---

25 Q Okay. There were no---

Kathleen Hodges - Direct examination
by Mr. Richey

1 A ---from the State.

2 Q There were no witnesses---

3 A Yeah, no witnesses to the incident.

4 Q Okay. So, basically---

5 A other than the child.

6 Q I'm sorry. I didn't mean to---

7 A I mean other than the child. No witnesses to the
8 incident.

9 Q And, so, it's basically the child had to testify
10 against him basically to make their case?

11 Without the child's testimony, the State would not have
12 a case against them?

13 Would that be an accurate statement?

14 A Yes and no. Without the child's statements as well as
15 any disclosures that she made to the investigators during
16 the -- you know, the child was able to testify and,
17 therefore, the State did not have to rely on a forensic
18 interview or anything like that. So -- and in terms of
19 being able to make their case. Whether it's true that, that
20 without the child testifying the State could not of made a
21 case, you know, I don't know that I could say that.

22 Q The child was a pretty good witness in the case?

23 Would you say that?

24 A She was an effective witness according to the jury's
25 verdict, yes, sir.

Kathleen Hodges - Direct examination
by Mr. Richey

1 Q Okay. All right. Do you believe that, that you
2 properly impeached the State's witnesses?

3 A I believe that I did.

4 Q Do you believe that you should of obtained a
5 independent forensic examination to look at, for the child's
6 behavior because there's an issue about the child acting out
7 and that was a result of the sex abuse?

8 A There is nothing that indicated to me that, that
9 anything was necessarily faulty or improper in terms of
10 standard child abuse protocols or child sex abuse
11 investigations that was done by the State and the State's
12 witnesses and the State's investigation that led me to
13 believe that an independent forensic examination or
14 interview or anything like that was necessary.

15 Q Okay. Do you believe that the, the prosecutor's
16 closing argument was prejudicial to Mr. Belcher?

17 A Yes. But I would of expected the State to try and make
18 a prejudicial argument against Mr. Belcher.

19 Q Well, when I say prejudicial, I mean legally
20 prejudicial where it crossed a line?

21 A In terms of the prosecutor injecting herself into, into
22 the argument, it probably came -- it may of come close to
23 the line. I don't think that it was anything that was
24 unduly prejudicial to the effect that, that it would have,
25 you know, tainted the jury or, or, you know, inflamed the