

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Yes, sir.

3 She's printing out another list. The computer
4 skipped somebody.

5 Just for the record the original list knocked out
6 166 and we've just put it back in.

7 (Whereupon, the jury panel returned to the
8 courtroom at approximately 12:46 p.m.)

9 THE COURT: Ladies and gentlemen, as I said, when
10 your name is called, bring all your personal belongings,
11 face the parties and they'll either strike you or tell
12 everybody to be seated.

13 Yes, ma'am.

14 THE CLERK: Number 116, Adrienne Long (White
15 female). If you will please come forward, bringing all
16 your personal belongings.

17 What sayeth the State?

18 MS. ADAMS: Please present Ms. Long.

19 THE CLERK: What sayeth the Defendant?

20 THE DEFENDANT: Yes.

21 THE COURT: Seat the juror?

22 THE CLERK: Seat the juror?

23 THE DEFENDANT: Yes, ma'am.

24 THE CLERK: Okay. Ma'am, if you would please be
25 seated in the jury-box.

1 Number 84, Michael Gray, (White male).
2 What sayeth the State?
3 **MS. ADAMS:** Please present Mr. Gray.
4 **THE CLERK:** What sayeth the Defendant?
5 **THE DEFENDANT:** No, ma'am.
6 **THE CLERK:** Okay. Sir, you have been excused from
7 this case. You may be seated.
8 **PROSPECTIVE JUROR GRAY:** Seated? Out here?
9 **THE CLERK:** Yes, sir.
10 Number 41, Brian Cawthon (White male).
11 What sayeth the State?
12 **MS. ADAMS:** Please present Mr. Cawthon.
13 **THE CLERK:** What sayeth the Defendant?
14 **THE DEFENDANT:** Yeah, please present him.
15 **THE CLERK:** Sir, if you would please take a seat in
16 the jury-box.
17 Number 67, Darrell Evett (Black male).
18 What sayeth the State?
19 **MS. ADAMS:** Please present Mr. Evett.
20 **THE CLERK:** What say the Defense?
21 **THE DEFENDANT:** Yes, please present him.
22 **THE CLERK:** Sir, please take a seat in the jury-box.
23 Number 201, Clyde Stansell (White male).
24 What sayeth the State?
25 **MS. ADAMS:** Please present Mr. Stansell.

1 THE CLERK: What sayeth the Defendant?

2 THE DEFENDANT: No.

3 THE CLERK: Sir, you have been excused from this
4 case. You may be seated.

5 Number 129, Waltetia McClure (White female).

6 What sayeth the State?

7 MS. ADAMS: Please present Ms. McClure.

8 THE CLERK: What say the Defense?

9 THE DEFENDANT: No, ma'am.

10 THE CLERK: Ma'am, you have been excused from this
11 case. You may be seated.

12 Number 186, Karen Settlemyre.

13 What say the State?

14 MS. ADAMS: Please present Ms. Settlemyre.

15 THE CLERK: What say the Defense?

16 THE DEFENDANT: No, ma'am.

17 THE CLERK: Okay. Ma'am, you have been excused from
18 this case. You may be seated.

19 Number 69, David Ferriouolo (White male).

20 What sayeth the State?

21 MS. ADAMS: Please present Mr. Ferriouolo.

22 THE CLERK: What sayeth the Defendant?

23 THE DEFENDANT: Yes, ma'am, please present him.

24 THE CLERK: Sir, if you would please take a seat in
25 the jury-box.

1 Number 123, Patrick Martin (White male).

2 What sayeth the State?

3 MS. ADAMS: Please present Mr. Martin.

4 THE CLERK: What say the Defense?

5 THE DEFENDANT: Yes.

6 THE CLERK: Sir, if you would please take a seat in
7 the jury-box.

8 Number 165, Ann Ready (White female).

9 What sayeth the State?

10 MS. ADAMS: Please present Ms. Ready.

11 THE CLERK: What sayeth the Defendant?

12 THE DEFENDANT: No, ma'am.

13 THE CLERK: Ma'am, you have been excused from this
14 case. You may be seated.

15 Number 193, Debra Smith (White female).

16 What sayeth the State?

17 MS. ADAMS: Please excuse Ms. Smith.

18 THE CLERK: Ma'am, you have been excused from this
19 case. You may be seated.

20 Number 59, Lauren Dost (White female).

21 What sayeth the State?

22 MS. ADAMS: Please present Ms. Dost.

23 THE CLERK: What say the Defense?

24 THE DEFENDANT: No, ma'am.

25 THE CLERK: Ma'am, you have been excused from this

1 case. You may be seated.

2 Number 28, Jack Burchfield (White male).

3 What sayeth the State?

4 MS. ADAMS: Please present Mr. Burchfield.

5 THE CLERK: What say the Defense?

6 THE DEFENDANT: Yes, ma'am.

7 THE CLERK: Sir, if you would please take a seat in
8 the jury-box.

9 Number 87, Daniel Guinn (White male).

10 What sayeth the State?

11 MS. ADAMS: Please present Mr. Guinn.

12 THE CLERK: For the Defense?

13 THE DEFENDANT: Yes, ma'am.

14 THE CLERK: Sir, if you would please take a seat in
15 the jury-box.

16 Number 137, Brian Miller (White male).

17 What sayeth the State?

18 MS. ADAMS: Please present Mr. Miller.

19 THE CLERK: What say the Defense?

20 THE DEFENDANT: Yes, ma'am.

21 THE CLERK: Sir, if you would please take a seat in
22 the jury-box.

23 Number 62, Willis Duke (White male).

24 What sayeth the State?

25 MS. ADAMS: Please excuse Mr. Duke.

1 THE CLERK: Sir, you have been excused from this
2 case. You may be seated.

3 Number 139, Alyssa Moore (White female).

4 What sayeth the State?

5 MS. ADAMS: Please present MS. Moore.

6 THE CLERK: What sayeth the Defendant?

7 THE DEFENDANT: Yes.

8 THE CLERK: Ma'am, if you would please take a seat
9 in the jury-box.

10 Number 182, George Schatz (White male).

11 What sayeth the State?

12 MS. ADAMS: Please present Mr. Schatz.

13 THE CLERK: What say Defense?

14 THE DEFENDANT: Yes.

15 THE CLERK: Sir, if you would please take a seat in
16 the jury-box.

17 Number 272, Jason Foster (White male).

18 What sayeth the State?

19 MS. ADAMS: Please excuse Mr. Foster.

20 THE CLERK: Sir, you have been excused from this
21 case. You may be seated.

22 Number 111, Sheila Lee (White female).

23 What sayeth the State?

24 MS. ADAMS: Please present Ms. Lee.

25 THE CLERK: What sayeth the Defendant?

1 THE DEFENDANT: No, ma'am.

2 THE CLERK: Ma'am, you have been excused from this
3 case. You may be seated.

4 Number 57, Margaret Domanico (White female).

5 What sayeth the State?

6 MS. ADAMS: Please present Ms. Domanico.

7 THE CLERK: What sayeth Defense?

8 THE DEFENDANT: No, ma'am.

9 THE CLERK: Ma'am, you have been excused from this
10 case. You may be seated.

11 Number 211, Alison Waldron (White female).

12 What sayeth the State?

13 MS. ADAMS: Please present Ms. Waldron.

14 THE CLERK: What sayeth the Defendant?

15 THE DEFENDANT: Yes, ma'am.

16 THE CLERK: Ma'am, if you would please take a seat
17 in the jury-box.

18 Number 213, Nichole Warnke (White female).

19 What sayeth the State?

20 MS. ADAMS: Please present Ms. Warnke.

21 THE CLERK: What sayeth the Defendant?

22 THE DEFENDANT: Yes.

23 THE CLERK: Ma'am, if you would please take a seat
24 in the jury-box.

25 This will be for the first alternate?

1 THE COURT: Right.

2 THE CLERK: Number 37, Christopher Carter (Black
3 male).

4 What sayeth the State?

5 MS. ADAMS: Please excuse Mr. Carter.

6 THE CLERK: Sir, you have been excused from this
7 case. You may be seated.

8 Number 146, Gregory Moss (White male).

9 What sayeth the State for cause?

10 MS. ADAMS: Please present Mr. Moss.

11 THE CLERK: What sayeth the Defendant?

12 THE DEFENDANT: Yes.

13 THE CLERK: Sir, if you would please take a seat in
14 the jury-box.

15 And this will be for alternate number 2.

16 Number 19, Nancy Black (White female).

17 What sayeth the State?

18 MS. ADAMS: Please present Ms. Black.

19 THE CLERK: What sayeth the Defendant?

20 THE DEFENDANT: No.

21 THE CLERK: Ma'am, you have been excused from this
22 case. You may be seated.

23 Number 49, Peter Cohen (White male).

24 What sayeth the State?

25 MS. ADAMS: Please present Mr. Cohen.

1 THE CLERK: What sayeth the Defendant?

2 THE DEFENDANT: Yes.

3 THE CLERK: Sir, if you would please take a seat in
4 the jury-box.

5 THE COURT: Are we gonna have any motions in regard
6 to the selection of the jury from the State?

7 MS. ADAMS: One moment, Your Honor.

8 No, sir, Your Honor, no motions.

9 THE COURT: From the Defense, anything?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. All right. Ladies and gentlemen,
12 I'll send you back to the jury room right now and I'll
13 bring you back in in just a minute. I will tell you
14 every time you leave the courtroom, from this point
15 forward, I'm gonna tell you "don't talk about this case."
16 The first time you should discuss this case at all
17 amongst yourselves is after you've heard all the
18 testimony and evidence in this case.

19 You can go back, introduce yourselves, talk about
20 football, the weather, anything, but don't talk about
21 this case. I'll bring you in in just a second.

22 And by the way, when we bring you in, Mr. Evett --
23 where is Mr. Evett -- I'm appointing you foreman of the
24 jury. You will sit in that first seat. You will be the
25 only one that has to sit there, okay?

1 All right. Anything I need to take up before I let
2 the rest of the jury panel go from the State?

3 MS. ADAMS: No, sir.

4 THE COURT: From the Defense?

5 THE DEFENDANT: No, sir.

6 THE COURT: Ladies and gentlemen, I appreciate you
7 waiting here all morning, and I apologize.

8 Ms. Black, she's left. Go. I wanted to let you go,
9 but you see my problem.

10 All right. Ladies and gentlemen, normally I would
11 tell you that you need to call in to the jury service
12 number and see if you need to come back. You don't
13 because this case will take us at least through Wednesday
14 or Thursday. So don't worry about that.

15 I will tell you that if you have to come up here
16 again and go through these questions and the Judge asks,
17 have you served on a jury in the last three calendar
18 years, since you have been qualified to serve, you can
19 answer "yes" to that. So, while I know you have been
20 sitting here a long time, this will be your once for
21 three years, so you are safe for at least three years.

22 Have a great holiday season.

23 (Whereupon, the jury panel was excused at
24 approximately 11:04 a.m.)

25 THE COURT: Before we break for lunch, Dr. Frierson

1 is here. Do you need to put him on the stand?

2 MS. SIMMONS: Judge, he's written a written report;
3 you can make that a court's exhibit if you would like.
4 We could certainly call him if the Court deems it
5 necessary.

6 THE COURT: No, I don't, no.

7 Mr. Temple, do you need to call Dr. Frierson? You
8 basically said you were competent, I think, this morning.

9 THE DEFENDANT: No, sir. I might need him.

10 THE COURT: Dr. Frierson, we may need you. You have
11 to stay. I apologize.

12 MS. SIMMONS: Judge, do you need an actual copy from
13 Dr. Frierson?

14 Dr. Frierson, do you have a copy of your report?

15 THE COURT: Okay. Since it's 1:00 we'll take a
16 break for lunch and start back at 2:30. And my intention
17 is to do opening and we'll do as many, get as far as we
18 can today, but I don't think we'll have to go much past
19 5:00 to do that.

20 Okay. I'll see you at 2:30.

21 THE SHERIFF'S DEPUTY: What about the jury?

22 THE COURT: Oh, I'm sorry. Hold on. Let me bring
23 the jury back again. Let me bring them back again.

24 Thank you. I need an assistant.

25 (The jury entered the courtroom at

1 approximately 11:06 a.m.)

2 THE COURT: All right. Ladies and gentlemen, thank
3 you for your patience this morning. I'm gonna let you go
4 to lunch now. We'll start back at 2:30. I'll need you
5 to be back in the jury room, back here by 2:30. We'll
6 begin the trial this afternoon.

7 I'll go through sort of a brief overview of how the
8 trial is gonna proceed. Then you'll have the opening
9 statements. We'll probably get one or two witnesses in.
10 But we won't be here late today, that won't be a problem.

11 But every time you leave I'm gonna say "please don't
12 talk about this case." It's not fair for you to even
13 really discuss or contemplate it in your mind, quite
14 frankly, the case until you have heard all the testimony.
15 But certainly you shouldn't discuss it amongst
16 yourselves.

17 And also I feel the need to tell you now as you go,
18 leave the courtroom for the first time, I am certain that
19 there will be publicity in this case. I'm ordering you
20 not to read any newspapers, listen to any radio, or watch
21 any television in which this case may be discussed.
22 There are a lot of reasons for that.

23 But when you come back at 2:30 you will be sworn in,
24 and one of the obligations you will have is to abide by
25 the rules of the Court. And, quite frankly, in South

1 Carolina within the last year we had a juror, two jurors
2 down in Charleston who failed to abide by the rule and a
3 couple other rules, but they are subject to going to
4 jail.

5 Another thing I'm gonna tell you is don't look on
6 the internet, do any Google searches or try to find
7 any information about this case. That's sort of the big
8 no-no.

9 But now that I gave you all those dire warnings,
10 have a great lunch and I'll see you back at 2:30, okay?
11 Thank you.

12 Mr. Evett, I'll explain what you got to do when you
13 get back, okay?

14 THE FOREMAN: Okay.

15 THE COURT: Okay. I'll see you all at 2:30.

16 Let's mark this as a Court's exhibit before we go,
17 Dr. Frierson's report.

18 MS. SIMMONS: Thank you, Judge.

19 THE COURT: Okay. See you all at 2:30.

20 (Whereupon, a luncheon recess occurred,
21 during which time the court reporter marked
22 the following exhibits for identification:)
23 (Marked for identification was Court's
24 Exhibit T-1, report of Dr. Frierson dated
25 November 1, 2010, from evaluation on October

1 18th, 2010.)
2 (Marked for identification was State's
3 Exhibit 1, copy of photo line-up.)
4 (Marked for identification was State's
5 Exhibit 2, photo of crime scene or car.)
6 (Marked for identification was State's
7 Exhibit 3, photo of crime scene or car.)
8 (Marked for identification was State's
9 Exhibit 4, photo of crime scene or car.)
10 (Marked for identification was State's
11 Exhibit 5, photo of crime scene or car.)
12 (Marked for identification was State's
13 Exhibit 6, photo of crime scene or car.)
14 (Marked for identification was State's
15 Exhibit 7, photo of crime scene or car.)
16 (Marked for identification was State's
17 Exhibit 8, photo of crime scene or car.)
18 (Marked for identification was State's
19 Exhibit 9, photo of crime scene or car.)
20 (Marked for identification was State's
21 Exhibit 10, photo of crime scene or car.)
22 (Marked for identification was State's
23 Exhibit 11, photo of victim.)
24 (Marked for identification was State's
25 Exhibit 12, photo of victim.)

1 (Marked for identification was State's
2 Exhibit 13, photo of victim.)
3 (Marked for identification was State's
4 Exhibit 14, photo of victim.)
5 (Marked for identification was State's
6 Exhibit 15, photo of victim.)
7 (Marked for identification was State's
8 Exhibit 16, photo of victim.)
9 (Marked for identification was State's
10 Exhibit 17, photo of victim.)
11 (Marked for identification was State's
12 Exhibit 18, photo of victim.)
13 (Marked for identification was State's
14 Exhibit 19, photo of victim.)
15 (Marked for identification was State's
16 Exhibit 20, photo of victim.)
17 (Marked for identification was State's
18 Exhibit 21, photo of victim.)
19 (Marked for identification was State's
20 Exhibit 22, photo of victim.)
21 (Marked for identification was State's
22 Exhibit 23, photo of exterior crime scene.)
23 (Marked for identification was State's
24 Exhibit 24, exterior crime scene photo.)
25 (Marked for identification was State's

1 Exhibit 25, exterior crime scene photo.)
2 (Marked for identification was State's
3 Exhibit 26, exterior crime scene photo.)
4 (Marked for identification was State's
5 Exhibit 27, photo of exterior of unit 193.)
6 (Marked for identification was State's
7 Exhibit 28, photo of exterior of unit 193.)
8 (Marked for identification was State's
9 Exhibit 29, photo of exterior of unit 193.)
10 (Marked for identification was State's
11 Exhibit 30, photo of exterior of unit 193.)
12 (Marked for identification was State's
13 Exhibit 31, photo of exterior of unit 193.)
14 (Marked for identification was State's
15 Exhibit 32, photo of exterior of unit 193.)
16 (Marked for identification was State's
17 Exhibit 33, photo of exterior of unit 193.)
18 (Marked for identification was State's
19 Exhibit 34, photo of storage unit interior.)
20 (Marked for identification was State's
21 Exhibit 35, photo of storage unit interior.)
22 (Marked for identification was State's
23 Exhibit 36, photo of storage unit interior.)
24 (Marked for identification was State's
25 Exhibit 37, photo of storage unit interior.)

1 (Marked for identification was State's
2 Exhibit 38, photo of storage unit interior.)
3 (Marked for identification was State's
4 Exhibit 39, photo of storage unit interior.)
5 (Marked for identification was State's
6 Exhibit 40, photo of storage unit interior.)
7 (Marked for identification was State's
8 Exhibit 41, photo of storage unit interior.)
9 (Marked for identification was State's
10 Exhibit 42, photo of storage unit interior.)
11 (Marked for identification was State's
12 Exhibit 43, photo of storage unit interior.)
13 (Marked for identification was State's
14 Exhibit 44, photo of storage unit interior.)
15 (Marked for identification was State's
16 Exhibit 45, photo of storage unit interior,)
17 (Marked for identification was State's
18 Exhibit 46, photo of storage unit interior,)
19 (Marked for identification was State's
20 Exhibit 47, photo of storage unit interior,)
21 (Marked for identification was State's
22 Exhibit 48, photo of storage unit interior,)
23 (Marked for identification was State's
24 Exhibit 49, photo of storage unit interior,)
25 (Marked for identification was State's

1 Exhibit 50, photo of storage unit interior,)
2 (Marked for identification was State's
3 Exhibit 51, photo of storage unit interior.)
4 (Marked for identification was State's
5 Exhibit 52, photo of storage unit interior,)
6 (Marked for identification was State's
7 Exhibit 53, photo of glasses.)
8 (Marked for identification was State's
9 Exhibit 54, 9-1-1 CD.)
10 (Marked for identification was State's
11 Exhibit 55, headlight.)
12 (Marked for identification was State's
13 Exhibit 56, belt.)
14 *** End of Morning Proceedings ***
15
16
17
18
19
20
21
22
23
24
25

1 AFTERNOON PROCEEDINGS

2 (Approximately 2:45 P.M.)

3 MR. TAVERNIER: Before we proceed, I think there is
4 a matter that needs to be brought before the Court. And
5 I don't believe I'm divulging any confidence between
6 Mr. Temple and myself when I tell you this.

7 Prior to trial today Mr. Temple had requested or
8 asked me about potential for a continuance or that in
9 some way or form that I might be able to represent him in
10 the trial. I told him the likelihood of that was pretty
11 slim, and thought that if he was gonna raise it, he
12 needed to raise it prior to trial in his pretrial
13 motions.

14 I asked him about it and he said he forgot about it.
15 And based on that, I think it needs to be addressed by
16 the Court. Because he had asked about it, I had given
17 him advice regarding it. But it was my impression he was
18 going to raise it during his pretrial motions and he
19 didn't. And out of an abundance of caution I think he
20 needs to raise it. He's indicated he wanted to raise it
21 and he forgot about it, and I think he needs to address
22 that now.

23 THE COURT: Yes, sir.

24 DEFENDANT'S MOTIONS FOR CONTINUANCE AND COUNSEL:

25 THE DEFENDANT: Yes, Your Honor.

1 Continuance. I would, I'd rather, I meant to ask
2 for it, but I forgot. I asked for so many motions, Your
3 Honor, that I got tied up on. And also in reference to
4 representation. Yes, sir.

5 THE COURT: So you are asking me to continue this
6 case so that Mr. Tavernier can represent you?

7 THE DEFENDANT: Yes, sir, that's what I'm asking.

8 THE COURT: Okay.

9 Yes, ma'am.

10 MS. SIMMONS: Judge, *State versus Reed*, South
11 Carolina case 332 S.C. 35, states that the right to
12 counsel, once waived, is no longer absolute.

13 We have gone through numerous pretrial motions in
14 this case and on numerous occasions Mr. Temple has
15 indicated that he wished to proceed *pro se* in this
16 matter. *State versus Reed* states that (reading): There
17 is a presumption that when a defendant asks for counsel,
18 it should not be refused. However, there are times when
19 the criminal justice system would be poorly served by
20 allowing defendants to reverse their waiver at the last
21 minute, particularly when delay would result.

22 Judge, this Defendant filed a speedy trial motion in
23 this case. This case has been fast-tracked because he
24 filed a speedy trial motion. We are ready to go forward
25 today, and it would be an undue burden and it would cause

1 undue delay if he were allowed to reverse his waiver.

2 *State versus Pride*, 372 S.C. 443, dealt with a
3 defendant who (reading): Failed to cooperate with
4 court-appointed counsel and failed to retain private
5 counsel, despite knowledge of the trial date.

6 We have been going for months with Mr. Temple
7 knowing that December 13th was his trial date, and he
8 could cooperate with Mr. Tavernier or he could retain
9 private counsel. He chose not to do so, and we ask that
10 this case go forward today.

11 THE COURT: Yes, sir.

12 THE DEFENDANT: Your Honor, that's not all true,
13 everything I hear her saying. The State -- during the
14 preliminary hearing, which was July the 16th, the State
15 specifically said that my trial date was set during that
16 time. My motion for a fast and speedy trial was not
17 entered into the record until August, the 17th or 19th, I
18 believe.

19 And the cases that she's bringing up are irrelevant
20 to this situation because those defendants in those cases
21 were intentionally firing their lawyers for no reason at
22 all. This is not -- I've been having problems with my
23 attorney, as you know. Which I still stand by, stand by
24 what I said, what I said back in, what, July 29th, I
25 still stand by that. Ms. Drawdy told me that a change of

1 venue was something that you ask for during trial, which
2 I was trying to get the case moved quickly. I mean, it's
3 not all absolute or negative or not so true. But I was
4 trying to get the case put in another jurisdiction with
5 another jury pool to decide this case since there was so
6 much publicity involved, which all the publicity was
7 prejudicial to this case. Prejudgment. Three times in
8 newspapers, sometimes three different, Greenville news,
9 Anderson news, Oconee news, on three to four different
10 channels, every time I hear it come up.

11 THE COURT'S RULING ON DEFENDANT'S MOTIONS:

12 THE COURT: Okay. All right. I understand your
13 motion. And like I said, one of the main things I want
14 to do is protect your rights, as we talked about last
15 week in answer for an appeal. At this late date, after
16 all the questioning that I've done, I'm gonna deny your
17 motion for a continuance. And I'm fairly comfortable
18 with that. I understand at this point -- I've been
19 concerned all along that we would get up here and you
20 might be overwhelmed with the legal proceedings, but I'm
21 gonna continue to order that Mr. Tavernier sit with you
22 and respond to your questions.

23 Okay. Hold on just a second.

24 (The Court and Clerk conferred off the
25 record.)

1 THE COURT: They're gonna stop the hammering for 30
2 minutes and let you all do your opening.

3 All right. Everybody ready to proceed?

4 MS. ADAMS: Yes, Your Honor.

5 THE COURT: All right. And in regard to the media,
6 make sure you don't take any pictures that might show the
7 jury, that's my concern. And I know you know that.

8 MS. ADAMS: Judge, or the victim.

9 THE COURT: Pardon?

10 MS. ADAMS: Or the victim.

11 THE COURT: Or the victim. Thank you.

12 THE DEFENDANT: Your Honor?

13 THE COURT: Yes, sir.

14 THE DEFENDANT: Could I address this issue to you
15 real quick?

16 THE COURT: Sure.

17 THE DEFENDANT: About this opening statement I have?

18 THE COURT: Uh-huh. Go ahead right there. I can
19 hear you.

20 THE DEFENDANT: Well, as you know, as I previously
21 said about the motion that was granted for the State to
22 exclude me from mentioning evidence that would, that I
23 feel that would prove my innocence, which is the previous
24 party involved in this case, the previous sexual
25 encounter with the alleged victim. Also, the D.N.A. test

1 show results that there was two, two to three other
2 individuals involved with this young lady during the time
3 that I raped her -- or allegedly raped her.

4 So what I'm saying is you said to let you be aware
5 if I was -- I was not gonna mention everything and go
6 into all the details, but I was gonna refer to two or
7 three other people who were involved in this.

8 THE COURT: All right. So you want to bring up --
9 we have already talked about the fact that the washcloth
10 that you talked about this morning is not gonna be
11 introduced, is that correct, nor is the D.N.A. evidence
12 from that?

13 MS. ADAMS: Correct, Your Honor.

14 MS. SIMMONS: Yes, Your Honor.

15 THE COURT: And in regard to the prior sexual
16 activity, I would not mention that in your opening.
17 Other things have to happen for that to be at issue, and
18 we'll deal with that at that time.

19 THE DEFENDANT: You say don't mention the other two
20 or three parties in opening statement?

21 THE COURT: You mean on the washcloth?

22 THE DEFENDANT: Well...

23 THE COURT: The washcloth is not gonna be introduced
24 into evidence according to the State. And if you're not
25 gonna introduce it, it's not gonna be in evidence. I

1 can't tell you what to say, but I wouldn't mention
2 something that's not coming into evidence.

3 THE DEFENDANT: Your Honor, I would like to get it
4 introduced. Because if I fail to introduce it, then I
5 waive the right to let her introduce it. Am I right?

6 THE COURT: Well, yeah. This is your shot.

7 THE DEFENDANT: And it's one of the key pieces of
8 evidence in my case.

9 THE COURT: Well, if that's what you intend to do,
10 you can mention that. Just don't go into the prior
11 sexual activity because that is at best a stretch to
12 introduce, and at worst a violation of the Statute.

13 So if you want to introduce the washcloth, I can't
14 stop you from saying anything about it, but we'll have to
15 deal with that at a later day.

16 THE DEFENDANT: Okay.

17 THE COURT: Okay. Let's go. Bring them in.

18 (The jury entered the courtroom at
19 approximately 4:58 p.m.)

20 (Whereupon, the jury was sworn by the Clerk
21 of Court.)

22 THE COURT: Thank you. Ladies and gentlemen, again
23 thank you for your patience. It won't be the last time
24 that I ask you during the course of this trial for your
25 patience. But please understand we are moving as quickly

1 as possible. Any time you are out of the courtroom,
2 something is going on in here. So trust me, you are not
3 just sitting back there. We're not wasting your time, I
4 hope.

5 Ladies and gentlemen, I want to give you an overview
6 of how we're gonna proceed and give you a little bit of
7 information about just the general legal system in South
8 Carolina so you understand the parameters that we're
9 gonna be dealing with today.

10 The first thing I want to tell you -- and I will
11 repeat this at least three times during the course of
12 this trial -- you heard the Solicitor this morning call
13 the case, and she actually read from these indictments.
14 This is the *State versus Temple*. Mr. Temple is charged
15 with criminal sexual conduct in the first degree, grand
16 larceny of \$5,000 or more, another case of criminal
17 sexual conduct in the first degree, and kidnapping.

18 What I read from and what the Solicitor read from
19 are the indictments. An indictment is literally just a
20 piece of paper that starts this process moving. It has
21 no evidentiary matter or import at all. In fact, you
22 should never discuss during the course of this trial or
23 in your deliberations the fact that an indictment has
24 been issued.

25 In South Carolina indictments are the literal pieces

1 of paper that start this process. The Defendant in this
2 case has pled not guilty; therefore, the burden is on the
3 State to prove each and every allegation in these
4 indictments. You will have the indictments with you when
5 you begin your deliberations, but they shouldn't be
6 discussed. They are not evidence and they should never
7 be considered evidence, and they are just the documents
8 that state the charges against the Defendant. And, as I
9 said, he's pled not guilty; therefore, the burden is on
10 the State to prove each and every allegation.

11 I want to tell you a couple of things first. I get
12 concerned, as do many judges, about the influence of
13 television on juries. And I tell just about every jury
14 for any trial that's gonna take more than a day that I
15 worry about that. The reason I worry about it is this
16 case is gonna take longer, it's gonna move slower than
17 television cases do. We will not finish this case in an
18 hour with 22 minutes' worth of commercials. We're not
19 gonna finish it today. It may not be as exciting as you
20 think that it may be if you watch television and assume
21 that that's what trials are like.

22 This is a search for the truth. That's what we are
23 all here today to do, this week to do, we're trying to
24 determine what the truth is in this case. Therefore,
25 it's a slow process. It is the best process in the

1 world. It is the fairest process in the world. But it
2 is sometimes very slow, and it is an honorable search for
3 the truth and that's what we're trying to do.

4 I also want to tell you that during the course of
5 this trial you and I have very different roles. You are
6 the judge of the facts in this case. You have to take
7 the testimony that you will hear in this courtroom, you
8 have to take any evidence that I determine is admissible,
9 you have to listen, you have to determine who you
10 believe, and you ultimately have to determine what the
11 facts are in this case.

12 If at any point during the course of this trial I
13 give you the impression that I believe a witness or that
14 I disbelieve a witness, that I think a fact is true or
15 that I don't think it's true, you should disregard it.
16 You are the only 14 people in this courtroom and in this
17 world that will determine what the facts are. And my
18 opinion about the facts don't matter.

19 I am the judge of the law. I have to determine
20 during the course of the trial what should be admissible,
21 what evidence should be in front of you and what should
22 not be in front of you. I'll have to rule on objections
23 and I'll make other legal decisions during the course of
24 this trial.

25 One of the things you will see me doing is I'll be

1 emailing back and forth with my clerk who is seated right
2 here. I have to at the end of the case charge you on the
3 law in this case, and I will tell you what the law is in
4 South Carolina regarding these charges. Just as I will
5 take as you determine them to be as the facts in this
6 case, you have to take the law as I give it to you during
7 the course of the trial and at the end of the trial as
8 the law in this case. In other words, our roles will
9 never cross. You determine what the facts are, I
10 determine what the law is; you apply the law as I give it
11 to you to the facts as you determine them to be, and
12 that's how you reach your verdict.

13 I also want to tell you that one of the main things
14 you're gonna have to do is listen to the witnesses and
15 determine their credibility. Credibility under the law
16 simply means believability. You can believe everything
17 that a witness says from this witness stand. You can
18 believe nothing that they say. You can take a portion of
19 what they say and believe it and disregard the remainder.
20 That decision is up to you. But to determine the facts
21 in this case you have to determine the credibility of the
22 witnesses. So I would urge you to listen very carefully
23 and listen to all of the testimony.

24 Now, as I said earlier, the Defendant in this case
25 has pled not guilty. The best way to describe it is the

1 way that it began to be described in courtrooms around
2 the turn of the century. Because he's pled not guilty,
3 he carries about his shoulders a robe of innocence or
4 righteousness. He carries it, it is draped around his
5 shoulders right now. It was draped around him before
6 this trial started today. It will continue to drape
7 around his shoulders until after all the testimony, after
8 the closing arguments, after I charge you on the law, you
9 go back and begin to deliberate, and then take that robe
10 of innocence or righteousness from him.

11 The presumption of innocence in this state and in
12 this country is not just a legal theory, it is not
13 something you hear about and disregard. It is a
14 fundamental right which we are all entitled to, and this
15 Defendant is entitled to a presumption of innocence.
16 That means that the State has to prove each and every
17 element of the charges beyond a reasonable doubt.

18 Beyond a reasonable doubt is proof that leaves you
19 firmly convinced of the Defendant's guilt. If the State
20 fails to prove each and every element of each and every
21 one of these charges, then you must find the Defendant
22 not guilty. If, on the other hand, they prove their case
23 beyond a reasonable doubt, then they have met their
24 burden.

25 In just a few minutes the parties will give their

1 opening statements, and this is an appropriate time for
2 me to tell you that the Defendant in this case is
3 representing himself.

4 As I said earlier this morning, I've appointed a
5 lawyer as an advisory counsel. He's under Order, my
6 Order, to sit here and give any advice that may be
7 needed. Mr. Tavernier cannot give advice unless it's
8 asked for, but Mr. Temple will be representing himself,
9 so he will be questioning many of the witnesses in this
10 courtroom.

11 In this country and in this state you have a right
12 to represent yourself, and you should not hold it against
13 the Defendant that he has decided to represent himself.
14 You shouldn't worry about that or discuss it. How we
15 reached this point is not an issue. He is representing
16 himself and he is to be treated just as if he knows all
17 the rules, he will be required to know all the rules and
18 he will be required to make objections, just as the State
19 will.

20 Also, I'm gonna tell you that any time a party makes
21 an objection in this case, I'm gonna send you out of the
22 courtroom. It's not that I'm trying to hide anything
23 from you, but lawyers make objections in order for me to
24 make legal rulings. And the reason I send you out of the
25 courtroom is so I can hear arguments on both sides, and I

1 don't want you to hear those arguments because you
2 shouldn't. What you have to do is take the evidence and
3 the decision I make and then take that into account.
4 Oftentimes I watch jurors and they get irritated at
5 lawyers and parties that make objections. You shouldn't
6 be. That's their job. When I send you out of the
7 courtroom, I'll do my best to get you back in here as
8 quickly as possible. I can guarantee you that you're
9 gonna be out longer than you want. If you sit back there
10 and think that you should only be back there for ten
11 minutes and you sit back there for 30, and you want to
12 get mad at somebody, get mad at me, don't get mad at the
13 Solicitor's Office or Mr. Temple or any witnesses or
14 court personnel.

15 In addition to being the judge on the law, I have to
16 manage the case. So if at any point you feel some level
17 of irritation at the time you are spending back in the
18 jury room, direct that at me. And at the end of this
19 trial, when the trial is all over, I'll come back there
20 and let you say what you want with me, okay? As long as
21 you don't get irritated with anybody else, I'll let you
22 get irritated with me.

23 Now, ladies and gentlemen, as I said earlier, every
24 time you leave the courtroom I'm gonna ask you not to
25 begin your deliberations or talk about this case. There

1 will be publicity in regard to this case, and there has
2 been. I know it's difficult for you to not be interested
3 in what other parties are saying about this case. But I
4 promise you that you will know more than any other person
5 in this world about this case. The only thing that can
6 happen if you listen to the radio, read the paper, or
7 watch television, is you will hear information that you
8 shouldn't know or that may be incorrect.

9 And I am warning you now -- and I hate to be this
10 way on the first day -- but if there is any indication
11 that any of you have been influenced by publicity or been
12 subjected to it, I'll have to take harsh action. That's
13 just what I have to do.

14 As I said earlier this morning to the whole panel,
15 it is completely improper for you to go home and plug any
16 names into a Google search engine or any other search
17 engine to try to figure out where we are. Again, you
18 will know everything about this case by the end of the
19 week, and you will know more than anybody on the internet
20 or the press will know. I can promise you that.

21 If you inadvertently are subjected to publicity, you
22 need to let the foreman know and he'll let me know and
23 we'll just deal with it.

24 Now, we will take breaks every hour to hour and a
25 half, but if you need a break earlier for whatever

1 reason, you need to go to the rest room or you're just
2 tired for some reason, raise your hand and get my
3 attention, get Mr. Bibb's attention, and we'll take a
4 break.

5 Mr. Foreman, if at any time you feel like the jury
6 needs to communicate with me in any way, there will be a
7 pad back there, you need to write out the question or any
8 problem that you have, sign your name to it and put the
9 time on it, knock on the door and they'll bring me the
10 question or the issue. I'll do my best to make you as
11 comfortable as possible and to address the issue. But
12 that's the way we'll communicate from this point forward.
13 I'll communicate with you or you communicate with me
14 about any issues with the jury or any problems that you
15 may have. And then you will have some additional duties
16 at the end of this trial that I'll explain to you.

17 All right. Ladies and gentlemen, what you are gonna
18 hear now are the opening statements of the parties. I
19 need to tell you two things. Opening statements and
20 closing statements are not evidence. So what the State
21 is getting ready to speak to you about and Mr. Temple are
22 getting ready to speak to you about are opening
23 statements. They are not evidence. The only thing you
24 should consider in reaching your verdict are things that
25 are admitted into evidence. The opening statement is

1 just a chance for the parties to tell you a little bit
2 about what they're gonna prove. And the closing
3 argument, which is also not evidence, will be at the end
4 of all the testimony, and it's just a chance for the
5 parties to argue their position. But please don't
6 consider them evidence.

7 All right. Again, if you need a break at any point,
8 raise your hand.

9 MS. ADAMS: Thank you, Your Honor. May it please
10 the Court?

11 THE COURT: Yes, ma'am.

12 OPENING STATEMENT ON BEHALF OF THE STATE:

13 MS. ADAMS: May 9th of this year was a Sunday, it
14 was Mother's Day. Catherine McGough was leaving the
15 following morning for North Carolina for a leadership
16 camp, and then from there she was going to Ireland to
17 study. She had just completed her sophomore year in
18 Clemson. She was an electrical engineering major.

19 Her dad had rented her a storage unit at All Safe
20 Storage in Seneca to keep her things while she was gone.
21 On May 9th, which was the second time Catherine had been
22 to that storage unit, and the first time she had been
23 alone, she only had a few things to put in before she was
24 planning on leaving the next morning. It was broad
25 daylight, ladies and gentlemen, it was around 4:30 in the

1 afternoon when Catherine got to All Safe Storage. But
2 Catherine never made it to dinner, she never made it to
3 leadership camp, and she never made it to Ireland.

4 The next couple days, ladies and gentlemen, are
5 going to be very difficult, and they're going to be
6 difficult because you are going to hear the horrific
7 details of how this Defendant kidnapped and raped then
8 nineteen-year-old Catherine McGough and held her against
9 her will, in his storage unit, locked, for almost nine
10 hours, bound and gagged.

11 What should have taken Catherine only a few minutes
12 turned into the worst nightmare of her life. The
13 Defendant approached her while she was unloading. There
14 was no one else around at the time. He tried to sell her
15 some shoes. She became flustered and nervous and forgot
16 that she had left the keys to her car on the back of her
17 trunk when she had popped her trunk to unload her stuff.

18 When she finally found her keys and was ready to
19 leave, she noticed she did not close her unit. She got
20 out. The door got stuck on a basket. And as she went to
21 lift the door and move the basket, the Defendant attacked
22 her, pushed her in. She fell into a narrow space in her
23 unit and she could barely move. But she fought and she
24 fought hard.

25 The Defendant strangled her with his hands and she

1 still fought. He punched her square in the face so hard
2 that her glasses broke and fell off. And then, ladies
3 and gentlemen, he put a two-inch leather belt around her
4 neck, like you would put a choke collar around an animal,
5 and he drug her body, strangling her, across the gravel
6 parking lot from her unit to his unit. Catherine
7 couldn't breathe. She passed out because the belt was so
8 tight around her neck, strangling her.

9 She finds herself on a mattress in the Defendant's
10 unit. He gags her with a sock so she cannot scream, and
11 he rips a sheet into strips and ties her hands and her
12 legs and then ties them together. He hogtied her.
13 There's no way she can escape.

14 And then, ladies and gentlemen, the Defendant rapes
15 her. And then he rapes her again but he rapes her in a
16 different way. He attempts to destroy the evidence that
17 he has left inside of her. He takes a Gatorade-type
18 bottle, filled with a cleaning solution, inserts it
19 inside her, injects the cleaning solution in her, an
20 attempt to destroy the semen that he's just left. He
21 douches her.

22 He ties her back up and he gags her. And he steals
23 her car, he gets her pin number from her bank account,
24 and he leaves. He comes and goes a few times over this
25 nine-hour ordeal.

1 But Catherine doesn't give up. She eventually gets
2 herself untied, she uses a head lamp that she found in
3 his unit so she can see. And after almost nine hours
4 locked in this storage unit, she is able to find a cell
5 phone and she calls 9-1-1.

6 And the police come and they rescue her. They have
7 to bust the door open. The bolt cutters break on the
8 lock. They have to kick the door in to free her. And
9 then when they get her out, she still had the strips of
10 sheet still draped over her that the Defendant used to
11 tie her up with.

12 Ladies and gentlemen, you're gonna hear from several
13 witnesses over the next couple days. You will hear not
14 only from Catherine, but from law enforcement and the
15 nurse and the doctor that examined Catherine at the
16 hospital. You will see pictures of Catherine's bruised
17 and beaten body. And you will hear from the D.N.A.
18 expert at S.L.E.D., Amanda Webb, who will tell you that
19 the semen collected from the rape kit at the hospital
20 from Catherine belongs to only one person, and that semen
21 matches the Defendant, Dennis Temple, because he did fail
22 in his attempt to destroy all the evidence.

23 Amanda will tell you that the belt he used to
24 strangle her, Catherine's D.N.A. was on the inside of
25 that belt, his belt. She will also tell you that

1 Catherine's saliva was found on the three different socks
2 that he used to gag her over this nine-hour period.

3 You will also hear from several S.L.E.D. and law
4 enforcement officers who basically just collected and/or
5 processed evidence. And I want you to understand that
6 the law requires that we prove to you a chain of custody
7 on our evidence, and that is exactly what we will do. It
8 should be short, but even if they did not process the
9 evidence, you will hear from them so you will know that
10 the evidence collected in his storage unit was not
11 tampered or altered with in any way, nor was the evidence
12 tampered or altered with that was collected at the
13 hospital off of Catherine in the rape kit.

14 Ladies and gentlemen, the Defendant has been charged
15 with four crimes: Two counts of criminal sexual conduct,
16 first degree; one count of kidnapping, and one count of
17 grand larceny. And I want you to remember it's gonna be
18 difficult, but it's gonna be difficult because of the
19 facts. Ladies and gentlemen, the evidence in this case
20 is overwhelming.

21 And at the end of this trial, after you have heard
22 everything from that witness stand and seen everything
23 that was gathered, you will have no doubt the Defendant
24 is guilty as charged. Thank you.

25 THE COURT: Yes, sir.

1 OPENING STATEMENT BY THE DEFENDANT:

2 THE DEFENDANT: Good afternoon, ladies and gentlemen
3 of the jury, people of the court. My name is Dennis
4 Temple. I am the Defendant and the Defendant's
5 counselor, and I am representing myself in this case. I
6 am not an attorney, but I do have many years of
7 experience and training in the law. I do not know a lot
8 of technical rules of trial, but I will do my best.

9 For the most part of this case, you already know I
10 have been accused of kidnapping and raping a woman plus
11 stealing her car. These charges that have been lodged
12 against me are some very serious and nasty allegations.
13 By no means am I guilty of these crimes. I hope and I
14 pray you take me serious here today as you would any
15 other attorney.

16 The testimonies that you will hear from the State,
17 as you just heard, is that I committed these crimes
18 against the alleged victim by myself. No one else was
19 involved. The evidence that you will hear today will
20 show that something did occur. But was it kidnapping?
21 Was it rape? And was it stealing the car by me, is the
22 question.

23 The D.N.A. test that you will hear today will show
24 not only was there two people involved in some type of
25 intercourses with the alleged victim ---

1 MS. ADAMS: Objection, Your Honor.

2 THE DEFENDANT: --- on nine ---

3 THE COURT: Hold on a minute.

4 All right. Ladies and gentlemen, I need to send you
5 out just a second. Please don't discuss the case.

6 (Whereupon, the jury left the courtroom at
7 approximately 3:22 p.m.)

8 THE COURT: All right. I understand from the
9 objection is as to the testimony about -- go ahead. Make
10 your objection.

11 MS. ADAMS: Your Honor, I believe he said that the
12 evidence will show that there were two people involved in
13 this alleged sexual conduct. There is no evidence of two
14 people being involved.

15 THE DEFENDANT: I didn't --

16 THE COURT: Are you talking about the washcloth
17 again? Stand up. You just need to tell me that.

18 THE DEFENDANT: Yes, Your Honor, I'm talking about
19 the washcloth. Not only the washcloth but the things,
20 the evidence that they have been collecting that the
21 Sheriff's Department collected. I mean, it speaks of
22 more than two people. That's what the D.N.A. test said.
23 It speaks. These are not my words. And I never
24 mentioned sexual acts.

25 THE COURT: Well, just -- you intimated it. Be

1 careful what you intimate. You can't go into the sexual
2 act, but I understand what you are saying.

3 All right. You can bring them back in.

4 Don't -- be careful what you say.

5 (The jury entered the courtroom at
6 approximately 3:24 p.m.)

7 THE COURT: All right. You can continue.

8 THE DEFENDANT: From where I started?

9 THE COURT: Yeah. You can start right there.

10 THE DEFENDANT: -- with the alleged victim on
11 5-9-2010, but a third person as well.

12 Now, on one hand the law states that a defendant on
13 trial is innocent until proven guilty, that he or she
14 does not have to put forth any witnesses, evidence, or
15 testimony on their own behalf to be found not guilty of
16 these charges.

17 But on the other hand, the law states that the
18 prosecution has the burden of proving its case beyond a
19 reasonable doubt. As these facts, I am going to sit
20 back, look and listen and observe their whole case. Then
21 I'm going to show you that the story is not sticking
22 together and the evidence is overwhelming for the
23 prosecution to overcome that doubt in your mind.

24 Thank you, ladies and gentlemen.

25 THE COURT: All right. You can call your first

1 witness.

2 MS. ADAMS: Thank you, Your Honor. The State calls
3 Catherine McGough.

4 Whereupon,

5 Catherine McGough,

6 after first having been duly sworn, testified as follows:

7 Direct Examination by Ms. Adams:

8 Q. Catherine, please state and spell your last name
9 for the record.

10 A. Catherine McGough, M-c-G-o-u-g-h.

11 Q. Catherine, how old are you?

12 A. I'm twenty.

13 Q. And where are you from?

14 A. West Virginia.

15 Q. And do your mom and dad still live in West
16 Virginia?

17 A. They do.

18 Q. Do you have any brothers and sisters?

19 A. I have two sisters.

20 Q. Are they older or younger?

21 A. Older.

22 Q. So you are the baby in the family?

23 A. I am.

24 Q. Now, are you in school right now? Obviously it
25 would be Christmas break. But were you in school this

1 past semester?

2 A. No, I was not.

3 Q. And did you work this past semester?

4 A. Yes, I worked at Engineering and Science
5 Education. I was a researcher.

6 Q. And was that through Clemson University, one of
7 the professors there?

8 A. Yes, ma'am.

9 Q. Catherine, you actually started Clemson as a
10 freshman in August of 2008; is that right?

11 A. Correct.

12 Q. So in May of this year, obviously, you had just
13 finished your second year?

14 A. Yes.

15 Q. Are you going back to class in January?

16 A. Yes, I am.

17 Q. And what is your major at Clemson?

18 A. Electrical engineer.

19 Q. Catherine, I want to focus now on what happened
20 and what you did on May the 9th of this year, okay? How
21 old were you on May the 9th?

22 A. I was nineteen.

23 Q. When did you turn twenty?

24 A. I turned twenty in September.

25 Q. May the 9th was a Sunday, correct?

1 A. Yes, it was Mother's Day.

2 Q. And were classes over at Clemson?

3 A. Yes, they were.

4 Q. So why were you still here -- well, I guess you
5 were in town at Clemson. Why were you still here?

6 A. I was going the next day, Monday, to Leadership
7 Camp in North Carolina, and then I was going to fly out
8 to Ireland to study abroad for a month.

9 Q. So did you get extended stay at Clemson?

10 A. I did. I was staying in the dorms.

11 Q. Were you allowed to keep your stuff at the dorm
12 while you were gone or did you have to move it out?

13 A. No, I had to move it out.

14 Q. So what were you going to do with your things
15 while you were gone?

16 A. My dad rented a storage unit for me so I could
17 keep them there for a month until I moved into my
18 apartment.

19 Q. And where was that storage unit?

20 A. It was in Seneca, All Safe Storage Facility.

21 Q. Now, on May the 9th, that Sunday, had you moved
22 most of your things into the unit?

23 A. Yeah. I had a few things left over, clothes,
24 school supplies.

25 Q. How many times had you been to the unit before?

1 A. I'd been twice before.

2 Q. Had your parents been there by themselves to move
3 some stuff in?

4 A. Yeah. They came in from West Virginia bringing a
5 mattress and a couch and a few other things.

6 Q. All right. Had you ever gone to your storage unit
7 by yourself before May the 9th?

8 A. No.

9 Q. Had you ever met anyone that was also renting a
10 storage unit at All Safe before?

11 A. No.

12 Q. Do you remember what the weather was like that
13 day; was it hot, cold?

14 A. It was summer so it was very hot.

15 Q. What were you wearing?

16 A. I was wearing navy shorts, boat shoes and a white
17 t-shirt, and my hair was down.

18 Q. And what were your plans that day?

19 A. I was going to drop off the last of my stuff, a
20 few clothes and school supplies, and then I was going to
21 go have dinner with my boyfriend.

22 Q. How long had you dated your boyfriend?

23 A. Over a year now.

24 Q. So you all are still dating as of today, this same
25 boyfriend?

1 A. Yes, ma'am.

2 Q. And you just had a few things you still had to put
3 in, correct?

4 A. Correct.

5 Q. What was your unit number at All Safe?

6 A. [REDACTED].

7 Q. Had you ever been to Seneca really for any other
8 reason besides the prior time to come to your storage
9 unit?

10 A. I took my friend to the AT&T store one time and we
11 had lunch in Seneca.

12 Q. But you didn't really hang out in Seneca by any
13 means?

14 A. No.

15 Q. About what time did you come to All Safe that
16 afternoon?

17 A. It was around 4:30.

18 Q. So it was broad daylight, right?

19 A. Yes, ma'am.

20 Q. What kind of car do you drive, Catherine?

21 A. I drove a 2008 Honda Accord two-door.

22 Q. Two-door. Explain to the jury, when you come up
23 to All Safe, how do you get in?

24 A. You have to go through a gate where you enter your
25 code.

1 Q. When you came up to the gate and you were entering
2 your code, did you notice anyone else around you?

3 A. I did. I noticed a man in a gray sweat suit
4 leaving as I was driving in.

5 Q. Could you tell whether it was a White male or a
6 Black male?

7 A. A Black man, yes.

8 Q. And you said you saw him in a gray sweat suit?

9 A. I did, yes.

10 Q. Did you make eye contact with him at this point or
11 you just noticed?

12 A. I just noticed.

13 Q. What do you think made you notice him?

14 A. I thought it was strange that he was walking
15 around without a car in his possession in a storage unit
16 facility.

17 Q. Do you recall if he was carrying anything?

18 A. Not that I remember.

19 Q. And when you were coming in, he appeared to be
20 leaving the storage unit?

21 A. Yes, ma'am.

22 Q. Did you go straight to your unit, [REDACTED]?

23 A. I did. I pulled in front of it so that my trunk
24 would be close to the door.

25 Q. And where is your unit in relation to the gate; in

1 other words, can you see the street?

2 A. Not well. It's on the right in the back.

3 Q. Did you see any other cars around when you pulled
4 up?

5 A. No, no one.

6 Q. About how big is your unit, Catherine?

7 A. It's the half size.

8 Q. Describe to the jury how much stuff you already
9 had in your unit.

10 A. It was pretty full. I had furniture in the back
11 and then a few small boxes in the front stacked neatly,
12 and clothes hanging out.

13 Q. How did you maneuver inside your unit; in other
14 words, did you have a clear space?

15 A. There was an aisle to get halfway back so you
16 could stack stuff.

17 Q. How long were you at your unit before you noticed
18 someone walking toward you?

19 A. Just a few minutes.

20 Q. How much stuff had you had a chance to unload by
21 this time?

22 A. I had unloaded some clothes and I think a few
23 boxes. I still had a good amount in my trunk.

24 Q. And where were you at the time when you noticed
25 someone walking toward you; were you in your unit or near

1 your car?

2 A. I was walking out of my unit, so I guess I was
3 closer to my car.

4 Q. What did you see when you came out?

5 A. I saw a man walking towards me with shoes in his
6 hand. He greeted me from a distance and then he came up
7 and we had a casual conversation. He asked me if I
8 wanted to buy shoes. I said no, I was saving. He asked
9 for what and I said for a trip.

10 Q. Let me back you up for a minute, honey. Okay?

11 A. Okay.

12 Q. When you noticed this man walking toward you, was
13 it the same man you saw at the gate?

14 A. Yes, it was.

15 Q. Okay. And how do you know it was the same man?

16 A. Wearing the same clothes, same build.

17 Q. Okay. So he had on the same gray sweat suit?

18 A. Yes, ma'am.

19 Q. Okay. When he was coming toward you, did you
20 notice anything behind you at that point, about any other
21 units?

22 A. I noticed his storage, that there was a storage
23 unit door open, which I assume was his.

24 Q. Now, Catherine, is the man that walked toward you
25 at this point and the man that you saw at the gate in

1 this courtroom?

2 A. Yes, he is.

3 Q. Can you point him out for the jury?

4 A. It's that man (pointing).

5 THE DEFENDANT: Objection, Your Honor.

6 THE COURT: What's your objection? You need to
7 stand up. What's your objection?

8 THE DEFENDANT: As previous before, Your Honor. In
9 court, the photo line-up was unnecessary and suggestive.
10 It allowed a drawn out over-identification, due process
11 violation.

12 THE COURT: OKAY. All right. And I ruled on that
13 last week. You are still protected. Your objection is
14 denied.

15 But go ahead.

16 MS. ADAMS: Thank you, Your Honor.

17 THE COURT: Overruled.

18 BY MS. ADAMS:

19 Q. Catherine, I'm gonna show you some pictures right
20 now just so the jury can actually picture what you are
21 talking about, okay?

22 I want to show you State's Exhibit 2. Do you
23 recognize that?

24 A. I do. That's the storage unit facility.

25 Q. Okay. And is your unit [REDACTED] in there?

1 A. It is. It's on the right side.

2 Q. Okay. Along with [REDACTED]?

3 A. Yes.

4 Q. Okay. And I also want to show you State's Exhibit

5 3. Do you recognize that?

6 A. I do. It's an aerial shot of the storage unit
7 facility.

8 Q. Okay. All right, Catherine. So the jury
9 understands, when you said your number is [REDACTED], that's
10 about right here, isn't it?

11 A. Yes, ma'am.

12 Q. Okay. And this open unit over here in this corner
13 is [REDACTED], correct?

14 A. Yes.

15 Q. Okay. I think that's a better shot. All right.

16 Now, State's Exhibit 3, so the jury can understand, your
17 unit again is about right here?

18 A. Yes.

19 Q. And [REDACTED] is over here?

20 A. Yes.

21 Q. So these are the buildings in between?

22 A. Yes, ma'am.

23 Q. Okay. Now I want to show you, Catherine, State's
24 Exhibit 4. Do you recognize that?

25 A. Yes. That's my storage facility, but that's not

1 the way I left it.

2 Q. Okay. But after the police came and got you out,
3 did you go back to your unit?

4 A. I did, yes.

5 Q. All right. And is that what it looked like?

6 A. Yes.

7 Q. Okay. So this is fair and accurate the last time
8 you saw it?

9 A. Yes.

10 MS. ADAMS: Your Honor, I'd like to admit State's
11 Exhibit 4 into evidence.

12 THE COURT: Any objection?

13 THE DEFENDANT: No, sir.

14 THE COURT: All right. Without objection.

15 (Received in evidence was State's Exhibit 4.)

16 BY MS. ADAMS:

17 Q. So, Catherine, I'm gonna leave this up for a
18 minute so the jury can kind of look and see when you
19 describe what happened at your unit, okay?

20 A. Okay.

21 Q. All right. When the Defendant first walks up to
22 you and starts a conversation, what did he ask you, what
23 did he say?

24 A. He greeted me and then walked towards me. We were
25 a few feet apart. He asked me if I wanted to buy shoes.

1 I said no, I was saving for a trip. He asked me where I
2 was going. I said to Ireland. And we talked a little
3 bit more, and he left.

4 Q. Had you ever seen the Defendant before this day?

5 A. No, I have not.

6 Q. And had you ever spoken to him before this day?

7 A. No, I had not.

8 Q. What kind of shoes was he trying to sell you,
9 Catherine?

10 A. They were Nike. One was pink with a dollar print
11 pattern.

12 Q. With dollar bill patterns on them?

13 A. Right. And one was orange.

14 Q. How were you feeling at this point?

15 A. I was uncomfortable because there was a man
16 walking towards me and I was alone otherwise in the
17 storage facility.

18 Q. So you told him you were getting ready to take a
19 trip, going to Ireland, and he walked away, right?

20 A. Right.

21 Q. All right. What did you do when he walked away?

22 A. I started looking for my keys. I had set them
23 down on the trunk of my car on the edge and I could not
24 remember where I had left them because I was flustered
25 and nervous. I did find them on the edge of my trunk

1 when he started to walk back towards me.

2 Q. So he came back. And what was he carrying at this
3 point? What did you notice about him?

4 A. He had a shoe in his left hand and a belt thrown
5 over his shoulder.

6 Q. What did he say to you at this point?

7 A. He asked me if I liked that shoe and I said, No,
8 I'm really -- I'm in a hurry, I can't stay.

9 Then he asked me if I would help him move
10 something in his storage unit. And I asked him what it
11 was. And he paused and said a wardrobe kind of thing.

12 I said, No, I'm really in a rush. I need to go.

13 At this point I got in my car, shut the door,
14 locked the door, was about to start the engine, and he
15 pointed out that my storage unit door was open, and I
16 decided I should get back out and close it.

17 So I got back out of my car. I walked over to the
18 storage unit door and started to close it and it got
19 caught on the basket on the right corner.

20 Q. That's in the picture?

21 A. Uh-huh. The Defendant started to walk towards me
22 and asking if he could help. And I said, No, I'm fine.
23 I lifted up the storage unit door and bent down to move
24 the basket over, and when I bent down, he pushed me
25 inside.

1 Q. And when he pushed you, Catherine, can you tell
2 the jury where you fell?

3 A. I fell inside that aisle you can see in between
4 the blue Tupperware boxes and the couch.

5 MS. ADAMS: I think that may be clearer, Judge, for
6 the jury, that photo.

7 BY MS. ADAMS:

8 Q. Because there's a white sheet right here?

9 A. Yeah. That white sheet wasn't there before. It
10 had fallen in later, I guess.

11 Q. Okay. And so this is, the black is the sofa
12 sticking out?

13 A. Right.

14 Q. Okay. So you fell pretty much between the sofa
15 and those tubs?

16 A. Right.

17 Q. Okay. So basically not much space?

18 A. No, not at all.

19 Q. All right. After he pushed you and you fell,
20 Catherine, what did you start doing?

21 A. I turned over immediately and I started screaming
22 and kicking, telling him to get off of me, screaming for
23 help. He got over on top of me. And I kept kicking and
24 he was trying to get my legs out of the way and I think
25 my shoes flew off at this point.

1 Then he finally got over on top of me and he tried
2 to get his hands around my throat to strangle me. And I
3 still had my keys in my hand and -- in my right hand, and
4 I jabbed him in the left side of his neck. I don't think
5 it hurt him because then he didn't really hesitate and he
6 punched me square in the face in between I guess right
7 here above my nose on my brow (pointing) so that I
8 dropped my keys and my glasses fell off.

9 Q. And, Catherine, do you always wear glasses?

10 A. I wear glasses when I drive or I'm in class. I
11 hadn't taken them off when I got there.

12 Q. So basically just for distances and to read fine
13 print?

14 A. Correct.

15 Q. All right. Once he punched you and your glasses
16 fell off and broke, what happened?

17 A. He was able to get his hands around my throat at
18 this point. And I could still speak a little, I could
19 still breathe a little. And I said, Okay, okay, I
20 wouldn't fight, or something like that. And so he let go
21 and I started screaming again and calling for help. And
22 this time he got his hands around me and I couldn't
23 breathe. So this time once again I motioned that I was
24 done. And when he took his hands off my throat this
25 time, I didn't yell again.

1 Q. And is he still on top of you, obviously?

2 A. Yes.

3 Q. Do you have any idea about how long all this took?

4 A. A few minutes.

5 Q. So after this second time that he strangled you
6 and then stopped, what did he do?

7 A. He put a belt around my neck.

8 Q. Catherine, I'm gonna show you State's Exhibit 56.
9 Do you recognize this belt, Catherine?

10 A. That's the belt he put around my neck.

11 Q. Okay. And can you describe to the jury, please,
12 how he put this around your neck?

13 A. He ripped it through so that he only had to pull
14 one end.

15 Q. All right. So in other words, did he put it in
16 the holes?

17 A. No.

18 Q. Okay. So it was all the way around. What would
19 happen if you pulled it on this end?

20 A. It would choke me more.

21 Q. Catherine, after he put that belt around your
22 neck, what happened?

23 A. I cooperated. He pulled me up onto my feet and he
24 stood me at the edge of my storage unit door with one
25 hand on the belt and one hand on me and said, We're gonna

1 run now, okay? And I said okay. He said, on the count
2 of three we're gonna run.

3 And at this point I thought he was letting me go
4 and he was going to just take my stuff. But then he
5 started walking towards the open storage unit across from
6 mine. At this point I realized that he was not letting
7 me go, and I started screaming and fighting again.

8 I ended up on the ground and he was dragging me
9 with the belt so I couldn't breathe at all, and I blacked
10 out.

11 I came to after having I guess like a dream-type
12 thing with bright, vivid colors. And I couldn't see or
13 hear anything at first, but then his face came into focus
14 over me. And everything around him was blurry and he was
15 saying something, but I couldn't understand it at first.
16 And then the next thing I remember was being on his
17 mattress inside the storage unit.

18 Q. So when you woke up the first time, Catherine, do
19 you remember where you were outside the unit?

20 A. Yes.

21 MS. ADAMS: I'm gonna put back State's Exhibit 2,
22 Your Honor.

23 BY MS. ADAMS:

24 Q. Catherine, when you woke up the first time --
25 again, because your unit is [REDACTED] here, which is where the

1 attack started -- so when you woke up the first time
2 where were you?

3 A. I could tell we were close to the buildings there
4 on the right because you could see the shadows on the
5 picture.

6 Q. These buildings, right?

7 A. Right.

8 Q. Okay. So he didn't take you straight across into
9 his unit?

10 A. No.

11 Q. And when you woke up over here, do you remember
12 actually going inside his unit?

13 A. No, I can't remember.

14 Q. Tell the jury again, so the next time you woke up,
15 where were you?

16 A. I was laying on his bed and he was in front of me
17 ripping a sheet into bindings.

18 Q. Okay. Catherine, I want to show you just two
19 pictures, okay?

20 A. Okay.

21 Q. These are State's Exhibit 5 -- do you recognize
22 that?

23 A. That's the mattress that I woke up on and that's
24 the binding laying on the bed.

25 Q. Okay. And State's Exhibit 6, is that just a

1 different angle?

2 A. Yes. That's taken from the entrance to the
3 storage unit.

4 Q. Okay. So it basically focuses on the back of the
5 unit?

6 A. (Nodded head.)

7 Q. What size was the Defendant's unit compared to
8 yours, Catherine?

9 A. I think his was the full size, it was twice as
10 large as mine.

11 Q. Okay. So these are both fair and accurate
12 representations of what his unit looked like?

13 A. Yes.

14 MS. ADAMS: Okay, Your Honor, I'd like to admit 5
15 and 6 into evidence.

16 THE COURT: Any objection?

17 THE DEFENDANT: No, sir.

18 (Received in evidence were State's Exhibits 5
19 and 6.)

20 BY MS. ADAMS:

21 Q. Catherine, this is 5. Explain to the jury for me
22 basically what you saw when you woke up.

23 A. I was facing the other direction.

24 Q. Now, when you say facing the other direction?

25 A. Meaning I couldn't see the entrance.

1 Q. So your head was where?

2 A. Towards the mattresses that are standing up.

3 Q. Okay. So tell the jury, what are these, what is
4 this standing up?

5 A. That's a mattress propped up.

6 Q. So they are blocking basically the majority of the
7 door --

8 A. Right. There was a --

9 Q. -- to his unit?

10 A. -- a small passageway on the left side that you
11 can see.

12 Q. Okay. Right here --

13 A. Yes, ma'am.

14 Q. -- that's the only way out?

15 A. Yes, ma'am.

16 Q. Okay. Where is your head facing when you woke up?

17 A. Towards the mattress.

18 Q. Towards these mattresses?

19 A. Uh-huh. My feet were at the end of the mattress.

20 Q. And what was the Defendant doing, again?

21 A. He was ripping a sheet into bindings.

22 Q. Had he put anything into your mouth at this point?

23 A. He reached over and got a sock out of a black
24 athletic bag and put it into my mouth.

25 Q. And, Catherine, I want to show you State's Exhibit

1 6, okay, which is, like you said, the different angle of
2 the Defendant's unit. And you can see obviously here is
3 the black ---

4 THE COURT: Hold on just a second.

5 Yes, sir.

6 THE DEFENDANT: Yes, Your Honor. I do want to
7 object to ---

8 THE COURT: You have to stand up to make an
9 objection.

10 THE DEFENDANT: I do want to object to that picture
11 and the previous picture, I believe. The State never
12 introduced those. I've never seen them before.

13 THE COURT: Hold on just a second.

14 THE DEFENDANT: Never. They were not in discovery.
15 Discovery was filed June the 24th?

16 THE COURT: Okay. I think they're checking. Let's
17 see if they were in.

18 MS. ADAMS: Your Honor, he's received all of the
19 pictures and we gave him a copy of all the pictures.

20 THE COURT: You got it.

21 MS. SIMMONS: Yes, sir, Judge. We have sent him
22 every picture we have in evidence. The initial set would
23 be pages 452 through 518 of our discovery that was
24 forwarded to him.

25 THE COURT: All right. Overruled.

1 Go ahead.

2 MS. ADAMS: Thank you, Your Honor.

3 BY MS. ADAMS:

4 Q. All right. So, Catherine, this is obviously a
5 view from the Defendant's storage unit from the door to
6 the back, right?

7 A. Correct.

8 Q. Do you know if this is the black duffle bag?

9 A. Yes.

10 Q. So he got a sock out of there?

11 A. Of the black -- he got a sock out of the black
12 athletic bag.

13 Q. Okay. Was the belt still around your neck?

14 A. Yes.

15 Q. Could you tell if the door to the unit was still
16 open?

17 A. I think it was. There was a lot of light. But I
18 couldn't see. I couldn't see the door.

19 Q. You couldn't see the door?

20 A. Right. I wasn't facing the entrance.

21 Q. But you knew that there was a lot of light. You
22 got a good look at your surroundings?

23 A. Yes.

24 Q. Okay. Do you have any idea, Catherine, what time
25 it is now?

1 A. It's still broad daylight, and not long has passed
2 since I got there.

3 Q. Do you remember what color the sock was that he
4 put in your mouth?

5 A. It was white.

6 Q. Explain to the jury exactly what happened when he
7 tied you up with bindings.

8 A. He tied my hands behind my back while I was on my
9 stomach and then he tied my feet together and then he
10 tied my hands and my feet together.

11 Q. So he basically hogtied you so you couldn't move?

12 A. Correct.

13 Q. And did he tie anything around your mouth to keep
14 the sock in?

15 A. Yes. He had tied a binding around my head.

16 Q. Was this the same type of binding?

17 A. It was sheets.

18 Q. So you're on your stomach and your head was turned
19 towards those stand-up mattresses, right?

20 A. Correct.

21 Q. What did he say to you?

22 A. He asked me if I had family in Clemson, and I said
23 yes, even though I did not. And he asked if I had any
24 money in my car, and I said yes. He said he was gonna go
25 get the money out of my car, and he shut and locked the

1 storage unit door that I could hear. And I heard a car
2 alarm go off and a storage unit door close, I don't
3 remember what order.

4 Q. Now, Catherine, let me ask you, before he left
5 after he asked you about your family and if you had money
6 in your car, did he do anything else, did he put anything
7 over you?

8 A. He put the magenta comforter that you see there
9 over my head.

10 Q. So you couldn't see?

11 A. No.

12 Q. Did you hear your storage unit door close?

13 A. I heard a storage unit door close. I assume it
14 was mine. It was the only one open.

15 Q. And then a car alarm went off?

16 A. Yes.

17 Q. How long was he gone before he came back?

18 A. A few minutes.

19 Q. What did he say to you when he came back?

20 A. I heard him rustling on the other side. He asked
21 me how much money I had in my bank account. I said
22 3,000.

23 Q. Now, Catherine, is it hard to talk? How are you
24 talking with the gag in your mouth?

25 A. I think he was trying to check to see if I could

1 talk. But he kept getting frustrated when I couldn't
2 answer. And I could talk because I didn't let the gag go
3 all the way into my mouth and so I responded the best I
4 could.

5 Q. How did you keep the gag from going all the way
6 down your throat?

7 A. I used my tongue to keep it from going all the way
8 down my throat.

9 Q. What did he ask you about your bank account, if
10 anything?

11 A. He asked me how much was in my bank account, and I
12 responded 3,000. And he muttered "rich White girl" over
13 and over.

14 Q. And what did he do next, Catherine?

15 A. He cut my ties with something that felt like a
16 knife, it was a sawing motion. I couldn't see it.

17 Q. Was the blanket still over you?

18 A. I don't remember. He rolled me over and --

19 Q. On to your back --

20 A. On my back.

21 Q. -- or were you still on your stomach?

22 A. My hands are still tied together, my feet are
23 apart. And he said, "I'm going to rape you now." I
24 didn't say any- --

25 Q. Did he ask you anything else or say anything else

1 after he said that?

2 A. He said, "Would you like that?"

3 And I said "No."

4 He said, "Do you want to die?"

5 And I said "No."

6 He said, "because I'll slit your throat if you
7 make a sound before anyone can get in here. I don't care
8 if I get caught. This is the shit hole that I live in.
9 This is all I have."

10 Q. Catherine, are you still gagged at this point?

11 A. I don't think so.

12 Q. But your arms are still tied behind your back and
13 you are laying on your back, correct?

14 A. Yes. I am laying on my arms.

15 Q. When did you realize that you had urinated on
16 yourself?

17 A. He took off my shorts and my panties and he said,
18 "you pissed yourself." And I assumed it was when I
19 blacked out outside.

20 Q. Now, Catherine, when he's taking off your shorts
21 and your panties, where are you on this mattress that he
22 moved you?

23 A. I'm at the edge of the bed, but my feet are over.

24 Q. Down here at this point?

25 A. Yes.

1 Q. And he moved you down there, correct?

2 A. Correct.

3 Q. After he pulled your shorts and your underwear
4 off, did he do anything to your shirt and your bra?

5 A. He lifted my bra over my breasts and the shirt
6 over my breasts so they were laying on my chest.

7 Q. Catherine, I know this is really hard, but please
8 tell the jury what happened next.

9 A. He inserted himself into my vagina.

10 Q. Inserted his penis into you?

11 A. Yes.

12 Q. When had he taken off his clothes?

13 A. When I had turned over, I noticed that he was
14 naked.

15 Q. All right. Was he holding on to you and touching
16 you during the rape?

17 A. He leaned over me so that he was on top of me and
18 his face was inches from my face. He kissed me on my
19 left cheek and called me "baby."

20 Q. How long do you think the actual penetration
21 lasted, Catherine?

22 A. He sat up so that he was upright and no longer
23 over me, and it was as if he was trying to hurt me, and
24 then he finished inside of me. It was a minute or so.

25 Q. Did he wear a condom during?

1 A. No.

2 Q. Could you tell if he ejaculated inside of you?

3 A. It seemed like he did, yes.

4 Q. Did you look at him when this all occurred?

5 A. I got a good look when he was in front of my face,
6 yes.

7 Q. Can you see inside the unit at this point? Is it
8 still light out?

9 THE DEFENDANT: Objection, Your Honor; leading the
10 witness.

11 THE COURT: All right. Overruled.

12 But make sure you don't lead. Go ahead.

13 MS. ADAMS: Yes, sir.

14 THE WITNESS: I could see well. There wasn't as
15 much light as before.

16 BY MS. ADAMS:

17 Q. After he penetrated you with his penis, Catherine,
18 what did he do next?

19 A. He stood up and paced, cursing himself for what he
20 had done, which I assume was coming inside of me, and he
21 pulled his pants up. I assume it was because he had
22 finished inside of me because then he grabbed a bottle
23 that was in a bucket of fluid in front of the bed -- you
24 can see it in the picture -- and inserted the bottle in
25 to me and squeezed the water out, the fluid, all inside

1 of me.

2 Q. Now, Catherine, can you describe what type of
3 bottle this was, could you tell?

4 A. I couldn't tell then, but later when I got a look
5 at the place, I could see a Gatorade bottle floating in
6 the bucket, which I assume is what he used.

7 Q. Now, did you actually feel the bottle fill up
8 inside you?

9 A. Yes, I did.

10 Q. So it actually penetrated you again?

11 A. Yes.

12 Q. Did he wipe you with anything?

13 A. He put a rag on his fingers and wiped me off, yes.

14 Q. So the bottle inserted in, he wiped you with a
15 rag, as well?

16 A. Yes.

17 Q. Now, was that rag soaked in anything?

18 A. The fluid, I believe. He repeated the process
19 several times. It took longer than the actual
20 penetration.

21 Q. It took longer to actually clean you out than the
22 actual penetration?

23 A. Yes.

24 Q. Okay. Catherine, how much time passed, do you
25 know, before after he ejaculated inside of you and before

1 he cleaned you?

2 A. I can't be positive. But he was pacing and
3 cursing himself and had to get his clothes on. No more
4 than a minute, about.

5 Q. And how were you laying at this point?

6 A. I was still laying on my back with my legs over
7 the end of the mattress.

8 Q. And your, are your hands still tied behind your
9 back?

10 A. Yes, ma'am.

11 Q. When did he get dressed?

12 A. He pulled his pants up before he cleaned me out.
13 I don't remember when he put his sweatshirt on. But he
14 started asking me about which card, what bank account the
15 \$3,000 was on. I told --

16 Q. Did he dress you?

17 A. Yes, he did.

18 Q. Okay. So after he cleaned you out, what did he
19 do?

20 A. He put my panties and my shorts back on and he
21 pulled my shirt down.

22 Q. Did he tie you?

23 A. He asked me about my bank account, and I
24 responded. And then he asked me about my pin number.
25 And he had put a gag in again, a different sock.

1 Q. Were you gagged during the actual rape?

2 A. No.

3 Q. So was this a different sock or the same sock?

4 A. A different sock. So he asked me about my pin
5 number and I couldn't respond. And he got more and more
6 frustrated. So I used my hands and I pulled them from
7 behind my back to motion with my fingers what the numbers
8 were.

9 Q. Did he tie you up the same way, Catherine, like
10 hogtied, or different?

11 A. This time he rolled me over and he tied my feet
12 together behind my back and then he tied my hands and my
13 feet together again. And then he added a binding around
14 my neck connected to my hands and feet so that if I moved
15 my legs, it would put pressure, more pressure on my neck.

16 Q. So if you tried to straighten out?

17 A. I couldn't relax my legs at all. I practice Yoga,
18 and so when he was tying me up I didn't -- I put
19 resistance so that he didn't know how flexible I was.

20 Q. So you tried to make the bindings as loose as you
21 possibly could?

22 A. Right. So that afterwards I could arch my back a
23 little more and take the pressure off my throat. And
24 this time he put the gag in and he wrapped electrical
25 tape around my head and over my hair.

1 Q. After he tied you up like this, what did he do?

2 A. He said he was gonna go down to the store down the
3 street. He covered my head with a blanket.

4 Q. That same magenta blanket?

5 A. Yes.

6 Q. And did he leave?

7 A. Yes.

8 Q. Did you -- did he lock the door?

9 A. I heard the door shut and the unit lock.

10 Q. How long was he gone this time when he said he was
11 going to the store? Do you know?

12 A. Around a half an hour, I guess. It seemed like a
13 long time, but I had no way to judge the time, really.

14 Q. Was it still daylight, could you tell?

15 A. I couldn't tell. The blanket was over my head.
16 But it was daylight when he got back.

17 Q. Catherine, what were you doing while he was gone?

18 A. I was trying to breathe. I had a gag in my mouth
19 and my nose was starting to stuff up from where he had
20 hit me in the face and the blanket was over my head so it
21 was very difficult to breathe. I tried to stay calm and
22 keep my breath slow and steady. I was afraid to move the
23 blanket off my head in case he came back and thought I
24 was trying to escape.

25 Q. What did you hear when he came back?

1 A. I heard my car pull up. And at first I heard the
2 bass loudly and then I heard an announcer come on the
3 radio and say "98.1." I heard him turn off the car and
4 close the door and open the storage unit door. He came
5 in and fumbled on the left side of the storage unit, I
6 guess the right if you're facing from the entrance.

7 Q. So the side where the black duffle bag is in the
8 picture?

9 A. Yes.

10 Q. Is the blanket still over your head?

11 A. The blanket is still over my head. He patted me
12 and said "go back to sleep" and started to leave again.
13 And I was afraid because he was leaving again and I
14 didn't know if he was going to leave me there. So I made
15 noise, I mumbled and moved.

16 And so he looked at the blanket and pulled down
17 the gag and said, "What?" And I said, "I can't breathe."

18 And he said "You can breathe fine" and shoved the
19 gag back in my mouth and threw another blanket on top of
20 my head.

21 Q. Was he in the unit long this time?

22 A. No, not long.

23 Q. Did he lock the door when he left?

24 A. Yes, I heard it lock.

25 Q. Did you hear your car radio?

1 A. Yes.

2 Q. How long was he gone this time?

3 A. A long time. I waited a long time. I was afraid
4 to move again. And I was playing around with the
5 bindings trying to put, take pressure off of my neck so I
6 could breathe easier and push the gag out.

7 Q. Can you describe to the jury how he actually had
8 the bindings around your arms and legs, do you know?

9 A. He had them wrapped and then tied so that I had a
10 little, they weren't tied directly to my wrists.

11 And I waited a while and I just could not breathe,
12 and so I was able to push the gag out of my mouth and I
13 checked to see that I could get it back in so that he
14 wouldn't know I could get it out.

15 I waited longer. When he still wouldn't come, I
16 pushed the blanket off my head and tried to see if I
17 could get it back on, and so on, until I noticed it was
18 getting dark outside.

19 When he laid me on the bed the first time, I
20 noticed a head lamp on the mattress. And while I was
21 sitting there, I could get my arms out, one hand out at a
22 time is all I would do just so I could put it back in and
23 he wouldn't know I could get out of the bindings if he
24 did come back. I didn't want him to tie them tighter.
25 So I would give one arm a break and use it to lift my

1 legs up to take the pressure off my neck.

2 Then finally the sun went down, and I thought he
3 had left me, and I thought it was safe to get up.

4 Q. How long do you think you were laying there,
5 Catherine, tied up like that?

6 A. Hours. I can't be sure. But it seemed like a
7 really long time.

8 Q. And you said you found a head lamp, though, you
9 saw one?

10 A. Yes.

11 Q. And, Catherine, I'm gonna show you State's Exhibit
12 55. Do you recognize this?

13 A. That's the head lamp.

14 Q. Okay. And this is what you used for light?

15 A. Yes.

16 Q. Okay.

17 A. I knew it was sitting there, so when I untied
18 myself I was able to find the head lamp, and I used it to
19 look around.

20 Q. Could you see at all before you found that head
21 lamp?

22 A. It was very dark.

23 Q. Did you try the door when you got yourself untied?

24 A. Yes, of course. Multiple times I was out for a
25 little while and I used to search the storage unit for a

1 weapon I could use or identification or anything. I
2 checked the door, and there was a crack above the door,
3 but it was only a few inches and there were spaces on the
4 side of the storage unit, but they were only half a foot,
5 I guess, nothing big enough to get through. And I could
6 find no way to open the door.

7 Q. While you were looking around his unit, Catherine,
8 to find something to help you, what did you do? Did you
9 hide anything?

10 A. Yes. The belt was still around my neck, and one
11 of the first things I did was take it off. And I had
12 noticed when I was looking around that there were holes
13 in all the mattresses, including the one I was laying in.
14 Nothing was in them that I could see, and so I stuffed
15 the belt that was around my neck, the electric tape that
16 he had used to tie around my head, and a wire hanger that
17 was unraveled that I saw in the storage unit, and I hid
18 it all in the mattress just because I saw them as things
19 that he could use to tie me tighter or hurt me.

20 Q. Did you notice anything about the liquid in the
21 bucket, Catherine, that he used to clean you out after he
22 raped you? And I'm gonna point right here.

23 MS. ADAMS: Your honor, this is still State's
24 Exhibit 6.

25 THE WITNESS: I, when I looked around, I saw the

1 bucket and the Gatorade bottle floating in it. And it
2 smelled funny, like cleaning liquid, and there was a
3 cleaning bottle sitting next to it.

4 BY MS. ADAMS:

5 Q. So you could tell it wasn't water, basically?

6 A. Right. I didn't know what it was, but it wasn't
7 water.

8 Q. Did the Defendant come back?

9 A. He did. I heard footsteps this time, no car. And
10 I sat back down on the mattress. I had no weapon and no
11 way I could tie myself back up the way I was. And so he
12 came in.

13 Q. And it had been hours, right?

14 A. It had been hours. It's dark. And he's fumbling
15 around on something on the right side of the storage unit
16 again. And I'm checking the pockets and he's packing
17 that black duffle bag with the Nike shoes and the boxes.

18 Q. Did he notice you were untied?

19 A. He didn't notice at first. I spoke to him. I
20 said, "Please let me go. I won't cause any trouble.
21 I'll just run. Just let me go."

22 And he kept repeating that he had to go get the
23 car.

24 I said, "I don't need the car. I'll just go, I'll
25 run. I don't need the car."

1 And he just stuck with that phrase. He tied me up
2 again, but this time only my feet and my hands behind my
3 back.

4 Q. Did he gag you?

5 A. Yes.

6 Q. Did he use another sock to gag you?

7 A. Yes.

8 Q. What did he use to keep the gag in your mouth this
9 time?

10 A. The binding.

11 Q. So how long was he inside the unit this time?

12 A. Minutes again. Not long.

13 Q. Just enough time basically to look through the
14 duffle bag and tie you back up?

15 A. Right.

16 Q. Did he close and lock the door again?

17 A. He did.

18 Q. So when he left this time, Catherine, what did you
19 do?

20 A. This time after I'd heard him leave, I got up. I
21 could slip my hand out the same way I did before. And I
22 left it on one hand and I left my feet together and I
23 hopped around searching again.

24 He had rearranged a few things and I looked and I
25 tried the storage unit door and I sat back down.

1 exhausted. And I decided I couldn't give up and so I got
2 back up. And this time, when I looked over, he had moved
3 the black duffle bag and there was a box that was under
4 the black duffle bag that was now exposed and in the box
5 was a red cell phone. I turned the cell phone on. It
6 had power, thankfully. I put it on silent and I called
7 9-1-1.

8 Q. Why did you put it on silent, Catherine?

9 A. The last thing I wanted to happen was for him to
10 find me with that cell phone. It was my only hope. And,
11 and I knew that 9-1-1 would call you back if I had to
12 hang up suddenly. I just, I didn't want him hearing the
13 beeping if I tried to dial 9-1-1 without him looking.

14 Q. Catherine, when you dialed 9-1-1 and they
15 answered, what was going through your head at this point?

16 A. I was just trying to be very quiet because he had
17 walked last time and I wouldn't hear him as well when he
18 was coming. I stayed calm. The whole time I was
19 thinking while I was laying there that I couldn't
20 remember the name of the storage facility that I was in,
21 I was pretty sure it was All Safe, but I didn't rent the
22 unit. And so I had the directions that my parents had
23 given me, I had them memorized. And I was thinking about
24 I would have to give the police that if they had any
25 chance of finding me. I didn't want them going to the

1 wrong place. And so I just tried to stay very calm so
2 that they could help me.

3 Q. And, Catherine, the police obviously came and they
4 got you out, correct?

5 A. Correct.

6 Q. Do you have any idea what time it was when they
7 finally rescued you out of the Defendant's unit?

8 A. I have no idea. One of the officers asked me -- I
9 told them that he said he was gonna be back soon. They
10 asked when he had left, and I said, "I don't know even
11 know what time it is now." I had the cell phone in my
12 hand and I checked the cell phone. It was 1:17 in the
13 morning.

14 Q. And again, you got to the storage unit around 4:30
15 that prior afternoon, right?

16 A. Correct.

17 Q. Catherine, when you came out and the police
18 rescued you, was your car anywhere in sight?

19 A. No, it wasn't.

20 Q. I want to show you -- these are State's Exhibits
21 7, 8, 9, and 10. Do you recognize them?

22 A. That's my car.

23 Q. Okay. All right.

24 MS. ADAMS: Your Honor, this is State's Exhibit 7.

25

1 BY MS. ADAMS:

2 Q. So Catherine, that's the car that you drove there,
3 that's your car?

4 A. It is.

5 Q. Okay. And this is a fair and accurate
6 representation of your car?

7 A. Yes.

8 MS. ADAMS: Your Honor, I would like to admit
9 State's Exhibit 7 into evidence.

10 THE COURT: Any objection to 7?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Why don't you show it to him? You've
13 got 8 and 9 there, too?

14 MS. ADAMS: I do, Your Honor.

15 THE COURT: Then why don't you go ahead and let him
16 look at it.

17 (Ms. Adams shows State's Exhibits 7, 8 and 9
18 to the Defendant.)

19 (Discussion off the record.)

20 THE DEFENDANT: Your Honor, I would like to object
21 to this piece of evidence. I never received none of
22 those pictures.

23 MS. ADAMS: Your Honor, he received them in
24 discovery.

25 THE DEFENDANT: In my discovery..

1 **THE COURT:** Ladies and gentlemen, I'm gonna send you
2 out. You've been sitting here for a few minutes. I'll
3 send you out for ten minutes. Please don't discuss the
4 case.

5 (Whereupon, the jury left the courtroom at
6 approximately 4:20 p.m.)

7 **THE COURT:** Why don't you all find those so we can
8 put that issue to rest?

9 Ma'am, you can step down.

10 **MS. SIMMONS:** He's never seen all of this in color.
11 Do you want us to go over everything up there with him?

12 **THE COURT:** Well, it might save some time, yes.

13 (Witness leaves stand.)

14 (A recess was taken while the State and the
15 Defendant looked over all of the State's
16 photographic evidence.)

17 **THE COURT:** Have you gone through all of those
18 pictures?

19 **MS. ADAMS:** Yes, Your Honor, we did.

20 **MS. SIMMONS:** He's looked at every single picture up
21 here now.

22 **THE COURT:** Okay.

23 **MS. ADAMS:** He has received either black & white
24 copies or disks when Mr. Tavernier was representing him
25 and the disks of all the photos. And we actually met

1 with Mr. Temple December 1st at Evidence at the Law
2 Enforcement Center, went over all the physical evidence
3 and everything that we were actually going to admit, gave
4 him an opportunity to view everything.

5 And I even said to him that there will be several
6 pictures that we will go through to admit into evidence
7 and asked him if he wanted to see anything, if he needed
8 anything else, and he said no, he was fine.

9 THE COURT: All right.

10 Yes, sir.

11 THE DEFENDANT: Yeah, but, Your Honor, there are a
12 lot of pictures that I've never seen, never, and I did
13 discovery first, like I say, on June 24th or 25th.

14 THE COURT: All right. Have you got the package
15 where you sent them?

16 MS. SIMMONS: Judge, these are pictures we
17 actually -- we took what we could and actually gave him
18 photocopies of hard copies. We sent Mr. Tavernier
19 probably five or six disks of photos. So between
20 Mr. Tavernier when he was counsel of record for him, and
21 what I sent him, he should have all of these pictures.

22 And Solicitor Adams is right. When we met with him
23 at the Law Enforcement Center, she specifically told him,
24 "There are photographs. Do you want to see anything? Do
25 you need anything else?" And he said "No."

1 THE COURT: All right. So I assume you would object
2 to their introduction; is that right?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. I'm gonna allow them in, but
5 your objection is preserved for the record.

6 Okay. You can bring them back in.

7 MS. SIMMONS: For the record, he has now seen every
8 picture up there.

9 (Witness resumes stand.)

10 (Received in evidence were State's Exhibits
11 7, 8, 9, and 10.)

12 (The jury entered the courtroom at
13 approximately 4:37 p.m.)

14 THE COURT: You can continue.

15 MS. ADAMS: Thank you, Your Honor.

16 BY MS. ADAMS:

17 Q. Catherine, so we're clear, I showed you State's
18 Exhibits 7, 8, 9 and 10, and these are pictures of your
19 car, correct?

20 A. Correct.

21 Q. Catherine, tell the jury the last time you saw
22 your car before the Defendant attacked you and what
23 condition was your car in.

24 A. I had a scratch on the passenger's side mirror,
25 but that was about it.

1 Q. What about what was in your car?

2 A. I had everything else in the trunk. I had a wire
3 pineapple, that was my Mother's Day present; and a desk
4 organizer with pens and pencils in it, and a few clothes.

5 Q. So your trunk still had items in it the last time
6 you saw it?

7 A. Yes.

8 Q. How full was it, were there a good many items in
9 it?

10 A. About half full, I guess.

11 Q. Catherine, you identified State's Exhibit 7 as
12 your Honda that you had driven to the unit that day?

13 A. Correct.

14 Q. Catherine, I show you State's Exhibit Number 8.
15 Do you recognize those objects on the floorboard of your
16 car?

17 A. The candle isn't mine. Never seen that before.

18 Q. Those items aren't correct?

19 A. No.

20 Q. During the attack did the Defendant ever wear
21 gloves?

22 A. One time when he came back in after moving my car.

23 Q. Okay. During the assault did he ever touch you
24 with any gloves?

25 A. Not that I remember.

1 Q. So every time he touched you and tied you and
2 gagged you, he used his hands with no gloves?

3 A. Correct.

4 Q. So those do not belong to you?

5 A. No.

6 Q. And did you ever put on any gloves in the
7 Defendant's unit while you were locked in there?

8 A. No.

9 Q. All right. Catherine, now I want to show you
10 State's Exhibit Number 9. Is that how you left your
11 trunk?

12 A. No, not at all. It had other things in it and the
13 only thing in there now was in a desk organizer.

14 Q. And State's Exhibit 10, can you please explain to
15 the jury what that is?

16 A. That's the wire pineapple that I had gotten my
17 mother for Mother's Day.

18 Q. How were you going to get that to your mom?

19 A. I was gonna park my car in Clemson and they would
20 pick it up and I was gonna leave the wire pineapple with
21 a note in it in the passenger's seat.

22 Q. So you were not taking your car to North Carolina,
23 then?

24 A. Correct. The camp was riding together.

25 Q. Last time you saw the wire pineapple, where was it

1 again?

2 A. In my trunk.

3 Q. Catherine, how much gas was in your car when you
4 went to that storage unit that afternoon?

5 A. I had filled it up the previous day.

6 Q. So was it pretty full?

7 A. Yes.

8 Q. Catherine, when you went to the hospital, did you
9 give a statement to the police?

10 A. Yes. I had to write a statement.

11 Q. Okay. And basically did you tell them everything
12 that you testified to here today?

13 A. Yes.

14 Q. Catherine, is the man that raped you and kidnapped
15 you and stole your car in this courtroom right now?

16 A. He is.

17 Q. Please point him out to the jury.

18 A. It's that man there (pointing).

19 MS. ADAMS: And, Your Honor, I would like the record
20 to reflect she pointed to the Defendant, Dennis Temple.

21 BY MS. ADAMS:

22 Q. Is there any doubt in your mind that Dennis Temple
23 is the man that did these things to you?

24 A. None whatsoever.

25 MS. ADAMS: Your Honor, I have no further questions.

1 Catherine, please answer anything the Defendant may
2 have.

3 THE COURT: All right. Hold on just a minute.

4 Y'all approach up here and let me ask you something.

5 (Discussion at sidebar.)

6 THE COURT: All right. Yes, sir. Do you have any
7 questions?

8 THE DEFENDANT: Yes.

9 THE COURT: You can go ahead.

10 THE DEFENDANT: Yes, sir, I do.

11 Your Honor, if I could have a little word? Could I
12 have a little word?

13 (Discussion at sidebar.)

14 CROSS-EXAMINATION BY MR. TEMPLE:

15 Q. Miss Catherine, I'm gonna ask you some very simple
16 questions. They really don't call for nothing but
17 yes-or-no answers, if you would. Is it true that on May
18 the 9, 2010, that I pushed you towards, forward into your
19 storage unit?

20 A. Yes.

21 Q. Is it true that as a result you fell down or you
22 stumbled, quickly flipped over to your back and jabbed me
23 in the left side of the neck with your keys?

24 A. That was after you had tried to strangle me, yes,
25 I stabbed you in the neck.

1 Q. Just say yes or no. Are you sure about that?

2 A. Yes. I'm positive.

3 Q. Is it also true that I placed a belt around your
4 neck and led you to the doorway of your unit?

5 A. Yes.

6 Q. Is it also true that you and I ran towards my
7 storage unit and somehow ended up on the ground with me
8 screaming?

9 A. I did not run towards your storage unit, no.

10 Q. Oh, no? Okay. Is it true that you passed out
11 from me strangling you?

12 A. Yes. When you were dragging me on the ground with
13 your belt.

14 Q. Are you sure about that?

15 A. Yes.

16 Q. Is it true that you came to with me standing over
17 you, saying things that you did not register?

18 A. Correct.

19 Q. Miss Catherine, what do you mean when you said,
20 when you stated "you came to"?

21 A. I mean I blacked out and --

22 Q. You blacked out?

23 A. Yes.

24 Q. Did you regain your consciousness as a result?

25 A. Yes.

1 Q. Is it true that I drug you from your unit to my
2 storage unit?

3 A. I blacked out. I can't remember how I got from
4 the ground to your storage unit.

5 Q. You can't remember?

6 THE DEFENDANT: Your Honor, can I consult with my...

7 THE COURT: Sure.

8 (Whereupon, the Defendant and Mr. Tavernier
9 conferred off the record.)

10 BY MR. TEMPLE:

11 Q. Excuse me. Miss Catherine, is it true also that
12 my storage unit was diagonally to the right from your
13 storage unit and you never saw the storage unit due to
14 your lack of glasses?

15 A. No. I could not see your storage unit number
16 because I was panicked and didn't look for it if that's
17 what you're referring to.

18 Q. So --

19 A. Not from my lack of glasses, it was from my lack
20 of thinking to look for it. I could see your storage
21 unit clearly.

22 Q. About how far in distance would you say that your
23 unit and my unit is?

24 A. I can't say for sure.

25 Q. Would you say about 60, 80 feet?

1 A. At least.

2 Q. 80 or 60?

3 MS. ADAMS: Your Honor, asked and answered. She
4 said "at least."

5 THE COURT: All right. Just make sure you ask
6 specific questions.

7 Sustained.

8 BY MR. TEMPLE:

9 Q. Is it true that I used a white sheet to rip strips
10 to tie you with?

11 A. Yes.

12 Q. Did anyone help me at any time during the course
13 of my kidnapping, raping, and stealing your car? Did you
14 see anyone? Did anyone help me?

15 A. No. It was just you who raped and kidnapped me.

16 Q. Just a yes or no. Thank you.

17 MS. ADAMS: Your Honor, badgering the witness.

18 THE COURT: Well, she -- don't badger. She can
19 answer yes or no, but she also has an option to explain.
20 So if you would answer yes or no, and then I'll let
21 you explain.

22 BY MR. TEMPLE:

23 Q. So, Miss Catherine, are you sure about that now?

24 A. Yes, I'm sure.

25 Q. Is it true that I asked you did you have family in

1 Clemson?

2 A. Yes.

3 Q. Is it true that -- what did you -- is it true that
4 you said "yes"?

5 A. I did say "yes."

6 Q. But do you have family in Clemson?

7 A. No, I do not. I wanted you to know that someone
8 would be looking for me or at least think that someone
9 would be looking for me.

10 Q. So, Miss Catherine, was that a, was that a lie you
11 told?

12 A. Yes. I lied to the man who attacked me so that I
13 would have a chance to escape.

14 Q. What was it that you say I cut your bonds with
15 that day?

16 A. You ripped it. When you were ripping open the
17 sheet, if you mean when, right before you raped me when
18 you were cutting my bonds. I don't know. I can't be
19 sure. You were doing a sawing motion.

20 Q. Yeah. These are simple yes-or-no questions.

21 THE COURT: Well, she can answer yes or no, but then
22 she has an option to explain. And I don't think your
23 question actually asks for a yes-or-no answer, so make
24 sure if you want a yes-or-no answer, you make that clear.

25 THE DEFENDANT: Okay. All right.

1 BY MR. TEMPLE:

2 Q. Is it true that I pulled off your shorts and your
3 underwear?

4 A. Yes.

5 Q. Is it true that I inserted my, inside of myself
6 within you?

7 A. Yes.

8 Q. Is it true also that I released myself within you?

9 A. Yes.

10 Q. Is it true that I also proceeded to wash you out?

11 A. Yes.

12 Q. After I realized it?

13 A. Yes.

14 Q. Is it also true, Miss Catherine, that I took a
15 blue cleaning rag, dumped it in some liquid, and rubbed
16 the rag around your private area to clean you out?

17 A. Yes.

18 THE DEFENDANT: Your Honor, at this time I would
19 like to introduce an exhibit in this case for the
20 Defense, a labelled exhibit, the washcloth.

21 THE COURT: All right. Hold on. Is it in the
22 courtroom?

23 MS. ADAMS: Your Honor, we have it. Is he gonna
24 prove the chain? Is he gonna lay a foundation?

25 THE COURT: Ladies and gentlemen, I need to send you

1 out of the courtroom one more time. Please don't discuss
2 the case.

3 (Whereupon, the jury left the courtroom at
4 approximately 4:58 p.m.)

5 THE COURT: All right. Where is the item?

6 MS. ADAMS: Your Honor, Patrick Merck has it in his
7 custody. He's the evidence custodian. He has not laid a
8 foundation. He hasn't shown it to Catherine. I don't
9 even know if Catherine can identify the rag he actually
10 used. If she can't, he hasn't laid a foundation and it's
11 not admissible.

12 THE COURT: I think he gets an opportunity to show
13 it to her and see if she can do it.

14 MS. ADAMS: Yes, sir.

15 THE COURT: Mr. Temple, you need to understand that
16 there's a chain of custody, so you're not waiving -- I
17 mean, you can't later object to the chain because it's
18 now in the courtroom, it's gonna be brought up here,
19 shown to her. And actually what I think I would rather
20 do is proffer it to her outside the witness -- or outside
21 the jury.

22 MS. ADAMS: Mark it Defense exhibit?

23 THE COURT: Yes.

24 And, Mr. Temple, what I'm gonna do is I'll allow you
25 to show this to her outside the jury and ask if she

1 recognizes it. If she doesn't recognize it, then it
2 won't come in. It's in a marked evidence bag so he's
3 gonna pull that out now so that there's no question about
4 who pulled it out.

5 MS. ADAMS: Your Honor, are we marking that as a
6 Defendant's exhibit? I mean, it is...

7 THE COURT: We'll mark it as a Court's exhibit right
8 now to see if she can identify it. Or not.

9 (Marked for identification was Court's
10 Exhibit 2-T, washcloth.)

11 THE COURT: All right. Mr. Temple, what you need to
12 do, you need to ask her if she can identify this outside
13 the presence of the jury. This is the item that you
14 mentioned that you called a blue rag, which is --

15 MS. ADAMS: Your Honor, this is just one item that
16 was collected.

17 THE COURT: Okay. All right. Go ahead and ask your
18 question. Let him do it since he's got the gloves on.

19 BY MR. TEMPLE:

20 Q. Miss Catherine, could you identify this item that
21 I used to wipe you with? (Patrick Merck shows rag to
22 witness.)

23 A. I can't be sure.

24 THE COURT: Okay. Her response was she can't be
25 sure. All right.

1 And your objection to the introduction of this is
2 she's not able to identify it; is that correct?

3 MS. ADAMS: Correct, Your Honor. She doesn't know
4 if that is the rag. Obviously the storage unit had a lot
5 of rags and clothing and all sorts of things in that
6 unit. And just because we collected one does not mean
7 that that is the one that he actually used on Catherine.
8 So, and if she can't identify that, which is why we're
9 not introducing it, because she can't identify it.

10 THE COURT: Do you understand her objection? Her
11 objection is she can't identify it. You'll have to get
12 it in with somebody else who might be able to identify
13 it, if they can.

14 But you can't ask her a question -- when you asked
15 the initial question, can she identify it, and she says
16 "no" or "I can't be sure," then it doesn't come in. And
17 it would be the same for the State if they ask her and
18 she says "I don't know," it doesn't come in.

19 But again, you'll have an opportunity to question
20 the officers, I'm sure, about where the rag came from at
21 a later time in the trial.

22 THE DEFENDANT: Okay, Your Honor.

23 THE COURT: All right. That's Court's Exhibit what
24 number?

25 THE COURT REPORTER: 2-T.

1 THE COURT: All right. 2-T for trial.

2 MS. ADAMS: Your Honor, she can't identify it,
3 that's just one piece of evidence collected. All Patrick
4 can say is he collected it.

5 THE COURT: Well, do that later. I'm just saying
6 that, right.

7 All right. Just in case, so I don't have to keep
8 sending them out, do you have any other evidence that you
9 want to ask her about?

10 THE DEFENDANT: No. Well, I do, but -- no, sir, not
11 at this time.

12 THE COURT: Okay. All right.

13 MS. ADAMS: Your Honor, is he going to any point in
14 his cross so we don't have to take the jury...

15 THE COURT: Well, I mean, that was my question. He
16 says "no" right now. I mean, I can't -- that's the
17 problem. I can't --

18 You are saying that you don't have any other
19 evidence that you're gonna ask her to identify; is that
20 correct?

21 THE DEFENDANT: There is a, another item, Your
22 Honor. It's not a -- I would like her to later -- the
23 time is not right right now.

24 THE COURT: Okay. All right. You all can wrap that
25 back up. What I may do, just for the record, I'm gonna

1 allow, even though it's a Court's exhibit, I'll let you
2 keep it with the other evidence, and it will have a
3 marker on it so we'll know, to keep the chain correct.

4 MS. ADAMS: And, Your Honor, for the record we do
5 have the S.L.E.D. report as a Court's exhibit, and this
6 is item 7.1 all the way down is what he's referring to,
7 so it's basically item 7, for the record, or 7.11, 7.12,
8 and 7.2 and 7.3.

9 THE COURT: Okay.

10 THE DEFENDANT: Your Honor, I would also like to
11 introduce the 9-1-1 tape.

12 MS. ADAMS: We're doing that next. We will.

13 THE COURT: That will be next, either tonight or
14 tomorrow morning.

15 MS. ADAMS: I'll authenticate it through the 9-1-1
16 operator, Your Honor.

17 THE COURT: Okay. That will be coming in.

18 Okay. You can wrap that back up.

19 (Patrick Merck wraps the rag, Court's Exhibit
20 2-T back up.)

21 THE COURT: Okay. You can bring them back in.

22 (The jury entered the courtroom at
23 approximately 5:08 p.m.)

24 THE COURT: All right. You can continue.

25

1 BY MR. TEMPLE:

2 Q. Miss Catherine, was anyone there with you and I?

3 A. No.

4 Q. In the storage unit?

5 A. No.

6 Q. Are you sure?

7 A. Yes, I'm sure.

8 Q. Is it true that I left and came back about two or
9 three times after the last time I left?

10 A. Can you restate that question?

11 Q. You said that I released myself into you. After I
12 released -- after that incident, is it true that I left
13 two or three more times after that?

14 A. No, not two or three more times. Two, I believe.

15 Q. Are you sure?

16 MS. ADAMS: Your Honor, asked and answered. She
17 testified about this on direct and now he's trying to
18 confuse her.

19 THE DEFENDANT: Your Honor, I am just trying to get
20 the story straight --

21 THE COURT: Overruled.

22 All right. Go ahead and ask your question. And if
23 she can answer, she can answer; and if she doesn't know,
24 she can say "I don't know."

25 MS. ADAMS: And, Your Honor, if I may, I'm not quite

1 sure which story is straight. She's never given anything
2 that's not consistent with what she's said.

3 THE COURT: Just make the objection. I've overruled
4 him. Go ahead.

5 THE DEFENDANT: Can I say something, Your Honor?

6 THE COURT: You can ask her a question.

7 THE DEFENDANT: Can I -- okay.

8 BY MR. TEMPLE:

9 Q. Is it true that the last time that I came back to
10 the storage unit, that I seemed a little happier and
11 packed the duffle bag with Nike shoes and I left with
12 them and I left?

13 A. Is that your question?

14 Q. (Nodded head.)

15 A. Yes, you came in, were distracted; you started
16 packing your bag, you didn't finish and you left.

17 Q. Is it also true that you describe the assailant as
18 a Black man between the age of twenty and forty?

19 A. I believe that's what I said.

20 Q. Is it true that you told the nurse at the hospital
21 that the assailant had a scar on his left cheek?

22 A. I believe so.

23 Q. Is it also true that you told the nurse at the
24 hospital that you were single?

25 A. That I was not married, correct.

1 Q. Are you sure?

2 A. I believe the proper term when a woman isn't
3 married is single, yes, so I said "single."

4 Q. Is it true that you had intercoursess before rape,
5 you was raped that same day?

6 MS. ADAMS: Objection, Your Honor.

7 THE COURT: Yeah. Sustained. You can't ask that.
8 Go ahead.

9 THE DEFENDANT: Your Honor, Your Honor, I feel that
10 these are very important questions that the jury needs to
11 know to make a determination that the prosecution can
12 prove all the elements in the case.

13 THE COURT: I understand. But there are certain
14 questions you can ask her and certain questions you
15 can't. You'll have to --

16 THE DEFENDANT: Also, Your Honor, I mean, to exclude
17 these matters would be to target me.

18 THE COURT: All right. Ladies and gentlemen, please
19 step out of the courtroom one last time.

20 (Whereupon, the jury left the courtroom at
21 approximately 5:15 p.m.)

22 THE COURT: All right. Mr. Temple, you just heard
23 me tell the Solicitor when she made an objection and then
24 went beyond making her objection just to make your
25 objection. That's all you can do. You cannot make

1 statements in front of the jury. And you need to
2 understand that when I rule, I rule.

3 Now, we had a discussion last week about this issue
4 and we had a discussion this morning about this issue.
5 And the question was, when can you ask that question that
6 you just tried to ask. It is not proper, based upon the
7 evidence that's been presented thus far and based upon
8 the lack of foundation, for you to ask that question
9 inasmuch as the code section only allows questions
10 regarding pregnancy, disease, and the identification of
11 semen, and there is nothing in evidence yet that would
12 allow that question to be asked. So you can't ask that
13 question. And make sure that when she objects and I say
14 "sustained," that means you go forward. When I say
15 "overruled," move on to the next question. You can't
16 make a statement, okay? All right.

17 All right. You can bring them back in.

18 (The jury entered the courtroom at
19 approximately 5:17 p.m.)

20 THE COURT: Just remember I told you, you might get
21 your exercise.

22 Yes, sir, next question.

23 BY MR. TEMPLE:

24 Q. Miss Catherine, is it true that -- is it true that
25 you use contraception?

1 MS. ADAMS: Objection, Your Honor.

2 THE COURT: Yeah. Sustained. You can't ask that
3 question. You have to move on.

4 THE DEFENDANT: Your Honor, I have no further
5 questions at this time.

6 THE COURT: All right.

7 Anything on redirect?

8 MS. ADAMS: Your Honor, just a couple questions.

9 (Marked for identification was State's
10 Exhibit 57, photo of Defendant taken
11 5-11-2010.)

12 REDIRECT EXAMINATION BY MS. ADAMS:

13 Q. I show you State's Exhibit 57. This is a picture
14 of Mr. Temple May the 11th, which was basically two days
15 after he attacked you and raped you. What do you see on
16 that picture?

17 THE DEFENDANT: Objection, Your Honor.

18 MS. ADAMS: Your Honor, he opened the door. He
19 referred to ---

20 THE COURT: I understand. Did you show him that
21 picture?

22 MS. ADAMS: I just did, yes, sir.

23 THE COURT: Have you seen that picture?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What's your objection?

1 THE DEFENDANT: It's not in discovery.

2 MS. ADAMS: Your Honor, he opened the door when he
3 asked Catherine if she --

4 THE DEFENDANT: Not --

5 THE COURT: Hold on, both of you.

6 Ladies and gentlemen, I'm gonna have to send you out
7 again.

8 (Whereupon, the jury left the courtroom at
9 approximately 5:20 p.m.)

10 THE COURT: Mr. Temple, what's your objection?

11 MR. TAVERNIER: Your Honor, he was just getting
12 ready to ask me something pertaining to that.

13 (Whereupon, the Defendant and Mr. Tavernier
14 conferred off the record.)

15 THE COURT: Yes, sir.

16 THE DEFENDANT: Your Honor, the prosecution
17 objection is outside the scope of my cross-examination.

18 THE COURT: All right. What's the picture of? Let
19 me see it.

20 MS. ADAMS: Your Honor, the picture is of Mr. Temple
21 that was taken on May the 11th, 2010, and Mr. Temple
22 asked Catherine if she told the nurse at the hospital if
23 the assailant had a scar on his left cheek, and you can
24 see a scar on his left cheek two days basically after
25 this incident. You can see a mark that she identified to

1 the nurse, and he opened the door.

2 THE COURT: All right. You did ask that question.

3 They didn't ask it, they didn't put it into evidence, and
4 you asked it. So all right, I'll allow the picture over
5 your objection. I understand.

6 (The jury entered the courtroom at
7 approximately 5:22 p.m.)

8 THE COURT: All right. Yes, ma'am.

9 MS. ADAMS: Thank You, Your Honor. May it please
10 the Court.

11 BY MS. ADAMS:

12 Q. Catherine, the Defendant asked you about a comment
13 you made to the nurse at the hospital when you were
14 describing who attacked you, and he asked you if you said
15 the man had a scar on his left cheek, okay?

16 A. Correct.

17 Q. All right. I'm gonna show you State's Exhibit 57,
18 which is a picture of Dennis Temple taken on May the
19 11th. Do you see a scar or what appears to be a scar on
20 his left cheek?

21 A. I do.

22 Q. Okay. Is this what you're referring to?

23 A. Yes.

24 MS. ADAMS: Okay. Your Honor, I'd like to admit
25 State's Exhibit 57.

1 THE COURT: All right. And over his objection as
2 previously stated, I'll admit it.

3 (Received in evidence was State's Exhibit 57,
4 photo of Defendant.)

5 THE DEFENDANT: Your Honor?

6 THE COURT: Yes, sir.

7 THE DEFENDANT: I believe that this picture was not
8 taken May the 11th. This is a picture that was taken two
9 years ago, a least a year and a half ago.

10 THE COURT: Y'all come around here.

11 (Discussion at sidebar.)

12 THE COURT: All right. You can continue.

13 MS. ADAMS: Thank you, your honor.

14 Your honor, you can't really see in the projector.
15 May I publish it to the jury --

16 THE COURT: Sure.

17 MS. ADAMS: -- so they can see the scar on his left
18 cheek?

19 (Ms. Adams publishes State's Exhibit 57 to
20 the jury.)

21 MS. ADAMS: Your Honor, I have nothing further.

22 THE COURT: All right. Thank you, ma'am. You may
23 step down.

24 (Witness leaves stand.)

25 THE COURT: How long is the next piece of evidence?

1 MS. ADAMS: Your Honor, it's the 9-1-1 tape.

2 MS. SIMMONS: Judge, it's 15 minutes. He had
3 stepped out and made arrangements for work.

4 MS. ADAMS: It will be quick.

5 THE COURT: All right. If we could do that tonight,
6 I'd just as soon do it.

7 MS. ADAMS: Your Honor, are we ready?

8 (Discussion at sidebar.)

9 MS. SIMMONS: Judge, can we take a five-minute
10 break?

11 THE COURT: Ladies and gentlemen, we'll break for
12 the day. If you would please be back in the jury room
13 tomorrow at 10:00.

14 Let me just tell you again, please don't watch any
15 TV or listen to any radio or read any papers. Please
16 don't discuss this matter with your family. When you get
17 home there's gonna be a natural inclination for your
18 family to ask you what this case is about.

19 The concern is that you might hear something, and it
20 is a real concern. If you can please not do that until
21 about Wednesday, we'll all be safe. But please don't
22 speak to anybody about this case. Don't -- if anybody
23 tries to contact you or to speak to you about this case,
24 let me know tomorrow and I'll take care of it. And don't
25 discuss the case amongst yourselves on the way out. And

1 I'll see you at 10:00 tomorrow morning.

2 A JUROR: Your Honor?

3 THE COURT: Yes, sir.

4 A JUROR: Is there a dismissal time tomorrow?

5 THE COURT: Well, we'll probably stop at 5:00
6 tomorrow.

7 A JUROR: Okay, thank you.

8 THE COURT: We had to go a little later tonight just
9 because we got started later. All right. Have a good
10 night.

11 (Whereupon, the jury left the courtroom at
12 approximately 5:30 p.m.)

13 THE COURT: Everybody stay seated. There's only one
14 elevator. I want everybody to stay in here until the
15 jury gets out and gets downstairs..

16 (Whereupon, the trial of the *State of South*
17 *Carolina versus Dennis Temple* adjourned for
18 the day at approximately 5:45 p.m. on Monday,
19 December 13, 2010, to resume at approximately
20 10:00 a.m. on Tuesday, December 14, 2010.)

21 ***

22

23

24

25

Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial, Volume 1, of the captioned case, relative to appeal, in the Court of General Sessions for Oconee County, South Carolina, on the 13th day of December, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 16, 2011


Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

1 State of South Carolina) In the Court of General
2 County of Oconee) Sessions
3) Indictments Nos:
4) 2010-GS-37-00886, 00887,
00888, and 00889

5 State of South Carolina,)
6 Plaintiff,) Transcript of Record
7 -vs-) Trial -- Volume 2
8 Dennis Temple,) Pages 153 through 335
9 Defendant.)
10)

11 December 14, 2010
Walhalla, South Carolina

12 B E F O R E:

13 The Honorable J. Cordell Maddox, Jr., Judge; and a
14 jury.

15 A P P E A R A N C E S:

16 Chrissy T. Adams, Esq.
17 10th Circuit Solicitor
Lindsey S. Simmons
18 Assistant 10th Circuit Solicitor
Attorneys for the State

19 Dennis Temple,
20 Pro Se Defendant
Kurt Tavernier, Esq.
21 Advisory counsel for Defendant

22 Robin Sue Hild, FCRR, RPR
23 Circuit Court Reporter
Post Office Box 9
24 Walhalla, SC 29691
25

1

INDEX

2

3

WITNESSES

PAGE

4

Neill Burkett

Direct Examination by Ms. Simmons

157

5

Cross-Examination by Mr. Temple

161

6

Britta Chapman

Direct Examination by Ms. Simmons

163

7

Cross-examination by Mr. Temple

174

8

Gregory L. Cromer, M.D.

Direct Examination by Ms. Adams

177

9

Cross-examination by Mr. Temple

198

10

Redirect examination by Ms. Adams

210

Recross-examination by Mr. Temple

212

11

Brian Danielson

Direct examination by Ms. Simmons

213

12

Cross-examination by Mr. Temple

216

13

Kimberly Chewning

Direct examination by Ms. Adams

218

14

Cross-examination by Mr. Temple

230

15

David Smith

Direct examination by Ms. Simmons

235

16

Cross-examination by Mr. Temple

238

17

Derek Pace

Direct Examination by Ms. Simmons

242

18

Cross-examination by Mr. Temple

253

19

Greg Reed

Direct Examination by Ms Adams

257

20

Cross-examination by Mr. Temple

266

Redirect examination by Ms. Adams

276

21

Recross-examination by Mr. Temple

276

22

Doris Yarbrough

Direct Examination by Ms. Simmons

277

23

Cross-examination by Mr. Temple

282

24

25

INDEX

1		
2		
3	WITNESSES	PAGE
4	Selena Kinard	
	Direct Examination by Ms. Simmons	283
5	Cross-Examination By Mr. Temple	289
6	Nikki Perry	
	Direct Examination By Ms. Simmons	293
7	Cross-examination by Mr. Temple	297
8	Sherree Brown	
	Direct Examination by Ms. Simmons	299
9	Cross-examination by Mr. Temple	305
	Redirect examination by Ms. Simmons	307
10		
11	Patrick Merck	
	Direct Examination by Ms. Simmons	309
12		
13	Certificate of Court Reporter	335
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

EXHIBITS

1

2

3

NUMBER AND DESCRIPTION

ID./EV.

4

5

6

State's 58, All Safe Storage rental agreement
Dated 3/22/2010

157/226

7

State's 59, All Safe Storage info on Dennis
Temple dated 3/22/2010

157/226

8

9

State's 60, two receipts: 3/22/10 and 5/3/10

157/226

State's 61, activity report dated 5/10/2010

157/226

State's 54 received -- NOT TRANSCRIBED

-- /161

X 10

State's 11 through State's 22 received

-- /488 no prsh

X 11

State's 24 and 25 received

-- /224 prsh

State's 62, bag of torn strips of cloth from
Inside the storage unit

241/314 no

12

13

State's 63, bag of torn strips of cloth from
Outside the storage unit

241/314

X 14

State's 3, 23, 26, and 22 received

-- /245 no prsh

X 15

State's 1 received

-- /261 no prsh

X 16

State's 56 received

-- /316 no prsh

State's 35, 26, 37, 42, 38, 48, 49, 50, 34, 39,
40, 47, 46, 45, 44, 43, 52, 51 and 53 received

-- /318 no prsh

17

State's 64, business card of Dennis Temple
State's 53 received

324/323 yes

-- /325 no

18

19

Court's 3-T, juror asking for break

170 IF you

can

20

21

22

23

24

25

1 ** Start of Requested Certified Transcript of Record **

2 (Whereupon, the trial in the *State versus*
3 *Dennis Temple* resumed on Tuesday, December
4 14th, 2010, at approximately 10:13 a.m.)
5 (Marked for identification was State's
6 Exhibit 58, All Safe Storage rental agreement
7 dated 3/22/2010.)

8 (Marked for identification was State's
9 Exhibit 59, all safe storage info on Dennis
10 Temple dated 3/22/2010.)

11 (Marked for identification was State's
12 Exhibit 60, two receipts: 3/22/2010 and
13 5/3/2010.)

14 (Marked for identification was State's
15 Exhibit 61, activity report dated 5/10/2010.)

16 THE COURT: Anything we need to take up before we
17 bring the jury in from the State?

18 MS. ADAMS: No, sir, Your Honor.

19 THE COURT: Mr. Temple, anything you want to bring
20 up?

21 THE DEFENDANT: No, sir.

22 THE COURT: Very good.

23 (The jury entered the courtroom at
24 approximately 10:19 a.m.)

25 THE COURT: Good morning, ladies and gentlemen,

1 sorry to make you wait for 15 to 20 minutes. I apologize
2 for keeping you late last night. I won't do that again
3 today. If you need a break, just raise your hand.

4 You can call your next witness.

5 MS. SIMMONS: The State calls Neill Burkett.

6 Whereupon,

7 Neill Burkett,

8 after first having been duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. SIMMONS:

10 THE COURT: Yes, ma'am.

11 MS. SIMMONS: Thank you, Your Honor.

12 BY MS. SIMMONS:

13 Q. Good morning, Mr. Burkett.

14 A. Good morning.

15 Q. Where are you employed?

16 A. At the Oconee County Sheriff's Office.

17 Q. And what is your job title there?

18 A. I'm a Senior Dispatcher.

19 Q. And tell me what being a dispatcher for the
20 Sheriff's Office entails.

21 A. Answering 9-1-1 calls as well as other phone lines
22 in the office, and also dispatching other public safety
23 personnel and other sheriff's Deputies as well.

24 Q. So you dispatch 9-1-1 calls in emergency
25 assistance?

- 1 A. Yes, ma'am.
- 2 Q. And how long have you been doing that?
- 3 A. A total of nine years.
- 4 Q. And do you personally know either the victim or
- 5 the Defendant in this case?
- 6 A. No, ma'am.
- 7 Q. In the early morning hours of May 10, 2010, were
- 8 you on duty?
- 9 A. Yes.
- 10 Q. Did you receive a 9-1-1 call regarding a rape and
- 11 kidnapping that morning?
- 12 A. Yes.
- 13 Q. What time did the call come in?
- 14 A. At 1:04 a.m.
- 15 Q. And who did the caller identify herself as?
- 16 A. As Catherine McGough.
- 17 Q. What did you immediately do after receiving the
- 18 call at 1:04?
- 19 A. I began taking her information, and going from
- 20 there, making sure help was dispatched to her two minutes
- 21 later.
- 22 Q. At what time did you dispatch help?
- 23 A. 1:06 a.m.
- 24 Q. And were the folks in dispatch in constant contact
- 25 with you?

1 A. Yes.

2 Q. What time did help arrive?

3 A. 1:13 a.m.

4 Q. What time was she actually freed from the confines
5 of the storage unit?

6 A. At 1:17 a.m.

7 Q. And do you typically keep 9-1-1 callers on the
8 line the entire time?

9 A. Yes, ma'am.

10 Q. Why do you do that?

11 A. To assure them and to also keep our officers and
12 responders updated as to any changes that may be going on
13 at the scene at that time.

14 Q. And are 9-1-1 calls typically in the ordinary
15 course of business recorded at the Oconee County
16 Sheriff's Office?

17 A. Yes, ma'am.

18 Q. How are they recorded?

19 A. They are recorded and stored digitally on site at
20 the Law Enforcement Center for what can be later
21 retrieved if need be.

22 Q. And are these -- once these calls are digitally
23 recorded at the Sheriff's Office, can they be altered or
24 tampered with in any way?

25 A. No, ma'am.

1 MS. SIMMONS: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes, ma'am.

4 BY MS. SIMMONS:

5 Q. Have you had occasion to review State's Exhibit 54
6 prior to court today?

7 A. Yes, ma'am.

8 Q. And did you initial that recording when you
9 reviewed it?

10 A. Yes, ma'am.

11 Q. Did you recognize your voice on the recording when
12 you listened to this?

13 A. Yes, ma'am.

14 Q. Is this recording a fair and accurate
15 representation of your conversation with Catherine
16 McGough on May 10th, 2010?

17 A. Yes, ma'am.

18 Q. Has it been altered or tampered with in any way?

19 A. No, ma'am.

20 MS. SIMMONS: Judge, we move to admit State's
21 Exhibit 54 and ask to publish it to the jury.

22 THE COURT: Any objection?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: All right. You can publish it.

25 (Received in evidence was State's Exhibit 54

1 and was published for the jury by the
2 Solicitor -- NOT TRANSCRIBED.)

3 BY MS. SIMMONS:

4 Q. Again, Mr. Burkett, this is a full and complete
5 recording of your 9-1-1 conversation with Catherine
6 McGough on May 10th, 2010?

7 A. Yes, it was.

8 MS. SIMMONS: Thank you very much. Answer any
9 questions that the Defendant may have.

10 THE COURT: Any questions?

11 CROSS-EXAMINATION BY MR. TEMPLE:

12 Q. Mr. Burkett, is it true that you work for the
13 Oconee County Sheriff's Department?

14 A. Yes, sir.

15 Q. And how long would you say you have been working
16 there?

17 A. A total of nine years.

18 Q. Nine years?

19 A. Yes, sir.

20 Q. Do you have any special type of training dealing
21 with 9-1-1 calls?

22 A. Yes, sir. We have had, we've had on-the-job
23 training for all new employees and hirees for
24 communications as well as additional training which is
25 handled at the Criminal Justice Academy in Columbia.

1 Q. Did this training teach you how to distinguish
2 between truthful reports and non truthful reports?

3 MS. SIMMONS: Objection, Your Honor, he's asking the
4 witness to speculate.

5 THE COURT: His question was is the training
6 allowed. I understand. Overruled.

7 Go ahead. You can answer the question. Okay.

8 THE WITNESS: To the best of my recollection, I
9 don't believe so.

10 BY MR. TEMPLE:

11 Q. Have you ever had anyone to make a false report
12 during your nine years of working for the Oconee County
13 Sheriff's Department?

14 A. To my knowledge, not that I can recall.

15 Q. In your nine years of working there you ain't had
16 no one make a false report to you? No prank calls or
17 anything?

18 A. To the best of my recollection, I cannot recall.

19 Q. So, to the best of your knowledge, you believe
20 this statement that was given to you?

21 A. I took the information which was given to me and
22 relayed it to the officers.

23 Q. So you didn't have no personal input in regards to
24 it?

25 A. No, sir.

1 Q. So your job requires you to forward information
2 regardless of whether it's false or the truth? Is that
3 what you're saying?

4 A. Our job is to get help and assistance for whoever
5 calls, any phone line requesting assistance of any sort.

6 THE DEFENDANT: No further questions, Your Honor.

7 THE COURT: Anything on redirect?

8 MS. SIMMONS: No, Your Honor. We would ask that
9 this witness be excused.

10 THE COURT: All right. You can be excused. Thank
11 you, sir.

12 (Whereupon, the witness was excused.)

13 THE COURT: Yes, ma'am.

14 MS. SIMMONS: Your Honor, the State calls Britta
15 Chapman.

16 Whereupon,

17 Britta Chapman,

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MS. SIMMONS:

20 THE COURT: Yes, ma'am.

21 MS. SIMMONS: Thank You, Judge.

22 BY MS. SIMMONS:

23 Q. Please state your full name for the record.

24 A. Britta Ann Chapman.

25 Q. And, Ms. Chapman, where are you employed?

1 A. Ocone Medical Center.

2 Q. And how long have you been at Ocone Medical
3 Center?

4 A. About two years.

5 Q. And what is your profession?

6 A. I'm a Registered Nurse.

7 Q. And tell me about the qualifications and training
8 required to be a Registered Nurse in the State of South
9 Carolina.

10 A. You have to go through nursing school and take the
11 State Board exam. I currently have two degrees, one from
12 Tri-County Tech, an Associate's Degree in Nursing; and
13 another from Clemson University, a Bachelor of Science in
14 nursing.

15 Q. What do the duties of a Registered Nurse in the
16 E.R. entail?

17 A. Triage, assessment of the patient, physical
18 assessment, and then any kind of medication
19 administration.

20 Q. Do you have occasion to treat sexual assault
21 victims in the E.R.?

22 A. Yes, ma'am.

23 Q. And how many times do you estimate you've done
24 that over the last couple of years?

25 A. Probably about a dozen.

1 Q. How does this case rank with the other dozen cases
2 you have seen over the last two years?

3 A. It's the worst.

4 Q. Do you personally know either the victim or the
5 Defendant in this case?

6 A. No, ma'am.

7 Q. And were you on duty at Oconee Memorial during the
8 evening of May 9th and as it turned into the early
9 morning of May 10th, 2010?

10 A. Yes, ma'am.

11 Q. Did you receive a report that night of an incoming
12 sexual assault victim?

13 A. Yes, ma'am.

14 Q. Who was that person?

15 A. Catherine McGough.

16 Q. How do you in the E.R. prepare for an incoming
17 victim of sexual assault?

18 A. We make sure we have an Ob/Gyn room available in
19 order to do the sexual assault kit and make sure we have
20 a sealed kit available to use.

21 Q. Are sexual assault victims immediately taken into
22 the E.R. for evaluation or do they have to wait?

23 A. No, they are immediately taken back.

24 Q. Is a nurse specifically assigned to sexual assault
25 victims?

1 A. Yes, ma'am.

2 Q. Were you that nurse that night?

3 A. Yes, ma'am.

4 Q. What does it mean when you are assigned to a
5 sexual assault victim?

6 A. You are with them throughout the whole process of
7 the examination kit. You are there with them, again
8 triaging them, assessment, treating them and medication
9 administration, as well as notifying law enforcement and
10 make sure law enforcement has been notified and the Rape
11 Crisis Center.

12 Q. Do you also document and chart everything that you
13 are seeing and doing with that patient?

14 A. Yes, ma'am.

15 Q. Is there a specific protocol when you deal with
16 sexual assault victims?

17 A. Yes, ma'am. Again, we call -- notify law
18 enforcement and the Rape Crisis Center and make sure
19 everything is readily available for that patient to treat
20 them appropriately, and evidence collection.

21 Q. What was the condition of Catherine McGough when
22 you first saw her that night, that morning?

23 A. She was calm, but nervous, and she had obvious
24 bruising and abrasions, which is just scrapes.

25 Q. Did you see any neck injuries?

1 A. Yes, ma'am.

2 Q. Were they consistent with some sort of
3 strangulation?

4 A. Yeah. She reported strangulation with a belt, and
5 her injuries were consistent with those.

6 Q. And what time did you first see her in the E.R.,
7 roughly?

8 A. She arrived about 2:27 a.m.

9 Q. And during your process of your treatment and
10 diagnosis of Catherine, did you ask her all about what
11 had happened to her?

12 A. Yes, ma'am.

13 Q. What did she tell you?

14 A. She stated that she was at a storage unit and that
15 a Black male approached her and was trying to sell shoes,
16 and she told him no, thank you. And so then she kind of
17 hurried up and finished up. She said she kept getting a
18 bad vibe about the Black male. And ---

19 THE DEFENDANT: Your Honor, I object to this
20 statement.

21 THE COURT: What's your objection?

22 THE DEFENDANT: I mean, it's cumulative to the
23 victim's report.

24 THE COURT: Okay. Overruled. I mean, she can
25 testify what she did in the course of her investigation.

1 All right. Go ahead.

2 BY MS. SIMMONS:

3 Q. Continue, please.

4 A. He come back with a belt. She said that she did
5 everything and was getting ready to get in her car and
6 she realized that she forgot to let her door down. She
7 went back to let her door down, and then that's when he
8 pushed her in her storage unit and started strangling
9 her. She said she blacked out and that's when he drug
10 her from her storage unit to his storage unit. And then
11 he tied her up and he raped her.

12 THE COURT: Hold on just a minute. Let me speak to
13 you all over here for just a second.

14 (Discussion at sidebar.)

15 THE COURT: All right. You can continue.

16 BY MS. SIMMONS:

17 Q. Just briefly, were the injuries you observed
18 consistent with what she told you had happened?

19 A. Yes. She had scrapes where she had been drug and
20 then she had the neck injury where she had been
21 strangled.

22 THE COURT: All right. I need to take a quick break
23 if we can. We'll take a 15-minute break for y'all.
24 Please don't discuss the case.

25 (Whereupon, the jury left the courtroom at

1 approximately 10:49 a.m.)

2 THE COURT: There's no problem. They just need a
3 break. One of them did. I'll make that a Court's
4 exhibit.

5 (Marked for identification was Court's

6 Exhibit 3-T, juror asking for break.)

7 MS. SIMMONS: May the witness step down if she does
8 not discuss her testimony?

9 THE COURT: Yes. That will be fine.

10 MS. SIMMONS: Thank you.

11 (Witness leaves stand.)

12 (A recess was taken.)

13 (The jury entered the courtroom at

14 approximately 11:04 a.m.)

15 THE COURT: All right. Mr. Foreman, that's exactly
16 the way you should communicate with me. Thank you very
17 much.

18 All right. You can continue.

19 MS. SIMMONS: Thank you, Judge.

20 BY MS. SIMMONS:

21 Q. Ms. Chapman, did part of your treatment of
22 Catherine involve a sexual assault protocol exam, which
23 is commonly referred to as a rape kit?

24 A. Yes, ma'am.

25 Q. Did you bring an unused rape kit with you today?

1 A. Yes, ma'am.

2 Q. If you would explain how that evidence is
3 collected and samples are taken. Can you do that for me?

4 A. Uh-huh. Yes, ma'am. It comes in a box just like
5 this. It's sealed, so no tampering of evidence or
6 anything like that. (Opens kit.)

7 Then the kit is opened. It gives you directions
8 on paperwork that you have to fill out about the patient.
9 Name, questions that you may have to ask her.

10 And then evidence collection. You have to collect
11 any miscellaneous materials, and that's found on the
12 patient, anything like that, any kind of clothing, like
13 any parts of clothing that may have been ripped or
14 anything like that found on the patient.

15 If there is a suspected bite, lip kiss or mark, so
16 if the patient has been kissed on the cheek, and she can
17 remember where, you take sterile water and take a cotton
18 tip and you wet it and then wet where she got kissed at,
19 and then that's left to dry and placed into evidence.

20 Oral swabs. You swab the inside of the patient's
21 mouth.

22 Fingernail scrapings in case the patient scratched
23 the person doing the raping or assaulting.

24 Scratch underneath their fingernails to see any
25 kind of evidence there.

1 Again, swabbing the mouth.

2 A pubic hair combing. It has a little comb and a
3 sheet, sterile sheet that you put there, comb any kind
4 of, combings of any kind of hair that falls there, you
5 fold it back up and place into evidence.

6 Vaginal swabs. This is, the doctor performs this.
7 Any kind of swabs in the vaginal area. And then it's
8 placed on a slide and both are let to dry and then it's
9 placed into evidence.

10 Rectal swabs. Again, the doctor performs this,
11 collects any kind of rectal swabbings.

12 And then we draw blood and urines. We collect
13 underwear, all the clothes. And then there's a debris
14 sheet collection of the patient. There's a sheet
15 provided, and the patient stands on it and drops her
16 clothing so any kind of again material, any kind of hair
17 or any kind of other evidence falls on that sheet and
18 then it is folded up and placed back in the bag.

19 And then once it's finished and you finish all the
20 paperwork, and that's asking questions again about what
21 happened, you know, you just assess her and ask her what
22 happened and everything is documented. And then
23 everything is sealed with these seals.

24 Q. So every sample that you take is sealed and then
25 put back in that box?

1 A. Yes, ma'am.

2 Q. And those stickers are used to seal the box?

3 A. And then the outside of the box is sealed.

4 Q. Were you personally present and the nurse in
5 charge on the collection of all these samples?

6 A. Yes, ma'am.

7 Q. And you were 100 percent in control of the
8 collection of these samples?

9 A. Yes, ma'am.

10 Q. How extensive and invasive would you characterize
11 the process of conducting a sexual assault examination?

12 A. Basically the patient has to relive the rape all
13 over again.

14 Q. Were you present with Catherine the entire process
15 of the rape kit?

16 A. Yes, ma'am.

17 Q. How long did it take?

18 A. The rape kit lasted approximately two hours. She
19 was in the E.R. for about eight hours total.

20 Q. And you documented and charted all her features?

21 A. Yes, ma'am.

22 Q. Are the samples that we just referred to in this
23 box, are they only handled or touched by qualified
24 medical personnel?

25 A. Yes, ma'am.

1 Q. And you were present during the collection of all
2 samples?

3 A. Yes, ma'am.

4 Q. Once the samples were collected, were they boxed
5 in terms of -- did you box them?

6 A. Yes, ma'am.

7 Q. And did they remain in your care, custody and
8 control the whole time they were at the hospital?

9 A. Yes, ma'am.

10 Q. Did you alter, destroy or damage these samples
11 that were submitted in this case in any way?

12 A. No, ma'am.

13 Q. And they were sealed in tamperproof packaging?

14 A. Yes, ma'am.

15 Q. You turned them over?

16 A. Yes, ma'am, I marked my initials.

17 Q. And who did you turn the sexual assault kit, the
18 C.S.C. kit over to?

19 A. Officer Brian Danielson.

20 Q. And what time in the morning do you think that
21 happened?

22 A. About 6:30.

23 MS. SIMMONS: Beg the Court's indulgence for a
24 moment.

25 THE COURT: Yes, ma'am.

1 MS. SIMMONS: Please answer any questions the
2 Defendant may have.

3 CROSS-EXAMINATION BY MR. TEMPLE:

4 Q. Ms. Chapman, could you please state how many years
5 you have been working for the Oconee Medical Center?

6 A. Approximately two years.

7 Q. And you are the one, the nurse that did the sexual
8 assault, sexual examination on the alleged victim?

9 A. I collected evidence.

10 Q. The evidence that you collected and the
11 information on the examination protocol sheet, is it
12 accurate to the best of your knowledge?

13 A. Yes, sir.

14 Q. Everything in it is truthful?

15 A. Yes, sir.

16 Q. During your inquiry with the victim, is it true
17 that you, that she had stated to you that she was single
18 on 5-10-2010?

19 A. Can you repeat the question, please?

20 Q. Did the victim state to you that she was single on
21 2010, 5-10-2010?

22 A. She never stated.

23 Q. Are you sure?

24 A. She never stated to my knowledge that she was
25 single.

1 Q. Next question. Is it true that the alleged victim
2 gave you a brief description of the assailant?

3 A. Yes, sir.

4 Q. Is it true that she stated the assailant had a
5 scar on the left cheek?

6 A. In the evidence collecting sheets, yes, sir, it's
7 noted that she said that a scar on the left cheek.

8 THE DEFENDANT: Your Honor, can I show the victim --
9 the witness this picture and ask a question?

10 THE COURT: The one that was introduced yesterday?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Sure. It's into evidence.

13 MS. SIMMONS: I object. She wasn't privy to who
14 committed this crime.

15 THE DEFENDANT: Your Honor, she's a nurse. She can
16 tell the difference between a scar and a sore.

17 THE COURT: I'll allow him to show her the picture
18 for what it's worth. It's up here somewhere. Wasn't it
19 introduced yesterday? There it is. Isn't that on top
20 there? Yes.

21 MS. ADAMS: Yes, sir, Your Honor. (Hands State's
22 Exhibit 57 to Defendant.)

23 BY MR. TEMPLE:

24 Q. Would you say that this is a scar on the left
25 cheek or a sore below the mouth?

1 A. To be honest with you, there was shading on this
2 picture, so I can't tell you whether there's something
3 noted on the cheek or not.

4 Q. You don't see nothing?

5 A. Not with the shading the way the picture is taken.

6 THE DEFENDANT: She don't see a scar or nothing.

7 Okay. Thank you, ma'am.

8 BY MR. TEMPLE:

9 Q. Next question. Is it true that the alleged victim
10 stated to you that --

11 Well, before I ask this question I might need to
12 consult with you, Your Honor?

13 THE COURT: All right. Come around:

14 (Discussion at sidebar.)

15 BY MR. TEMPLE:

16 Q. Ms. Chapman, is it also true that you noted that
17 the alleged victim was quiet and nervous?

18 A. Yes, sir.

19 Q. Are you sure?

20 A. Yes, sir.

21 Q. Would you please refer to your examination of
22 protocol sheet where you noted that she was quiet but you
23 didn't note nervous as a requirement, as part of the
24 title?

25 A. That's the physician's part. That's not my part..

1 Q. Okay. So you did not do the pelvic examination,
2 either?

3 A. No, sir.

4 THE DEFENDANT: Your Honor, that would be all at
5 this time.

6 THE COURT: Anything on redirect?

7 MS. SIMMONS: No, Your Honor. We ask that this
8 witness be excused.

9 THE COURT: All right. You can be excused. Thank
10 you.

11 (Whereupon, the witness was excused.)

12 THE COURT: All right. You can call your next
13 witness.

14 MS. ADAMS: Thank you, Your Honor. The State calls
15 Dr. Greg Cromer to the stand.

16 Whereupon,

17 Gregory L. Cromer, M.D.

18 after first having been duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MS. ADAMS:

20 Q. Please state your full name and spell your last
21 name for the record.

22 A. Gregory L. Cromer, C-r-o-m-e-r.

23 Q. Where are you employed?

24 A. Blue Ridge Emergency Physicians.

25 Q. And does your group contract with the Ocone

1 Medical Center?

2 A. Yes, we do.

3 Q. And do you work in the Emergency Room at the
4 Ocone Medical Center?

5 A. Yes, I do.

6 Q. All right. And what are your duties there?

7 A. I'm a staff E.R. Physician, Emergency Medicine
8 Physician for the Emergency Department. That means we
9 handle all of the assessment, diagnoses, treatment plans,
10 and procedures that have to be done on any patients
11 presented to the Emergency Department.

12 Q. And how long have you been an Emergency Room
13 Doctor?

14 A. I've been working at Ocone for nine and a half
15 years.

16 Q. Please tell the jury a little about your
17 educational background and training.

18 A. I attended Clemson University as an undergraduate.
19 Then the Medical University of South Carolina for medical
20 school. Then, after finishing the Medical University of
21 South Carolina, then completed a residency in emergency
22 medicine and internal medicine at L.S.U. in New Orleans.

23 Q. What are your duties as an emergency room doctor
24 at the hospital?

25 A. The simplest way to sum it up is I treat

1 everything. If it walks through the door, be it a
2 gunshot wound or earache, we're responsible for
3 diagnosis, treatment, ordering the appropriate tests and
4 doing the appropriate, the interventions at that time or
5 consulting with another consulting physician.

6 Q. So as part of your duties as an E.R. doctor, do
7 you perform sexual assault kits on rape victims?

8 A. Yes, I do.

9 Q. And about how many sexual assault kits or exams do
10 you think you performed in your nine and a half years?

11 A. Over a hundred. I'm not sure how many, the exact
12 number.

13 Q. And have you testified in court before?

14 A. Yes, I have.

15 Q. And have you been qualified before as an expert in
16 the field of emergency medicine?

17 A. Yes.

18 MS. ADAMS: Okay. Your Honor, at this point I would
19 like to qualify Dr. Cromer as an expert in the field of
20 emergency medicine.

21 THE COURT: Any objection to that?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. Without objection.

24 BY MS. ADAMS:

25 Q. Dr. Cromer, were you working May 9th into the

1 morning hours of May 10th?

2 A. Yes, I was.

3 Q. Did you perform a sexual assault kit on the victim
4 in this case, Catherine McGough?

5 A. Yes, I did.

6 Q. What is your procedure in performing a sexual
7 assault kit? In other words, what is the first thing
8 that you do as the doctor?

9 A. The person is brought in, placed in one of the
10 rooms, usually with the nurse meeting them at the door
11 when they're brought in. I will usually enter the room
12 at the beginning to make sure there are no
13 life-threatening injuries sustained to the person that
14 needs emergent intervention.

15 Then I'll allow the nurse to do the collections of
16 most of the samples, take most of the history, and then I
17 will come in and do the sexual assault part of the exam
18 or the g-y-n part of the exam along with a history and
19 physical exam to find exactly what's hurt, what's
20 injured, what happened in the case.

21 Q. So do you also speak to the victim as well to find
22 out what happened?

23 A. Yes, I do.

24 Q. Okay. And obviously that is for your purposes to
25 treat her; is that correct?

1 A. That's correct. And to find out if there is any
2 potential hidden injuries that she didn't know was there
3 by the history of what had happened to her.

4 Q. So medically what did she tell you had happened to
5 her?

6 A. That she was, that somebody had approached her and
7 punched her in the face, then choked her with his hands,
8 tied a belt around her throat and drug her ---

9 THE DEFENDANT: Objection, Your Honor.

10 THE COURT: What's your objection?

11 THE DEFENDANT: It's hearsay again, Your Honor.

12 MS. ADAMS: Your Honor, it's part of his diagnosis.

13 THE DEFENDANT: It's cumulative.

14 THE COURT: Okay. All right. I'll allow him to
15 testify because it is a part of his diagnosis as to what
16 happened. But, you know, let's hit it and move on with
17 it.

18 Go ahead.

19 THE WITNESS: -- and that she was drug into a
20 storage shed and then sexually assaulted.

21 BY MS. ADAMS:

22 Q. After Catherine gave you an account of the events
23 that had happened, did you begin the physical exam?

24 A. Yes.

25 Q. All right. What, if anything, did you observe

1 about her neck?

2 A. She had what appeared to be a strangulation mark
3 or ligature mark across her throat that was consistent
4 with a belt or strap around her throat, causing
5 strangulation.

6 Q. Could you also tell, were there any other marks,
7 like fingerprints or anything, finger, hand marks?

8 A. There was two marks below the one dense
9 strangulation mark. They were very red and erythematous,
10 consistent with where thumbs would be placed if somebody
11 was attempting to strangle somebody.

12 Q. In fact, Dr. Cromer, let me show you State's
13 Exhibits 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and
14 22. If you can flip through those a minute. And do you
15 recognize those pictures?

16 A. Yes. The first picture --

17 THE COURT: All right. Hold on. Just do you
18 recognize them.

19 You need to show them to him.

20 THE WITNESS: I do.

21 BY MS. ADAMS:

22 Q. Because you have seen these before, correct?

23 A. Yes.

24 Q. And are these pictures of the victim?

25 A. Yes, they are.

1 Q. All right. And do these pictures fairly and
2 accurately represent the way she looked and presented
3 herself in the E.R. the night you saw her or the early
4 morning hours?

5 A. Yes, they do.

6 THE DEFENDANT: Your Honor, some of those pictures
7 I've never seen before. I object.

8 THE COURT: Ladies and gentlemen, let me send you
9 out. I'll bring you back in here in about five minutes.
10 Please don't discuss the case.

11 (Whereupon, the jury left the courtroom at
12 approximately 11:28 a.m.)

13 MS. ADAMS: Your Honor, he was provided these
14 pictures. He was given these pictures in black and
15 white. When Mr. Tavernier was representing him, he was
16 given disks of all these pictures. They were voluminous.
17 We could not print them out. They were given to us on
18 disk, we gave them to the Defense on disk. And we
19 reviewed all these last night again. And when we went
20 down to the Law Enforcement Center to review evidence, I
21 told Mr. Temple that we were introducing multiple
22 pictures and asked him if he had any questions about what
23 he had received, and he said no.

24 THE COURT: But you did send them to him in black
25 and white, the copies he's got in the office?

1 MS. ADAMS: He has -- I'd have to look and check --
2 either disk or photocopies.

3 THE COURT: Okay.

4 Yes, sir.

5 THE DEFENDANT: By the State telling me that they're
6 gonna introduce pictures does not satisfy the disclosure
7 upon the South Carolina Rules of Criminal Procedure.

8 THE COURT: Just check and see if you sent them to
9 him. I'm assuming they were sent in a pack.

10 MS. ADAMS: Your Honor, they were either sent copies
11 or in a disk.

12 THE COURT: Right. I want to know which one. I
13 need to know.

14 THE DEFENDANT: Also, Your Honor, keep in mind that
15 I filed discovery first in my case. I've had three
16 attorneys for no more than 30 days at the most, those
17 three attorneys.

18 THE COURT: Well, did you review the packets of
19 pictures that they sent you?

20 THE DEFENDANT: Your Honor, I received some of those
21 pictures, but I really -- just now, but there are three
22 pictures that I haven't seen.

23 THE COURT: Which ones are you talking about? That
24 would save me some time. Point them out there.

25 THE DEFENDANT: It looks like she kind of hung

1 herself or something with a --

2 THE COURT: You are talking about the ligature marks
3 around the neck?

4 MS. ADAMS: Your Honor, he has those.

5 THE COURT: Okay. Show them to him.

6 And these are the ones that were sent to you. Are
7 those the ones you are talking about?

8 MS. SIMMONS: Three, actually four ligature mark
9 pictures.

10 THE DEFENDANT: Can I see those, please, right
11 there?

12 MS. ADAMS: (Handing).

13 THE DEFENDANT: I never seen these.

14 MS. SIMMONS: These pictures he is referring to were
15 provided.

16 THE COURT: Okay.

17 THE DEFENDANT: Do you know what number that is?

18 MS. SIMMONS: Discovery 461 and 462.

19 THE COURT: Okay.

20 THE DEFENDANT: Yes, I have these. You can't really
21 see the hanging. Yes, I have them.

22 THE COURT: Okay.

23 MS. ADAMS: But, Your Honor, we also provided disks
24 as well of all of the pictures.

25 THE COURT: Right. Yeah. I'm just a little

1 concerned about the disks because there have been a
2 couple lawyers. As long as he's got hard copies of them
3 and he's seen them and this witness can identify them and
4 there's a proper foundation, I've got to let them in.

5 But your objection is that -- what?

6 THE DEFENDANT: Basically I thought that I didn't
7 have them, but I do have them.

8 THE COURT: That's all right. I'd rather you make
9 the objection than not make it.

10 THE DEFENDANT: Right.

11 THE COURT: Okay. All right. You can bring them
12 back in.

13 (The jury entered the courtroom at
14 approximately 11:33 a.m.)

15 THE COURT: Okay. You can continue.

16 BY MS. ADAMS:

17 Q. So, Dr. Cromer, these pictures do fairly and
18 accurately represent the way Catherine presented herself
19 in the E.R. on May the 11th?

20 A. Yes.

21 MS. ADAMS: Okay. Your Honor, I'd like to move
22 State's Exhibits 11 through 22 into evidence.

23 THE COURT: Okay. Any objection?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. Without objection.

1 (Received in evidence were State's Exhibits
2 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21,
3 and 22.)

4 THE COURT: Would it help to turn these lights out?

5 MS. ADAMS: I think it's a lot clearer, Judge, for
6 the jurors on the TV, except when I do that.

7 THE COURT: Okay. There you go.

8 MS. ADAMS: All right.

9 BY MS. ADAMS:

10 Q. Dr. Cromer, this is State's Exhibit 11. Can you
11 please describe to me what this shows?

12 A. Her nose appears to be swollen and she's got a
13 contusion above the right eye. And a contusion just
14 basically means a bruise.

15 Q. Okay. So would that be consistent with being
16 punched in the face?

17 A. Yes, it would.

18 Q. Dr. Cromer, this is State's Exhibit 12, probably a
19 little harder for the jury to see here. Describe to them
20 what's depicted in this picture.

21 A. Yes. She's got a bruise on the forearm. It's
22 kind of tough to see with the lighting, but there's a
23 bruise on the side of her forearm.

24 Q. Is that a little better?

25 A. Yes.

1 Q. Okay. And would that be consistent with being
2 tied?

3 A. Yes, it would.

4 Q. And State's Exhibit 13, what is that?

5 A. Another bruise or contusion on her arm, but also
6 consistent with being tied.

7 Q. Being tied, in like a wrapping-type motion?

8 A. Yes.

9 Q. And State's Exhibit 14, as well?

10 A. The same thing. There was a bruise on her forearm
11 in the wrist area.

12 Q. And, of course, as well as 15?

13 A. The same bruising on her wrist.

14 Q. And, Dr. Cromer, this is State's Exhibit 16. Can
15 you tell the jury about these injuries on Catherine?

16 A. Yes. She actually had multiple abrasions or
17 scrapes or bruising on her left shoulder. The one with
18 the measuring tape around it, kind of right flank, the
19 right shoulder, had some bruising as did the lower -- you
20 can't see it on this picture -- but on the lower part of
21 her abdomen and the lower part of her back and hip, as
22 well. And those are consistent with what she was saying,
23 that she was drug.

24 Q. And State's Exhibit 17?

25 A. Showing some more of the abrasions on her back.

1 Q. State's Exhibit 18?

2 A. Her left thigh and left knee and left lower leg
3 had multiple scrapes and abrasions on it. That picture
4 is showing some of the abrasions on the lower leg and on
5 the top of her foot.

6 Q. Again consistent with being --

7 A. Consistent with being dragged.

8 Q. -- drug across a gravel parking lot?

9 A. Yes.

10 Q. And State's Exhibit 19, is that the upper leg
11 area?

12 A. Yeah. It's of the upper left thigh. There's a
13 large abrasion there that's consistent with being drug.

14 Q. And you referred to her shoulder?

15 A. Yes. That's a close-up of her left shoulder that
16 shows the same abrasions.

17 MS. ADAMS: And that was State's Exhibit 20, Your
18 Honor.

19 BY MS. ADAMS:

20 Q. And State's Exhibit 21?

21 A. There's two different markings in this picture.
22 The top marking shows the linear red line that is
23 consistent with a ligature or a belt or some kind of
24 object tied around the neck or pulled with force against
25 the neck to bruise it in that straight linear line.

1 The bruising down below it that's a little bit
2 more diffuse could either be caused by part of a belt or
3 by fingers basically grabbing the front of the throat.

4 Q. So this again is consistent with Catherine's
5 account to you of being strangled with a belt?

6 A. Yes, that's consistent with strangulation.
7 There's nothing else that's gonna leave marks like that
8 other than being strangled by something.

9 Q. Okay. And here is one more, which is State's
10 Exhibit 22?

11 A. And it shows the same thing, the top ligature mark
12 all the way around the throat, and then the bruising down
13 below it right in the midline.

14 MS. ADAMS: Thank you, Dr. Cromer.

15 THE WITNESS: You're welcome.

16 BY MS. ADAMS:

17 Q. Dr. Cromer, when someone is strangled like that,
18 what happens to a person's bodily functions?

19 A. When you cut off blood supply to the brain or cut
20 off oxygen to the brain, you will first get light-headed,
21 then you will go unconscious. After you are unconscious,
22 you will lose control of your bowel and bladder. And if
23 the pressure is held long enough, you'll die.

24 Q. In this case when Catherine testified that she had
25 urinated on herself, that is also consistent with being

1 strangled, correct?

2 A. Yes, it is.

3 Q. Okay. Now, please explain to the jury exactly
4 what you do when you perform the vaginal part of the
5 sexual assault kit.

6 A. Okay. There's a few different stages to it. The
7 first is an external inspection. Is there any obvious
8 cuts, scrapes, lacerations. Then we inspect with a
9 wood's lamp or black light because semen will become
10 fluorescent so it will give you areas that you can sample
11 that you might not normally have sampled otherwise.

12 Then you do a speculum exam where you insert a
13 metal speculum or a plastic speculum into the vaginal
14 canal. I observed the inside of the vaginal canal, the
15 cervix, for any tears, lacerations, fluid discharge, they
16 would be there. Then you collect samples from the, in
17 her case the fluid that was in the vaginal canal, then
18 you collect samples from around the rectum and the anus.
19 And then those samples are then given to the nurse who
20 would then dry them and it's sealed into the kit.

21 Q. Please explain to the jury what your results were
22 in Catherine's exam.

23 A. There was a few things. She was, there was a
24 large amount of fluid within the vaginal canal, a little
25 more than what would typically be expected.

1 Q. When you say a little more, what does that mean?

2 A. People will have some discharge within the vaginal
3 canal that will be there, and it will vary from person to
4 person. There was a large amount of fluid there that was
5 very abnormal to have that volume of fluid there.

6 Q. Now, so would that be consistent with Catherine's
7 account of having a cleaning solution injected into her
8 vaginal area to clean her out?

9 A. Yes, it would. Out of that sample that we took,
10 we sampled some of it to send with the S.L.E.D. lab with
11 the sexual assault kit; there was another swab that was
12 taken that was sent to our lab and evaluated in the lab
13 and by myself under the microscope. And the fluid
14 collection that was there appeared to be semen but it
15 appeared to be a lot more volume than should be there,
16 and a little bit thinner.

17 On the wet prep slide that we did in the lab,
18 which is basically just taking a swab, applying it to a
19 glass slide, putting a cover slip on it and looking at it
20 under the microscope, you could identify, see sperm
21 within the wet prep or within the materials in the
22 vaginal canal.

23 Q. Okay. So in this case what did you identify from
24 this swab?

25 A. She had a few things. One, there was non mobile

1 sperm, which just means that it wasn't moving, it was on
2 the wet prep slide. She also had evidence of a
3 Candidosis or a yeast infection and some sort of
4 bacterial vaginosis, which is when the pH within the
5 vaginal canal gets disrupted, different bacteria will
6 grow at a different rate that are all normal bacteria
7 that are there normally. They just have a very specific
8 balance. And when that balance gets disrupted by
9 anything that changes the pH, then some of the bacteria
10 can grow and produce an infectional vaginosis.

11 Q. When you say non mobile sperm, would being
12 injected with the cleaning solution --

13 A. Absolutely. Sperm will stay mobile for, assuming
14 that they're in a healthy environment out of the male
15 body for 24 hours, maybe 48. If you introduce a cleaning
16 solution that has the chemicals in it, it'll basically
17 kill the sperm that are there and you'll still be able to
18 see the cell structure for a little while, and then it
19 will kill them and make them immobile. So that was very
20 consistent with what she had described as happening.

21 Q. And again, Dr. Cromer, when you collected the
22 vaginal or rectal swabs, they went directly into the
23 sexual assault kit, and you did not tamper with those
24 swabs in any way; is that correct?

25 A. That is correct.

1 The only other thing of note is that she was
2 tender within the vaginal canal during the exam, which is
3 consistent with basically bruising and contusions within
4 that area. Because of the way the tissue is you can't
5 see a bruise like you would a typical, like on your skin.
6 But she was pretty sore within the vaginal canal, as
7 well.

8 **MS. ADAMS:** Thank you, Dr. Cromer. Please answer
9 anything the Defendant may have.

10 **THE COURT:** I'll tell you what, Mr. Temple. Before
11 you start, ladies and gentlemen, I'm gonna send you out
12 for a few minutes. I need to take up a matter outside of
13 your presence. This will probably take about ten
14 minutes. Please don't discuss the case.

15 (Whereupon, the jury left the courtroom at
16 approximately 11:45 a.m.)

17 **THE COURT:** All right. So we don't have to deal
18 with this and I have to send the jury out, I assume,
19 Mr. Temple, that you intend to ask the doctor about his
20 finding of the immobile sperm?

21 **THE DEFENDANT:** Previous sexual encounter?

22 **THE COURT:** Yeah. Stand up. What do you intend to
23 ask?

24 **THE DEFENDANT:** Well, Your Honor, by the doctor
25 noting, like he said, tender is consistent with

1 disruption, that that disruption, if she had sex that
2 previous, that same day, how can we distinguish between
3 the disruption from the previous sexual encounter and the
4 rape? Or from, from the rape or from the rape or the
5 previous sexual encounter? How could we distinguish, set
6 it apart or identify it?

7 Because criminal sexual conduct has two elements
8 which the prosecution must prove beyond a reasonable
9 doubt to the jury: Aggravated force, which is physical,
10 intrusion --

11 THE COURT: The intrusion, however slight.

12 THE DEFENDANT: -- kidnap or whatever.

13 Also, the second one is an insertion, which is any,
14 any slight intrusion of the female organs or vagina.

15 THE COURT: All right.

16 Yes, ma'am.

17 MS. ADAMS: Um...

18 THE COURT: I just want to deal with it now so I
19 don't have to send them out.

20 MS. ADAMS: And, Your Honor, again, there was only
21 one D.N.A. profile that was extracted from the swabs
22 taken, and it was from a rectal swab.

23 THE COURT: Right. The problem is -- and that is
24 not an issue. Let me --

25 Go ahead. Yes, sir.

1 THE DEFENDANT: Your Honor, that's true. But,
2 however, the effects of penetration is lasting. I mean,
3 it's not --

4 THE COURT: All right. I'm gonna take care of this.
5 Doctor, let me ask you the question. Are you able
6 to tell if, assuming as fact for a moment --

7 THE WITNESS: Uh-huh.

8 THE COURT: -- that there was consensual sexual
9 activity the day before --

10 THE DEFENDANT: Same day.

11 THE COURT: Let me ask the questions.

12 THE DEFENDANT: I'm Sorry.

13 THE COURT: And I mean that. Have a seat.

14 THE WITNESS: There's no way to --

15 THE COURT: You know what I'm asking you.

16 THE WITNESS: Yeah. There's no way to know if
17 somebody, the presence of sperm within the vaginal canal
18 means that somebody ejaculated inside of her at some
19 point within couple of days, two to three days at the
20 most, and that's a very outside number, the three-day
21 mark. You can't say whether it was consensual or non
22 consensual just by the fact that there was semen within
23 the vaginal canal.

24 THE COURT: What about the -- you testified there
25 was some evidence, you said you can't tell if there's

1 bruising, but tenderness, et cetera?

2 THE WITNESS: The tenderness -- can you be sore
3 after consensual sex? Sure. But it's also consistent
4 with vigorous, forceful, an act. If somebody is a
5 willing participant, typically the vaginal canal will
6 relax more and there won't be as much trauma or as much
7 damage done or as much soreness as a result of it.

8 THE COURT: And the immobile sperm you found, your
9 testimony is that that was, it could have been caused by
10 the cleaning solution?

11 THE WITNESS: That's correct. The fact that there's
12 semen in the vaginal canal means that somebody ejaculated
13 inside of her. The things that will make the sperm non
14 mobile is if the person ejaculating has dysfunctional
15 sperm, they're not mobile. If it's been a long period of
16 time, the sperm have died and aren't mobile, or if you
17 applied something to the area that killed the sperm, then
18 they wouldn't be mobile.

19 THE COURT: All right. But your testimony also is
20 the sperm could live for 24 hours, at least, in the
21 vaginal canal?

22 THE WITNESS: That's correct.

23 THE COURT: So let's assume there was consensual sex
24 24 hours prior --

25 THE WITNESS: Uh-huh.

1 THE COURT: Let's just assume it's 36 hours prior.

2 THE WITNESS: Uh-huh.

3 THE COURT: Without some introduction of an outside
4 solution or chemical, that sperm would still be alive,
5 most likely; is that correct?

6 THE WITNESS: Yes.

7 THE COURT: See, that's your problem. I mean, what
8 you want to ask is -- the problem is that his testimony,
9 you're hanging your hat on this -- in fact, both sides
10 are hanging their hat on this immobile sperm. The
11 problem is that, assuming she had consensual sex the
12 night before, the sperm would still be alive, except for
13 the introduction of a chemical agent.

14 Yes, sir. You can ask the questions. I'll let you
15 ask him any questions you need to ask him, but I need to
16 proffer it outside the jury. But you can ask the
17 questions.

18 CROSS-EXAMINATION BY MR. TEMPLE:

19 Q. Doctor, let's say if the sperm don't, are sterile,
20 would the semen be mobile?

21 A. It would depend on why they're sterile. If they
22 were sterile because they had had a vasectomy, then you
23 would have no sperm within the ejaculant. That's the
24 reason for doing the vasectomy. If you are sterile
25 because your sperm don't work, then the sperm might be

1 mobile or they might not be mobile.

2 Q. So we can't make a determination?

3 A. I can say that somebody ejaculated inside of her
4 in the vaginal canal, and I can say that it happened from
5 the time of my exam within at most probably two days
6 before that at the outside.

7 But, as was already said, the D.N.A. evidence that
8 was collected was from a different swab, from a different
9 area. And D.N.A. is a hundred percent specific. I mean,
10 there, it wouldn't matter if it was a different sperm
11 there or not, D.N.A. is D.N.A. If there's D.N.A.
12 evidence there, then the person's D.N.A. was present
13 there. It's irrelevant of anybody else's.

14 THE DEFENDANT: Okay. But in this situation we
15 can't determine, we can't know for sure. I understand.

16 THE COURT: I understand you can't be for sure, as
17 you say. But the point is he's saying that if she had
18 sexual activity the night before and there was no
19 introduction of a chemical or any other agent, that sperm
20 would still be alive. Or motile. Let's put it that way.

21 THE DEFENDANT: But he also said, too, Your Honor,
22 if the sperm donor was, had defects in his system --

23 THE COURT: That's outside of any evidence. All
24 right. I understand what you want to get into. And let
25 me tell you what my ruling is. I mean, Section

1 16-3-359.1 is real clear. It's generically called the
2 Rape Shield Act. It prohibits the introduction of the
3 victim's sexual conduct, except for the origin of semen,
4 pregnancy or disease. Based on the testimony of the
5 doctor and based upon the questions concerning the
6 introduction of the agent, I don't see how any previous
7 conduct would be relevant.

8 The other problem you've got with 16-3-359 is it
9 requires me to weigh whether or not it is relevant and
10 whether its probative value is outweighed by, you know,
11 by the inflammatory nature of it. I understand that --
12 hold on -- I understand that eventually you will appeal
13 this and that's fine. But based upon 16-3-359.1 and
14 based upon the testimony that I've heard, I'm not gonna
15 let you ask you that question.

16 And I have really struggled with it, quite frankly,
17 even though you may not believe it, because it is an
18 issue that requires some thought, and it is a
19 case-specific issue. So you are protected for the record
20 because we dealt with that last week.

21 And just to make sure the record is clear, I'm
22 ordering that you not ask that question where you get
23 into any specific sexual conduct of the victim. But
24 again, you are protected for the record.

25 Anything else?

1 THE DEFENDANT: Um...

2 THE COURT: I mean, I'm assuming you object to my
3 ruling?

4 THE DEFENDANT: Yes, I do object, Your Honor.

5 MR. TAVERNIER: Stand up when you address the Court.

6 THE DEFENDANT: May I question more of this doctor?

7 THE COURT: Okay. All right. Just keep away from
8 that issue. Okay.

9 You can bring them back in.

10 (Whereupon, the jury entered the courtroom at
11 approximately 11:57 a.m.)

12 THE COURT: All right. Thank you, ladies and
13 gentlemen. As I said, if you sit back there too long,
14 blame me. That was my fault.

15 All right. You can ask your questions.

16 BY MR. TEMPLE:

17 Q. Dr. Cromer, just a couple questions for you.

18 You said that the belt, the markings around the
19 victim's neck was consistent with having a belt or strap
20 wrapped around her neck. Is that true?

21 A. Yes. It was consistent with strangulation, it was
22 something being wrapped around her neck.

23 Q. Could these, these markings around the victim's
24 neck, as you saw from the slide, did it have a kind of
25 like a, like a looping effect, like it was going around?

1 A. I don't know what you're asking.

2 Q. The markings.

3 A. There was a single large contusion across the
4 anterior or the front portion of her neck that was
5 consistent with somebody putting a large amount of force
6 around it and bruising her neck.

7 Q. With a strap or a belt?

8 A. Yes. Pardon?

9 Q. I said with a strap or a belt?

10 A. Yes, it would be consistent with a belt or --

11 THE DEFENDANT: Your Honor, could we see that slide?

12 THE COURT: Sure. You can put it up.

13 (Ms. Adams shows slide to jury.)

14 BY MR. TEMPLE:

15 Q. From the picture it seems that the grooves want to
16 go on around, like, like you say, she had a belt or
17 something that was strapped around her neck. Right?

18 A. Right.

19 Q. Is it also true, though, that these markings could
20 have been caused by a rope around her or strangulation or
21 attempted suicide or something?

22 A. Um, any mark that goes around somebody's neck that
23 is putting a force against it can cause marking,
24 bruising, like in strangulation. If it was a solitary --
25 I mean, anything can be used to strangle somebody, a

1 cord, a rope, a belt, anything that will fit around their
2 neck and they can pull pressure against. The bruising
3 below the one, that one deep dark red mark across the top
4 of her, of the front of her throat is consistent with a
5 prolonged steady force applied at that one area. If
6 there was a rope that had been used in an attempted
7 hanging, I wouldn't expect to see bruising below that
8 marking as well as around that marking.

9 Q. Have you ever seen a victim of a rope hanging
10 before?

11 A. Yes.

12 Q. You have?

13 A. Yes.

14 Q. So by having applied pressure to the neck, you are
15 saying that that is where the pressure was coming from?

16 A. I'm saying that a bruise or a contusion around the
17 anterior portion of somebody's neck like that is
18 consistent with somebody having something tied around
19 their neck and applying significant force and pressure to
20 the throat and to their neck.

21 Q. Okay.

22 THE DEFENDANT: Your Honor, can I look at the last
23 alleged victim's hands, slides?

24 THE COURT: Sure.

25 (Ms. Adams confers with the Defendant off

1 the record.)

2 MS. ADAMS: Judge, I'm gonna show Dr. Cromer up
3 close because it's sometimes hard to see, so he knows
4 which one.

5 THE WITNESS: Okay.

6 MS. ADAMS: And it's State's Exhibit 12.

7 THE COURT: All right.

8 BY MR. TEMPLE:

9 Q. Doctor, the victim also stated that she also was
10 hogtied behind like this (demonstrating) and that a lot
11 of pressure was on her neck?

12 A. Uh-huh.

13 Q. Was, she said that she couldn't let her neck down
14 because if she let her neck down, then the pressure would
15 be on her feet.

16 A. Uh-huh.

17 Q. So but by her being hogtied, don't you think that
18 being tied itself and pressure applied, that she would
19 also sustain similar markings as the ones that was on
20 there?

21 A. Are you talking about around her wrists?

22 Q. Yes, around her wrists.

23 A. It would be dependent on how she was tied and what
24 was used to tie it. These pictures aren't -- we use
25 flash photography with fresh bruises. They blanch out

1 and you don't see them very well typically. If her
2 hands, as you indicated, were crossed like that, they
3 would be consistent with that because there was a bruise
4 here and a bruise here and if her hands are crossed like
5 that, that would be indicative of that. If it was around
6 her ankles and around her throat, wherever the most
7 pressure is gonna be put is where most of the pressure is
8 gonna be. Typically if you have -- the ends are where
9 most of the pressure is gonna be, so then the two ends of
10 somebody's, as you describe being hogtied, is at their
11 ankles and their throat.

12 Q. If you could see barely, a little bit of glimpse
13 of something, it could, could be tied.

14 The next question. You say that the bump that was
15 above her head and swelling of her nose, did you have a
16 before-and-after picture of her nose?

17 A. I never met her before the night she was brought
18 into the Emergency Department.

19 Q. How did you detect this swelling that was --

20 A. Looked at it.

21 Q. You just looked at it?

22 A. Yes. It was noticeably swollen.

23 Q. You didn't examine her?

24 A. Yes. That's part of the examination is looking at
25 it, pressing around the nose, pressing around the face

1 around the forehead to make sure I didn't see anything
2 that looked indicative of broken bones. I didn't see
3 anything that looked like broken bones, but the nose was
4 swollen and there was a bruise on her forehead that was
5 consistent with blunt trauma of that area.

6 Q. So it's consistent with being punched?

7 A. Yes.

8 Q. These are bruises and bumps. Is it also, is it
9 not true that these similar markings could be caused by a
10 car accident?

11 A. I've never seen a car accident cause ligature
12 marks around somebody's throat. I typically don't see
13 bruising on the wrists of people by car accidents.

14 Q. We're talking about the --

15 A. The bruised nose?

16 Q. On the head and the nose.

17 A. Anything that struck her nose or forehead could
18 have caused swelling of her nose or forehead.

19 Q. Anything that caused force that --

20 A. Anything that struck her face can cause bruising
21 over her nose or over her forehead.

22 Q. So after the fall and hit the ground and sustained
23 a bump or a bruise?

24 A. Yes. Any force that hits somebody's face can
25 cause their nose to be swollen and bruised.

1 Q. So it's not absolute that she was punched, these
2 injuries were sustained by punches?

3 A. The only injury that, that was a question of if it
4 was sustained by being punched or not was the nose and
5 the forehead area. You can say that's bruised and is
6 swollen and that some force struck her face, and you
7 can't dictate exactly what that is and what that isn't.

8 Q. That's right. You can't put no determination or
9 an exact cause.

10 A. But now you're talking about just the nose or are
11 you talking about the other injuries, as well?

12 Q. I'm talking about the nose, the swelling above the
13 forehead, that even the scratches you say that's on her
14 back --

15 A. Uh-huh.

16 Q. -- isn't it also possible that a person could have
17 an accident, flip out the window, land in front of the
18 car and slide on the ground? Couldn't these same
19 injuries, bruises on the back, could be caused by the
20 same thing? That's all I meant, sir.

21 A. The ligature marks around the neck, no, couldn't
22 be. The abrasions across her back are consistent with
23 being drug on the ground regardless of what your starting
24 point is or isn't. With that being said, most people
25 that are ejected or thrown out of a car during a car

1 wreck sustain much more severe injuries than just simple
2 abrasion and scrapes to the back.

3 Q. So you are saying that every person that do fall
4 out the car, get thrown out of the car, will sustain head
5 injuries or concussions?

6 A. No, I never said that. I said that most people
7 that are ejected out of a moving vehicle in relation to a
8 car wreck, they're moving at speeds and they're forcibly
9 thrown out of the car, are gonna have significant
10 injuries. Not a hundred percent of the time, but most
11 have significant injuries that usually exceed scratches
12 and scrapes across the back.

13 Q. So you also said that you detected a large amount
14 of fluid within the alleged victim?

15 A. Yes, within the vaginal canal.

16 Q. And did you do tests on this fluid? Was it
17 cleaning fluid, or was it urine, what was it?

18 A. No. I didn't send the fluid off for analysis of
19 specific types of fluid.

20 Q. So you don't know what type of fluid was used?

21 A. All I'm saying is it was a large amount of fluid
22 that was more present than I would have expected it to
23 have been.

24 Q. Could this fluid also have been vaginal fluid or
25 any other kind of contraception fluid?

1 A. Most contraceptions are not fluids that are
2 injected into the vaginal canal, so no, I don't think it
3 would be that. Regular vaginal discharge is, that would
4 be a very large and abnormal amount if it was a standard
5 vaginal discharge.

6 Q. So you didn't form -- we can't distinguish between
7 the difference, was it cleaning fluid or urine, right?

8 A. I didn't do any specific analysis on the fluid
9 within the vaginal canal to detect what type of fluid it
10 was.

11 Q. Okay. Have you ever known anyone to, to use the
12 bathroom on themselves?

13 A. Yes.

14 Q. You have?

15 A. I've met patients that were incontinent before.

16 Q. Conscious?

17 A. Incontinent, went to the bathroom on themselves.
18 People capable of being incontinent or using the rest
19 room on themselves.

20 Q. And being conscious?

21 A. If somebody is conscious and awake and they
22 urinate on themselves, they'll realize that unless
23 they're paralyzed and don't have any sensation in that
24 part of the body. Some people aren't able to control
25 when they go to the bathroom and when they can't go to

1 the bathroom. But even people that have a lack of
2 bladder control will still realize that they urinated on
3 themselves when it happens.

4 Q. So you don't have to be unconscious to use the
5 bathroom on yourself?

6 A. No, you don't have to have unconscious to use the
7 bathroom on yourself.

8 Q. It's either one of the two?

9 A. No. People can be incontinent and not be
10 unconscious.

11 Q. Okay.

12 THE DEFENDANT: Thank you, Doctor, that would be
13 all.

14 THE COURT: Anything on redirect?

15 MS. ADAMS: Just a few questions, Your Honor, to
16 clear some stuff up.

17 REDIRECT EXAMINATION BY MS. ADAMS:

18 Q. Dr. Cromer, I want to make sure the jury
19 understands. The vaginal swabs you collected that were
20 actually sent to S.L.E.D. did not indicate the presence
21 of semen. One of the swabs that you took under the wet
22 prep slide, you stated you saw, I believe, what appeared
23 to be semen or non-mobile sperm, correct?

24 A. That's correct.

25 Q. Is that consistent with the cleaning solution

1 being injected inside as Catherine said and basically the
2 area that you swabbed?

3 A. Yes. The reason that you can have, identify sperm
4 on one sample and not on another swab that's taken out of
5 the same sample is sperm make up a very small percentage
6 of the amount of total ejaculant that's there, maybe ten
7 percent of the total volume that's there.

8 And it's not spread equally through the entire
9 sample. If you add another liquid into that sample,
10 whatever it is, it's gonna dilute it out further. It's
11 gonna be further decreased concentration. And if you,
12 depending on where you sample on the fluid might dictate
13 whether there is sperm present there or not.

14 The analogy would be if you took a bag of M&Ms and
15 took 90 brown M&Ms and took ten green ones and stuck it
16 in a bag and shook it up and reached in from different
17 areas and drew out one or two or three M&Ms, you are not
18 guaranteed that it's gonna be the same everywhere you
19 grab because it's not distributed equally everywhere.
20 That could be part of the reason why one would show it
21 and one wouldn't.

22 Q. And especially in this case because of the amount
23 of fluid that you saw?

24 A. Absolutely. The larger the volume of fluid, the
25 more it's gonna be diluted down. The other thing is that

1 cells are specific to very specific pH's and very
2 specific environments to live and survive. And if that
3 is disrupted dramatically by any kind of cleaning
4 solution or cleaning agent, then a lot of them are
5 caustic and would cause the cells to rupture and to break
6 apart, so I mean you could absolutely lose the evidence
7 if you got the right solution applied to cell tissue, it
8 will actually destroy the cell tissue so you won't be
9 able to collect it later.

10 MS. ADAMS: Thank you, Doctor.

11 RECROSS-EXAMINATION BY MR. TEMPLE:

12 Q. Doctor, you said you didn't detect no sperm inside
13 the vagina?

14 A. No. I did detect sperm inside of the vaginal
15 canal on the swabs that I took.

16 Q. You didn't test it. It was sent to S.L.E.D.?

17 A. There were different swabs taken. Some of the
18 swabs were sent to S.L.E.D. and were sealed in the sexual
19 assault kit that the police took custody of. The other
20 swab was sent to the lab and was examined by the lab
21 technicians and examined by myself in the lab that night.

22 Q. And from those examinations of those findings that
23 you tested, what did you conclude? Did you detect, did
24 you find a match for D.N.A. or something?

25 A. We don't do D.N.A. matches and screens through the

1 Emergency Department. That's a judicial test that's run
2 through the police. What I saw on the swab that I looked
3 at under the microscope was that there was sperm present
4 on the swab.

5 Q. But you didn't determine -- couldn't determine
6 whose it was, though.

7 A. (Witness shook head.)

8 THE DEFENDANT: Okay. Thank you, Doctor.

9 THE COURT: All right. Thank you, sir. You can
10 step down.

11 MS. ADAMS: Your Honor, may he be excused?

12 THE COURT: Yes.

13 You can be excused, Doctor. Thank you.

14 (Whereupon, the witness was excused.)

15 MS. SIMMONS: Your Honor, the State calls Brian
16 Danielson.

17 Whereupon,

18 Brian Danielson,
19 after first having been duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. SIMMONS:

21 Q. Good afternoon, Deputy Danielson. Where are you
22 employed?

23 A. Ocone County Sheriff's Office.

24 Q. And what is your current rank?

25 A. I'm a Deputy.

1 Q. And how long have you been in law enforcement?

2 A. I've been in law enforcement right at nine years
3 now.

4 Q. How long have you been with the Sheriff's Office?

5 A. A year and a half, roughly.

6 Q. Were you part of a call to All Safe Storage in
7 Seneca, South Carolina, during the early morning hours of
8 May 10, 2010?

9 A. I was.

10 Q. And did you also have occasion to be on duty at
11 the Oconee Memorial Hospital later that morning on May
12 10, 2010?

13 A. Yes, I was there.

14 Q. Why were you at the hospital?

15 A. I transported Ms. McGough from the incident
16 location to the hospital. I stayed there with her to
17 ensure her safety while there, as well as collecting
18 evidence that may be obtained while there.

19 Q. So you didn't do any active investigation in this
20 case. You transported the victim to the hospital and
21 waited for evidence?

22 A. Correct.

23 Q. Did you end up receiving any evidence?

24 A. I did. I collected a pair of shoes that she had
25 been wearing as well as the rape kit I collected from the

1 nurse, Britta Chapman.

2 Q. What time roughly did you receive the rape kit
3 from Britta Chapman?

4 A. Roughly 6:30.

5 Q. And was it in a sealed package?

6 A. It was.

7 Q. Describe the package you received.

8 A. A white box with tape on it sealing all sides so
9 that it could not be tampered with or entered into, and
10 Nurse Chapman had initialed off on it and had identifying
11 marks on the outside saying who, who it was taken from.

12 Q. And during the time that the sexual assault kit
13 was received and the kit was in your care, custody, and
14 control, did you destroy, alter or tamper with it, open
15 it, or anything of that nature?

16 A. No, I did not.

17 Q. What did you subsequently do with that evidence?

18 A. When I left the hospital, I went back to the squad
19 room, I filled out the necessary paperwork on it and
20 submitted it to evidence lockers.

21 Q. When did you submit it to the evidence locker?

22 A. It was submitted into evidence on 5-10 at
23 approximately 7:30 in the morning.

24 Q. With the appropriate paperwork?

25 A. Correct.

1 Q. How does the sealed locker procedure work at the
2 Sheriff's Office?

3 A. The lockers are such that when you, they stay open
4 when you put your evidence in, you can shut it, you turn
5 a knob which locks it. There is no key from the outside,
6 so once it's in there, the knob has been turned, the
7 locker is locked and you have no access to it. It has to
8 be the evidence technicians who have access from the
9 backside. And I don't know how that works, I don't go
10 back there.

11 Q. So during the time that the rape kit was in your
12 care, custody, and control, you took appropriate steps to
13 ensure the integrity of this item of evidence?

14 A. Yes. It stayed with me the whole time.

15 MS. SIMMONS: Please answer any questions the
16 Defendant might have.

17 CROSS-EXAMINATION BY MR. TEMPLE:

18 Q. Yes. Officer Danielson, you say you transported
19 the victim to the Oconee Hospital?

20 A. Yes, I did.

21 Q. Have you ever been in that position when you
22 transport anybody else --

23 A. Transport people --

24 Q. -- reference to assaults or any other particular
25 points?

1 A. As a Sheriff's Officer we do transports quite
2 frequently. Mental facilities, I've transported overdose
3 patients to the hospital. If I'm the fastest and safest
4 and best way to get them there, that's how they go.

5 Q. And you transported Ms. McGough on 5-10-2010?

6 A. On 5-10 I believe we left the incident scene after
7 midnight, which would have been 5-10, correct.

8 Q. And you say you collected evidence such as?

9 A. Such as shoes and the rape kit.

10 Q. Was there any other contact between you or any
11 other officer during that time when you had the victim in
12 your custody?

13 A. While she was in -- I never had her in custody. I
14 had her in my car for transport. At that point in time
15 there were no other officers around. It was she and I.
16 We went from the storage shed to the hospital.

17 THE DEFENDANT: Okay. Thank you. Nothing further.

18 THE COURT: Anything on redirect?

19 MS. SIMMONS: No, Your Honor. We would ask that
20 this officer be excused.

21 THE COURT: All right. Thank you, sir. You will be
22 excused.

23 (Whereupon, the witness was excused.)

24 MS. ADAMS: Your Honor, the State calls Kim Chewning
25 to the stand.

1 Whereupon,

2 Kimberly Chewning,

3 after first having been duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MS. ADAMS:

5 Q. Kim, please state your full name and spell your
6 last name for the record.

7 A. Kimberly Edwards Chewning, C-h-e-w-n-i-n-g.

8 Q. And, Kim, where do you work?

9 A. All Safe Storage.

10 Q. And what are your duties at All Safe?

11 A. I'm the properties manager. I rent units and
12 process payments.

13 Q. Where is your office located in relation to the
14 actual gate as you come in to All Safe Storage?

15 A. It's directly across from the gate.

16 Q. So you can see who comes and goes from the gate?

17 A. Yes.

18 Q. And from your office?

19 A. Yes.

20 Q. Kim, there is also a fence around the All Safe
21 Storage --

22 A. Yes.

23 Q. -- as well, right?

24 A. Yes.

25 Q. All right. When you rent a customer a unit, how

1 do you assign them an access code?

2 A. They can either suggest their own four digit code
3 or we suggest sometimes the last four digits of their
4 phone number as an easy way to remember their code.

5 Q. And once they give you the number, what do you do
6 with that number?

7 A. I put it in a computer and our software that keeps
8 track of that.

9 Q. So their code actually attaches to their name?

10 A. Yes, it does.

11 Q. And does that give you the ability to track who
12 comes and goes?

13 A. Yes.

14 Q. Did you rent a storage unit to the victim in this
15 case, Catherine McGough?

16 A. Yes, I did.

17 Q. When was that, do you recall?

18 A. It was in April, I believe. It was as classes
19 were getting out at Clemson.

20 Q. The bill is April 13th, correct?

21 A. Yes.

22 Q. And what unit did Catherine rent?

23 A. [REDACTED].

24 Q. And had you ever met Catherine before?

25 A. No.

1 Q. Kim, do you know the Defendant in this case,
2 Dennis Temple?

3 A. Yes, I do.

4 Q. How do you know him?

5 A. He rented a storage unit from us in March.

6 Q. And I believe when he rented his first unit, that
7 was March 22nd?

8 A. Yes.

9 Q. And what unit number did he rent at that time?

10 A. At that time he rented unit [REDACTED].

11 Q. And when the Defendant came in to rent his unit,
12 did he actually do that in person?

13 A. Yes, he did.

14 Q. So you saw him and spoke with him and --

15 A. Yes.

16 Q. -- met with him?

17 A. Yes.

18 Q. All right. Was that the first time you had ever
19 met him?

20 A. Yes.

21 Q. Did he change units?

22 A. Yes, he did. A few weeks later he called and
23 asked if we had a larger unit. He had his shoe business
24 to store and he wanted a larger unit, so I assigned him
25 unit [REDACTED].

1 Q. And had he ever tried to sell you shoes before?

2 A. Yes, he did.

3 Q. And were those Nike shoes?

4 A. I'm not sure if they were Nike. They were tennis
5 shoes.

6 Q. Do you recall when was the last time he attempted
7 to sell you shoes before this incident on May the 9th?

8 A. I think it was on Wednesday before.

9 Q. And do you recall exactly when the Defendant moved
10 into unit number 193?

11 A. I think it was around the 17th of April.

12 Q. Of April. So on May the 9th of this year the
13 Defendant was renting unit 193?

14 A. Yes, he was.

15 Q. Kim, how often did you see the Defendant at the
16 storage unit?

17 A. Several times a day. My desk is right at the
18 front door right in front of the window. And he would
19 come in because he was on foot and he could get in the
20 gate with his gate code. But in order to get around and
21 get the gate open, he had to be in a vehicle to actually
22 open the gate, and he couldn't since he was on foot, so
23 he would come in and ask me to open the gate from the
24 computer several times a day.

25 Q. So basically you can't just walk out of the gate

1 when you go to leave there?

2 A. That's correct.

3 Q. And your computer only tracks when people come in,
4 not when they go out, right?

5 A. Yes, ma'am.

6 Q. Now, if you weren't in your office, how would the
7 Defendant get out? Would he crawl?

8 A. He would have to crawl under the gate.

9 Q. Did you ever see the Defendant in a car?

10 A. No.

11 Q. Did you ever see him with anybody else?

12 A. No.

13 Q. Was he usually carrying a bag when you would see
14 him?

15 A. Yes. He was carrying a large duffle bag.

16 THE DEFENDANT: Um -- okay.

17 BY MS. ADAMS:

18 Q. Kim, I want to show you State's Exhibits 24 and
19 25. Do you recognize those?

20 A. Yes. That's the gate to our facility.

21 Q. Do these fairly and accurately represent what the
22 gate looks like?

23 A. Yes, they do.

24 MS. ADAMS: I ask State's Exhibits 24 and 25 be
25 moved into evidence.

1 THE COURT: Any objection?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Without objection.

4 (Received in evidence were State's Exhibits
5 24 and 25.)

6 BY MS. ADAMS:

7 Q. Kim, I'm gonna put up State's Exhibit 25. Now
8 obviously -- tell the jury what that is. What's the
9 angle?

10 A. That's the view from inside the facility looking
11 out the gate.

12 Q. All right. So it's obviously the road and that's
13 where you pull in?

14 A. Yes.

15 Q. Okay. And this is a little closer up. I know
16 it's got the measuring tape in it. But what does that
17 depict?

18 A. That's outside the gate looking in.

19 Q. Okay. And obviously there's enough space for
20 someone to crawl under?

21 A. Yes.

22 Q. And, in fact, have you had to do that before?

23 A. Yes.

24 Q. All right, Kim. Now I want to show you State's
25 Exhibit 58. Do you recognize that?

1 A. Yes, I do.

2 Q. Okay. What is that?

3 A. That's a contract that we had when someone rents a
4 unit, and that's the one that Mr. Temple signed when he
5 was in my office.

6 Q. Okay. And so he signed that in your presence?

7 A. Yes, at my desk.

8 Q. Okay. And this is a fair and accurate
9 representation of what happened on -- what date is this
10 when he first came in?

11 A. March 22nd.

12 Q. Okay. Of this year?

13 A. 2010.

14 Q. And obviously that's --

15 A. That's my signature.

16 Q. Okay. And then that is?

17 A. That's his signature.

18 Q. Okay. All right. Now, this is State's Exhibit
19 59. Can you identify that?

20 A. That's our application that someone fills out or I
21 fill out as they are there renting their storage unit.

22 Q. And State's Exhibit 60?

23 A. Those are receipts that I have written when he
24 paid the rent on the storage unit and it's also a copy of
25 the, an envelope when he dropped in a payment. I always

1 keep copies of anything they drop in the, in our drop
2 box.

3 Q. Okay. And all this is from the Defendant,
4 Mr. Temple?

5 A. Yes, it is.

6 Q. And one last, State's Exhibit 61, what is this a
7 printout of?

8 A. That's the gate activity report, and it prints out
9 each person that comes in the gate accessing the key pad,
10 the time, and the person's unit number and who it's
11 rented to.

12 Q. Okay. And this activity report is what happened
13 May the 9th through May the 10th, correct?

14 A. Yes, it is.

15 MS. ADAMS: Your Honor, I would ask that 58, 59, 60
16 and 61 be admitted.

17 THE COURT: Any objection?

18 THE DEFENDANT: No. No, sir.

19 THE COURT: Admitted without objection.

20 (Received in evidence was State's Exhibits
21 58, 59, 60 and 61.)

22 BY MS. ADAMS:

23 Q. Kim, let's start with State's Exhibit 58. Wait a
24 minute. Hang on a second. This is the rental agreement,
25 correct?

1 A. Yes.

2 Q. All right. Now, please explain to the jury why it
3 says "Dennis Tribble" up at the top where it's signed
4 "Dennis Temple"?

5 A. I must have made a mistake. Usually we sign the
6 contract after the application, and sometimes we carry on
7 a conversation in the process. And I don't know why I
8 wrote "Tribble." My husband works at The Tribble Center
9 and we could have been talking about that. I don't know
10 why I wrote "Tribble."

11 Q. All right. But obviously that's just a mistake,
12 right?

13 A. Yes, it is.

14 Q. Does Dennis Tribble exist?

15 A. No.

16 Q. So Dennis Tribble is Dennis Temple?

17 A. That's correct.

18 Q. All right. And obviously, based on his signature
19 that he signed in your presence this day?

20 A. That's correct, yes.

21 Q. Kim, this is State's Exhibit 59. Can you explain
22 to the jury again what this is?

23 A. That's our application where we write the tenant's
24 name, address, phone number, unit number, the size of
25 their unit and their gate code.

1 Q. So this is obviously the first one, this is when
2 he rented unit [REDACTED]?

3 A. Yes.

4 Q. Now, so this up at the top, this shows where he
5 transferred to [REDACTED] on April 17th of this year, correct?

6 A. Yes.

7 Q. All right. And again, this actually says "Dennis
8 Temple" and he signed again "Dennis Temple" down here?

9 A. Yes. Yes.

10 Q. Okay. Now, State's Exhibit 60. Explain again to
11 the jury what this is, please.

12 A. These are receipts. The bottom receipt is dated
13 March 22nd is when he initially came in and paid for the
14 unit to rent [REDACTED].

15 Q. And again, Dennis Tribble is Dennis Temple?

16 A. Yes. And then one, the one on top is a payment
17 that he dropped in the payment box in the door on May
18 3rd, and that's when he was paying for the larger unit,
19 [REDACTED].

20 Q. And so this is actually -- this isn't your
21 handwriting?

22 A. No. That's his. That was on the envelope his
23 payment was dropped in on. I always keep that, I keep a
24 copy of whatever is dropped in the door.

25 Q. And then obviously this is just the receipt that

1 you did for the Defendant on May the 10th?

2 A. Yes.

3 Q. Okay. All right. And, Kim, this is State's
4 Exhibit 61. This is the activity report for the gate,
5 correct?

6 A. Yes.

7 Q. All right. Can you tell the jury -- and again, I
8 know this says Dennis Tribble -- but this is the
9 Defendant, Dennis Temple, correct?

10 A. Yes, it is.

11 Q. Okay. So on May the 9th it shows him coming in at
12 what time?

13 A. About 10:16 in the morning.

14 Q. All right. And then obviously again, when you go
15 down, you have the victim, Catherine, right here,
16 correct?

17 A. Yes.

18 Q. What time does it show Catherine coming in May the
19 9th, that afternoon?

20 A. 4:38.

21 Q. Okay. And this shows the Defendant, Dennis
22 Temple, coming in when?

23 A. 4:41, three minutes later.

24 Q. All right. And then again it shows Dennis Tribble
25 or Dennis Temple, same person, coming in at what time

1 here?

2 A. 6:16 that afternoon.

3 Q. Okay. And obviously this is Catherine at 1:00
4 a.m., which is law enforcement?

5 A. Yes.

6 Q. Okay. Kim, were you called out to the scene that,
7 early morning hours of May the 10th?

8 A. Yes.

9 Q. By law enforcement, correct?

10 A. Yes.

11 Q. All right. Were you helping them identify the
12 owner of unit [REDACTED] --

13 A. Yes.

14 Q. -- where Catherine was found?

15 A. Yes.

16 Q. And did you tell them who it was who was renting
17 it?

18 A. Yes. I pulled the files and told them who it was.

19 Q. Who did you tell them it was?

20 A. Dennis Temple.

21 Q. Kim, is there any doubt in your mind that that
22 Defendant sitting at that table right there is the man
23 that you rented unit number [REDACTED] to?

24 A. No doubt.

25 Q. In fact, did you receive calls from individuals

1 wanting to retrieve the rest of the Defendant's things
2 out of his unit, number [REDACTED], after his arrest?

3 A. Yes.

4 Q. Did he himself call you after he was arrested for
5 these charges?

6 A. Yes, he did.

7 Q. Okay. Did you speak to him or did he leave a
8 voice mail?

9 A. He left a voice mail.

10 Q. And that was May the 12th, correct?

11 A. Yes.

12 Q. How do you know it was Dennis Temple, the
13 Defendant?

14 A. Well, he identified himself as Dennis Temple, and
15 he stated he wanted to give someone permission to clean
16 out his unit, [REDACTED].

17 Q. And did you recognize his voice as well?

18 A. Yes, I did.

19 Q. And did someone subsequently, that Dennis Temple
20 gave permission to, come and get his things out of unit
21 [REDACTED]?

22 A. Yes, they did.

23 MS. ADAMS: Thank you, Kim. Please answer anything
24 the Defendant may have.

25

1 CROSS-EXAMINATION BY MR. TEMPLE:

2 Q. Yes, ma'am. Miss Kim, you say you work at All
3 Safe?

4 A. Yes.

5 Q. What is your normal working hours, Miss Kim?

6 A. I'm usually there from ten to three, ten to four,
7 or after, depending on how, how much I have to do.

8 Q. And you say you rented me a storage unit?

9 A. Yes.

10 Q. What is your normal way of renting storage units?
11 Do you normally take the person's I.D. and fill a form
12 out yourself or let them fill it out?

13 A. I usually fill it out myself as they give me the
14 information.

15 Q. So based upon your contract with me, you allege,
16 do you, you rented a unit to a Dennis Tribble but not a
17 Dennis Temple?

18 A. I rented it to Dennis Temple.

19 Q. Isn't that what the name says on the contract on
20 there?

21 A. Yes.

22 THE DEFENDANT: Your Honor, I would like to refresh
23 the witness's memory.

24 THE COURT: With the contract?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay.

2 (Ms. Adams hands the contract to Mr. Temple
3 and then places it on the projection screen.)

4 MS. ADAMS: Your Honor, this is State's Exhibit 58.

5 THE COURT: Okay. You can ask your question.

6 BY MR. TEMPLE:

7 Q. Ms. Chewning, who is the name the storage shed is
8 rented out to on that form?

9 A. All Safe Storage.

10 Q. Is it rented to Dennis Temple?

11 A. It says "Dennis Tribble."

12 Q. Is that my name?

13 A. That's not your last name.

14 Q. That's not my last name. Okay. So is every
15 person who rents a storage shed from All Safe, do they
16 get a new last name?

17 A. No. It was just an accident, just a mistake. The
18 original, original application had "Dennis Temple" and
19 you signed it as "Dennis Temple."

20 Q. You say I switched units from [REDACTED] to [REDACTED]?

21 A. Yes.

22 Q. So, Miss Kim, tell me about this code. You say
23 you give each client a code number to come in and out of
24 the gate?

25 A. Just to come in the gate.

1 Q. Just to come in?

2 A. Uh-huh.

3 Q. Okay. Can, do you have -- or you say you had me
4 come in at 4:41?

5 A. That's what the gate shows. The key pad records
6 all of that.

7 Q. You also have a surveillance camera, too; is that
8 right?

9 A. No.

10 Q. You advertise a surveillance camera.

11 A. In the process of getting surveillance cameras.

12 Q. So we can't determine who punched these codes in
13 the gate during this time?

14 A. No, we cannot.

15 Q. For even the victim, alleged victim or even the
16 Defendant?

17 A. It was just someone who has to know that code.

18 THE DEFENDANT: Your Honor, if we had these tapes, I
19 could prove that I'm innocent of this charge.

20 MS. ADAMS: Objection, Your Honor. She said there
21 are no videotapes. They didn't have any.

22 THE COURT: Right. Sustained.

23 BY MR. TEMPLE:

24 Q. Now, Ms. Chewning, during the time that you have
25 worked at All Safe, you've never seen me drive up in a

1 car or vehicle or nothing?

2 A. No.

3 Q. But always on feet?

4 A. Always on foot.

5 Q. Is it true that you all do security checks like
6 you're supposed to?

7 A. Yes.

8 Q. Did anyone previously note of anyone staying at
9 the storage unit?

10 A. I'm sorry, I didn't understand your question.

11 Q. Have there been any prior notices that someone was
12 sleeping in a storage unit?

13 A. No.

14 Q. Or have you had any complaints about anyone
15 roaming around in a storage unit?

16 A. No.

17 THE DEFENDANT: That would be all. Thank you,
18 Ms. Chewning.

19 THE COURT: Anything on redirect?

20 MS. ADAMS: No, sir, Your Honor. She can be excused
21 if she would like to be.

22 THE COURT: Yes. You can be excused.

23 (Whereupon, the witness was excused.)

24 THE COURT: How long is your next witness gonna be?

25 MS. SIMMONS: Judge, I can fill in with a ten-minute

1 witness.

2 THE COURT: Let's do that and then we'll take a
3 break.

4 MS. SIMMONS: I call sergeant David Smith.
5 Whereupon,

6 David Smith,
7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. SIMMONS:

9 THE COURT: Yes, ma'am.

10 MS. SIMMONS: Thank you, Judge.

11 BY MS. SIMMONS:

12 Q. Sergeant Smith, where are you employed?

13 A. With the Oconee County Sheriff's Office.

14 Q. And how long have you been in law enforcement?

15 A. I've been in about 23 and a half years.

16 Q. And are you currently assigned to the
17 Investigations Division?

18 A. I am.

19 Q. What do investigators for the Sheriff's Department
20 do?

21 A. My priority or my prime area is property crimes,
22 or whatever other case may be assigned to me, I go out
23 there and investigate the crimes that are assigned to me.

24 Q. And were you on duty on May 11, 2010?

25 A. I was.

1 Q. Were you assigned a portion of the case involving
2 this Defendant, Dennis Temple?

3 A. I was contacted by Lieutenant Reed to meet with
4 Sergeant Moss, and we went to Wellborn Road in Anderson,
5 South Carolina, to retrieve a vehicle that was missing.

6 Q. And was this vehicle, the information given to
7 you, that it was the victim's 2008 Honda?

8 A. That's correct.

9 Q. During the course of your employment as an
10 investigator at the Sheriff's Office, do you have
11 occasion to value vehicles?

12 A. We have. On property crimes we get a lot of
13 those.

14 Q. The 2008 Honda that was ultimately recovered, in
15 your opinion, does that value exceed \$5,000?

16 A. Yes, it does.

17 Q. What is the wholesale value on the car in
18 question?

19 A. It's probably around 19,000.

20 Q. Did you respond to the scene of where the 2008
21 Honda was located?

22 A. I was.

23 Q. And where was that car located?

24 A. Wellborn Road is located off of 76. Which, if you
25 are familiar with Anderson, 76 goes right before I-85.

1 Garrison Farms, the big farm on the right back, it's back
2 over to the left, a little road off, off of 76.

3 Q. Were you called there by the Anderson County
4 Sheriff's Office?

5 A. That's correct. I was informed by Lieutenant Reed
6 to meet a deputy over there. It was Deputy Miller with
7 Anderson County Sheriff's Office. When we arrived, the
8 vehicle was partially in the road and partially out of
9 the road. There was no one around the vehicle.

10 Q. So it was abandoned?

11 A. Yes, it was.

12 Q. Had Deputy Miller altered or tampered with the car
13 in any way, or any officer that was there before you
14 arrived?

15 A. Not while I was there, no.

16 Q. What condition was the car in that you observed?

17 A. It was just a couple scratches, maybe a dent. But
18 the vehicle was in good condition.

19 Q. Did you subsequently call a towing service for the
20 vehicle?

21 A. We did. Contacted again back to our Sheriff's
22 Office. A Cartee wrecker actually came and got the
23 vehicle. I rode with the vehicle in the wrecker truck
24 back to Oconee County. It stayed in my sight the whole
25 time. Then it was turned over to Sergeant Merck with the

1 Forensic Department.

2 Q. Did you ensure that the contents of the vehicle
3 were not altered, tampered with, destroyed or changed in
4 any way between Anderson County and Oconee County?

5 A. Yes, I did.

6 Q. Again, who processed the vehicle?

7 A. Sergeant Merck.

8 MS. SIMMONS: Please answer any questions the
9 Defendant may have.

10 THE WITNESS: Yes, ma'am.

11 CROSS-EXAMINATION BY MR. TEMPLE:

12 Q. Yes. Mr. Smith, how long have you been with the
13 Oconee County Sheriff's Department?

14 A. I started in, with the Sheriff's Office in
15 actually 1988. I've been with the Sheriff's Office about
16 22 years, thereabouts.

17 Q. 22 years. And you reported you responded to the
18 scene of the abandoned vehicle?

19 A. That's correct.

20 Q. And you also reported that there was no tampering
21 with the car?

22 A. Not while I was there.

23 Q. And you rode inside the vehicle --

24 A. No, sir.

25 Q. -- during the tow?

1 A. No, sir. I rode up front with Chris Cartee. He
2 was the driver of the wrecker.

3 Q. Did you notice any exterior damage to the car or
4 any kind of like, where, something noticeable where you
5 could tell that someone, someone was in a wreck or
6 something of that occasion?

7 A. There was a little bump there, nothing major. I
8 mean like you might have bumped into a, I mean, you could
9 have bumped into a guardrail -- I mean, not a guardrail,
10 but a sign. Nothing major. The vehicle was in good
11 shape.

12 Q. You said nothing major. But it could have been a
13 car wreck there, right?

14 A. No, sir, I don't believe so.

15 Q. You don't believe so?

16 A. There was no paint transfer on the vehicle.

17 Q. Are you sure?

18 A. From what I saw, yes, sir.

19 Q. Is there an incident report on file in reference
20 to this car?

21 A. You would have to check with the officers who did
22 the report. I'm sure the investigator working the case
23 did. My job was to go to the vehicle and secure the
24 vehicle, get it back to Sergeant Merck and let him
25 perform his job on it.

1 Q. Okay. Thank you, sir.

2 THE DEFENDANT: That would be all, Your Honor.

3 THE COURT: Anything from the State?

4 MS. SIMMONS: Judge, no. We ask that Sergeant Smith
5 be excused.

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

7 THE WITNESS: Thank you, sir.

8 (Whereupon, the witness was excused.)

9 THE COURT: All right, ladies and gentlemen. You
10 have listened very carefully this morning. We're going
11 to go ahead and take our lunch break. If you would be
12 back in the jury room at 2:15, 2:20, we'll start about
13 2:30. Please don't discuss this case with anybody, and
14 if anybody contacts you, let me know. Have a good lunch.

15 (Whereupon, the jury left the courtroom at
16 approximately 12:55 p.m.)

17 THE COURT: Everybody stay seated until the jury
18 gets out. We only have one working elevator. I'll see
19 you all about 2:15 or so.

20 (A luncheon recess occurred.)

21 (End of morning proceedings.)

22 ***

23

24

25

1 AFTERNOON PROCEEDINGS

2 (2:25 p.m.)

3 (Marked for identification was State's
4 Exhibit 62, bag of torn strips of cloth from
5 inside the storage unit.)

6 (Marked for identification was State's
7 Exhibit 63, bag of torn strips of cloth from
8 outside the storage unit.)

9 MR. TAVERNIER: Mr. Temple, they just brought him up
10 a few minutes ago and he needs me. He's got another
11 question for me.

12 THE COURT: All right.

13 MR. TAVERNIER: Thank you, your honor.

14 (The Defendant conferred with Mr. Tavernier
15 off the record.)

16 THE COURT: What have we got this afternoon?

17 MS. SIMMONS: Judge, we anticipate calling two to
18 three law enforcement witnesses and four S.L.E.D. chain
19 witnesses. They are quick witnesses on the chain.

20 THE COURT: Okay. All right. You can bring them
21 in.

22 (The jury entered the courtroom at
23 approximately 2:32 p.m.)

24 THE COURT: All right, ladies and gentlemen, I hope
25 you had a good lunch. Like I said, we're not gonna keep

1 you late tonight.

2 You may continue.

3 MS. SIMMONS: Thank you, Judge.

4 The State calls Corporal Derek Pace.

5 Whereupon,

6 Derek Pace,

7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. SIMMONS:

9 THE COURT: Okay.

10 MS. SIMMONS: Thank you, Your Honor.

11 BY MS. SIMMONS:

12 Q. Good afternoon, Corporal Pace.

13 A. Good afternoon.

14 Q. Corporal Pace, where are you employed?

15 A. Ocone County Sheriff's Office.

16 Q. Have you had any specialized training with law

17 enforcement over the past eight years?

18 A. I've been with the S.W.A.T. Team for seven years

19 now and I've had numerous classes. Also basic

20 investigators' school, four or five supervisonal

21 schools, and private duty training school.

22 Q. And what does the corporal do?

23 A. The corporal helps the sergeant. And the sergeant

24 is the boss or the manager of each shift. They have

25 their own shift. And the corporal helps the sergeant and

1 management as a whole, and when the sergeant is not there
2 that day, the corporal is the acting supervisor.

3 Q. Were you on duty on May 9th and 10th of 2010?

4 A. I was.

5 Q. Were you the acting supervisor?

6 A. I was on-scene supervisor.

7 Q. In the early morning hours of May 10th?

8 A. Just a little after 1 a.m., I believe.

9 Q. Was this in Seneca, South Carolina?

10 A. It is.

11 Q. How was the call dispatched? What were you
12 looking for once you were sent out?

13 A. I was contacted over our radio by our dispatcher,
14 and he gave me a call stating that a female college
15 student had been abducted and was locked in a storage
16 facility. And he later came back across the radio and
17 this is where it was at, All Safe Storage, located on
18 Shiloh Road in Seneca. He also informed me that she had
19 been raped, as well.

20 Q. How long did it take you once you got the call to
21 get to All Safe, roughly?

22 A. Probably about five minutes.

23 MS. SIMMONS: May I approach?

24 THE COURT: Yes.

25

1 BY MS. SIMMONS:

2 Q. I'm going to show what have been previously marked
3 as State's Exhibits numbers 3, 23, 26, and 32.

4 MS. SIMMONS: And, Judge, these have been shown to
5 the Defendant.

6 THE COURT: All right.

7 BY MS. SIMMONS:

8 Q. Do you recognize these photographs?

9 A. I do.

10 Q. Are they a fair and accurate representation of the
11 layout of All Safe Storage and the facility and the crime
12 scene as you saw it on Monday morning?

13 A. It is.

14 MS. SIMMONS: We would move for admission and
15 publication of State's 3, 23, 26 and 32.

16 THE COURT: Any objection?

17 THE DEFENDANT: Um, no.

18 (Mr. Tavernier confers with the Defendant off
19 the record.)

20 THE DEFENDANT: Okay. No objection.

21 (Received in evidence were State's Exhibits
22 3, 23, 26, and 22.)

23 BY MS. SIMMONS:

24 Q. Corporal Pace, I'm showing you State's Exhibit 23.
25 Can you use this exhibit to kind of explain to the jury

1 how you got in that night and how, how the facility is
2 laid out?

3 A. I, the way I came in was from, the bottom end of
4 the picture would have been coming from Wells Highway.
5 That Shiloh Road is shown as the two-lane road on that
6 picture. I came up to the gate, which is in the front of
7 that, the drive right there between the two first
8 buildings you come to.

9 Q. And how did you get in that night?

10 A. We, I contacted our dispatch on the radio, then
11 they paged me with the code, which later I found out was
12 the victim's code.

13 Q. Any access codes after 1 a.m. would have been law
14 enforcement codes?

15 A. Ours. Either the Sheriff's Office or Seneca City.

16 Q. I'm gonna show you what's been marked as State's
17 Exhibit 3. Can you show me roughly on this exhibit where
18 you found the victim or what unit?

19 A. It was in unit [REDACTED] from the smallest far
20 right-hand corner, that is perpendicular to Shiloh Road.
21 If you are coming in from the back right-hand corner over
22 there, it would have been right on there facing me on the
23 back section. The door would have been facing us the way
24 the picture is facing right now.

25 Q. Okay. I show you State's Exhibit 26. When you

1 look at this, can you see units [REDACTED] and [REDACTED] in that
2 photograph?

3 A. Yes.

4 Q. Roughly, can you tell me what the distance between
5 [REDACTED] and [REDACTED] is as the crow flies?

6 A. 75, 80 feet.

7 Q. Okay. So there were other officers there that
8 night?

9 A. There was.

10 Q. And how long do you think it took you to locate
11 the victim in that storage facility?

12 A. Once I got in the gate, I believe there was, I
13 believe two Seneca City officers that pulled in the gate,
14 and the gate shut by that time they went through, so I
15 had to punch in a code and I got through behind them.

16 When I pulled up where the gate is, the office is
17 right diagonal from the gate, down in front of the gate.
18 When I pulled in straight behind the second row -- or the
19 first row of buildings to the back set, I parked my car
20 so we could listen to see if we could hear her kicking.

21 Seneca City officers turned right at that
22 intersection going on the back section of the storage
23 buildings to where the unit [REDACTED] section is, and they
24 called me over there saying that we located her over
25 here, so I ran down to unit [REDACTED].

1 Q. So roughly ten minutes after the 9-1-1 call to
2 dispatch, you had found the unit [REDACTED]?

3 A. Yes. Probably at least ten minutes -- probably at
4 most ten minutes, because I got there probably five or so
5 minutes from the call coming in.

6 Q. Unit [REDACTED], what was the condition of the outside of
7 the storage unit when you initially arrived?

8 A. When we initially arrived, the storage unit door
9 was completely down. There was a round shank silver lock
10 through the outside latch so that nobody could get in or
11 out. We used a set of -- we had a -- one of the officers
12 that was on the scene with me had a small set of bolt
13 cutters and we tried to get in the lock that way and we
14 were unsuccessful trying to cut the lock. The bolt
15 cutters actually broke.

16 Q. You could hear her inside the unit?

17 A. Yes, yes.

18 Q. Is it impossible to lock yourself inside one of
19 these storage units?

20 A. It is that one, yes.

21 Q. How did you finally end up opening the unit?

22 A. After several attempts with the bolt cutters, I
23 told the victim inside to get back, because we didn't
24 have any other choice, so I told the officers to get
25 back, too, and I kicked the door several times after the

1 last just to try to get it to fold in where we could
2 break the door open and push it open where we could get
3 her out.

4 Q. I'm gonna show you what has already been admitted
5 as State's number 32. Is this what unit [REDACTED] looked like
6 on the outside once you were finished?

7 A. Yes.

8 Q. How much force really was necessary for you to
9 kick this unit open?

10 A. I kicked as hard as I could probably four or five
11 times, and finally it gave in to the point to where we
12 could push and raise it up just a little bit to where we
13 could push it open and get her out.

14 Q. What were your immediate observations of Catherine
15 once you got her out of the unit?

16 A. When she came out of the unit, she looked like she
17 was relieved that we had finally located her. There was
18 whites, as shown in the bottom right-hand corner of the
19 picture. Those cloth strips were draped or wrapped
20 around her. And I remember her wearing a white t-shirt
21 and dark colored shorts and didn't have any shoes on.

22 Q. She still had the bindings on her when she came
23 out?

24 A. Yes.

25 Q. And were her lack of shoes consistent with her

1 story about her shoes being knocked off in the attack?

2 A. They were.

3 Q. What else do you see in the photo right there?

4 A. A red cell phone. She, she came out with a red
5 cell phone. She stated to me after she came out that she
6 just rummaged through after some time and found the
7 phone, and that's the one that she placed the call to
8 9-1-1 with.

9 Q. And was this phone operable for all calls?

10 A. No. 9-1-1 only.

11 Q. And based on your law enforcement training, do all
12 phones always work for 9-1-1 even though they don't have
13 service?

14 A. They do.

15 Q. Were there injuries readily observable on her
16 person?

17 A. The only thing that I can recall seeing -- it was
18 very dark over there in that unit -- with a flashlight
19 was a redness around her throat.

20 Q. Did she describe her attacker to you?

21 A. She described him as a Black male, thirty-ish,
22 around that age, in his thirties, about five-nine,
23 five-ten. And then she went on to tell me that he was in
24 her vehicle. And that's when I proceeded, I got the
25 vehicle information and put out what we call a B.O.L.O.,

1 to be on the lookout, through our dispatch, so they can
2 pass that on to all police agencies so they could be on
3 the lookout for the vehicle, as well.

4 Q. And what storage unit belonged to the victim, or
5 were you able to ascertain?

6 A. [REDACTED].

7 Q. And she was found in [REDACTED]?

8 A. Yes.

9 Q. Did you call the manager of All Safe Storage to
10 the scene?

11 A. I did.

12 Q. What purpose did you call her for?

13 A. To find out who the renter was of [REDACTED].

14 Q. Who did she tell you that was?

15 A. Dennis Temple.

16 Q. And who was that information later passed along
17 to?

18 A. To, I believe it was Scott Arnold, who gave it to
19 Greg Reed.

20 Q. How long do you believe it took you initially to
21 process the scene? And when I mean "process the scene,"
22 get the victim out, look around, that sort of thing?

23 A. Once we got the door open and got the victim out,
24 my main concern was her medical status. I then called
25 the E.M.S. to come and check her medical stability. And

1 once they arrived, it probably took them ten minutes or
2 so, as a guess, that they arrived on scene. They checked
3 her out and they said that she was stable and would be
4 fine. We said that we would transport her to the
5 hospital and that's the reason Deputy Danielson
6 transported her to the hospital.

7 After all that time, we did during this, while we
8 were waiting on the ambulance, we did a protective sweep
9 of his unit just to make sure there was nobody else in
10 there. We didn't touch anything. Then we come out,
11 secured the scene the best we could. We didn't lower the
12 door or anything, but I stayed outside to make sure
13 nobody entered or came out of the unit.

14 Q. So you didn't actually do any active searching of
15 the unit that night?

16 A. No.

17 Q. Was the victim's storage unit open that night at
18 all?

19 A. It was locked when we arrived. The victim wanted
20 to look for a pair of shoes, and she gave us permission
21 to remove the lock on her door. Her keys were missing
22 along with the vehicle, so we, she gave us permission to
23 cut it with what we had, the bolt cutters that we used.

24 Q. Again, you were looking for her shoes for her
25 because she was barefoot?

1 A. Yeah.

2 Q. Did you end up looking for the Defendant in this
3 area that night?

4 A. I did. I stayed at the storage unit, but I
5 directed other units to canvass the area, probably from
6 the storage unit all the way to the county line, which
7 was at Cherry Road, 93 at Clemson, all the way back up to
8 all over Seneca, the Shiloh area.

9 Q. Why were you looking for him in that area?

10 A. Well, once the storage unit manager arrived on
11 scene and told us who was renting the unit, we knew that
12 he had resided close by.

13 Q. In the past?

14 A. In the past.

15 Q. Did you stay at the storage units overnight?

16 A. I stayed until Pat, Sergeant Merck arrived between
17 6:30 and 7:00 in the morning.

18 Q. Why did you stay overnight?

19 A. To see if anybody tried to come back to the unit.

20 Q. And did you also, to keep the crime scene secured
21 at the time?

22 A. I did. I did.

23 Q. Based on your observations and investigation, what
24 time did the sun rise on the morning of the 10th when you
25 were out there?

1 A. Around 6:30, 6:20-ish.

2 Q. And the night of the 9th when you were working, do
3 you recall what time the sun set?

4 A. That was probably around 8:00, 8:30.

5 Q. And no one came and went other than law
6 enforcement from the scene during the time you were
7 there?

8 A. Right. No one entered unless they were law
9 enforcement.

10 Q. And who again did you eventually turn the scene
11 over to?

12 A. Sergeant Patrick Merck.

13 Q. And when was that?

14 A. The morning of the 10th around 6:30, 7:00.

15 MS. SIMMONS: Please answer any questions the
16 Defendant may have.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION BY MR. TEMPLE:

20 Q. Officer Pace, on the morning of May the 10th,
21 2010, you say you reported to the scene of All Safe
22 Storage unit; is that right?

23 A. That is correct.

24 Q. When you came through the front gate, did you
25 notice anything about the front gate itself?

1 A. The front gate was closed.

2 Q. It was closed. Was there any way you could have
3 gotten in the gate besides putting the code in?

4 A. Not driving my car. I would have had to crawl
5 under the gate.

6 Q. So you could crawl up under the gate?

7 A. Yes.

8 Q. Do you think it's possible that the, that while
9 you was there at the front gate that -- well, did you
10 notice anyone looking at you around in that area,
11 watching you, rather?

12 A. If you are asking me if I saw anybody on the
13 street looking at me?

14 Q. No. I'm asking you, did you notice -- did you
15 look around to see if someone was watching you?

16 A. My main concern was getting to the storage unit
17 once we entered the premise to make sure she was safe, to
18 get her out of the storage unit.

19 Q. And once you got in the unit, you immediately
20 tried to get the door unlocked?

21 A. Once we located her in unit 193, that was our
22 goal, was to get her out.

23 Q. Do you know the distance between the one unit that
24 the alleged victim stated that she was raped and the
25 other unit, you say between 75 to 80 feet distance

1 between?

2 A. Yeah, that's just a guesstimate.

3 Q. Did you test any of the locks on the door to see,
4 to check for fingerprints?

5 A. I believe those were turned over to Sergeant Merck
6 for processing.

7 Q. Sergeant Merck. Did you see the victim actually
8 binded by white strips?

9 A. White strips were draped over her and around her
10 as she came out from under the door when we pushed it
11 open.

12 Q. So you didn't have to untie her?

13 A. No. She untied herself.

14 Q. Did you see a binding there with the ties?

15 A. No, I couldn't see through the door to see if she
16 was bound or not. But the dispatcher stated she was
17 untying herself. And once we got the door open, she
18 walked freely, but the bindings were still wrapped around
19 her.

20 Q. Is it possible she could have binded herself or...

21 A. I don't, I don't think I could answer that because
22 I didn't see what, how she was bound inside of the
23 building.

24 Q. Well, do you believe that she was -- well,...

25 You stated that the alleged victim had on a

1 t-shirt and shorts. Did she tell you that she was drug
2 80 feet from one unit to the next unit?

3 A. She, from my initial on-scene interview was that
4 she stated that a Black male abducted her at her storage
5 unit, pushing her inside her unit, punching her in the
6 face by busting her glasses, strangling her and dragging
7 her to unit number [REDACTED].

8 THE DEFENDANT: Objection, Your Honor.

9 THE COURT: Hold on.

10 That's good. Go ahead. Make sure you just answer
11 the question. Go ahead.

12 BY MR. TEMPLE:

13 Q. When you went to the management department and you
14 checked to see who, whose name the lease was in, did you
15 get another name besides the one you were, Dennis Temple?

16 A. On the top of the original contract it said
17 "Dennis Tribble." At the bottom of the signature, other
18 than the manager, it said "Dennis Temple." And on some
19 receipts that the manager showed me it was "Dennis
20 Temple" as well.

21 Q. Did you search for the other -- did you do a
22 search for Dennis Tribble?

23 A. No, we did not.

24 Q. So Dennis Temple was the primary suspect?

25 A. That's right.

1 Q. But you stated there was two names on the
2 contract.

3 A. The reason that Dennis Temple was the only person
4 that we searched for was because the receipts that Dennis
5 Temple signed himself that was paying for the unit, told
6 me on scene that was the person paying for the unit was
7 Dennis Temple.

8 Q. So does that mean Dennis Temple placed the victim
9 inside?

10 A. That means he was the renter of the storage unit.

11 Q. You immediately placed an arrest warrant on him?

12 A. I didn't sign a warrant on Dennis Temple. That
13 was, I believe, investigations.

14 Q. Okay. And you say fingerprints and other tests
15 was performed, but not by you?

16 A. Not by me. That was by the forensics unit, who
17 the scene was turned over to, it turned out to be
18 Sergeant Patrick Merck.

19 THE DEFENDANT: Thank you.

20 Nothing more, Your Honor.

21 THE COURT: Anything on redirect?

22 MS. SIMMONS: No, Your Honor. We would ask that the
23 officer be excused.

24 THE COURT: Okay. You can be excused. Thank you.

25 THE WITNESS: You're welcome.

1 (Whereupon, the witness was excused.)

2 THE COURT: You can call your next witness.

3 MS. ADAMS: Thank you, your honor. The State calls
4 Lieutenant Greg Reed.

5 Whereupon,

6 Greg Reed,

7 after first having been duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS ADAMS:

9 Q. Please state your full name for the record and
10 spell your last name.

11 A. Greg Reed, R-e-e-d.

12 Q. And, Mr. Reed, where are you employed?

13 A. Oconee Sheriff's Office.

14 Q. And how long have you been there?

15 A. 25 and a half years.

16 Q. And what are your duties?

17 A. I am the Supervising Lieutenant in charge of the
18 Criminal Investigation Division. I'm also assigned to
19 the command post and S.W.A.T. Team as Entry Team
20 Coordinator; and I'm a member of the dive team, which is
21 the Sheriff's Underwater Evidence Recovery Team.

22 Q. And what kind of training have you had over,
23 briefly, the past 25 years?

24 A. Everything from the Criminal Justice Academy to
25 the Southern Police Institute, photography schools,

1 odontology schools, basic investigations, numerous
2 homicide schools, advanced homicide schools, evidence
3 collection schools. Probably 30 different schools.

4 Q. How did you become specifically involved in this
5 case?

6 A. In the early morning hours -- again, let me
7 apologize if you can't understand me real good -- early
8 morning hours of May 10th I was notified at my residence
9 by Investigator Arnold that he had received a call from
10 Officer Pace and other officers on the scene that there
11 had been a young lady rescued out of a storage building
12 down on Shiloh Road, All Safe Storage. She was, stated
13 that she had been kidnapped and raped and then bound and
14 left in the building for hours by a Black male.

15 Q. Now, as part of your investigation, what did you
16 do?

17 A. After speaking with him, I, I was informed that
18 the building was leased to a Dennis Temple, and at that
19 time I went to the Oconee Law Enforcement Center, I got
20 what is called a photographic line-up consisting of six
21 individuals. These photographs was in black and white.
22 They was of six Black males and they were all of similar
23 facial characteristics, skin tone and hair, weight, and
24 size.

25 Q. Lieutenant, I want to show you State's Exhibit 1.

1 Can you identify that for me, please?

2 A. Yes. That is the line-up.

3 Q. Okay. This is the line-up that you created?

4 A. That, that I created, yes, that is the line-up.

5 Q. Is that a fair and accurate representation --

6 A. Yes, it is.

7 Q. -- of exactly what you actually showed --

8 A. Yes, it is.

9 Q. -- the victim?

10 Has it been altered or tampered with?

11 A. No, it has not.

12 MS. ADAMS: Your Honor, I'd ask that State's Exhibit
13 1 be entered into evidence.

14 THE DEFENDANT: Your Honor, I object. That has
15 already been raised.

16 THE COURT: The same objection that we talked about?

17 THE DEFENDANT: Right.

18 THE COURT: All right. Subject to the same
19 objections that we discussed in the pretrial, you are
20 protected for the record, those are incorporated in your
21 motion, I'll go along with the other rule and I'll allow
22 it.

23 MS. ADAMS: Thank you, Your Honor.

24 (Received in evidence was State's Exhibit 1.)

25 BY MS. ADAMS:

1 Q. So, Lieutenant Reed, you got this photo line-up
2 together and what did you do?

3 A. Once I got the line-up, got it printed out, I went
4 directly to the Ocone Medical Center where I produced
5 and showed this line-up to the victim, Catherine McGough.

6 Q. All right. Approximately what time did you show
7 this line-up to Catherine?

8 A. Probably around 5:20, something like that.

9 Q. Explain to the jury, please, what they are looking
10 at?

11 A. Again, this is the six-person line-up I did from
12 my database at the Law Enforcement Center. Once I
13 arrived at the center and was able to get in to speak
14 with Catherine, I told her at that time that I wanted to
15 show her something. I introduced myself to her and spoke
16 with her for just a brief moment.

17 I told her what I was gonna do was show her a
18 photographic line-up, which consisted of six individuals.
19 I wanted her to take her time, look at the line-up very
20 well. And if she picked someone from this line-up as
21 being her assaulter, she needed to be 100 percent sure.
22 If she was not 100 percent sure, not to pick anyone,
23 because she needed to be 100 percent sure.

24 Q. Was anybody else present in the hospital room
25 while you were having this conversation with Catherine?

1 A. Yes, there was. There was Uniform Officer
2 Danielson, our victim's advocate, Vickie Bottoms, and the
3 rape crisis counselor.

4 THE DEFENDANT: Your Honor, I object to the
5 testimony for the jury. This --

6 THE COURT: Ladies and gentlemen, let me send you
7 out for just a second.

8 THE DEFENDANT: I object.

9 THE COURT: Hold on.

10 (Whereupon, the jury left the courtroom at
11 approximately 3:02 p.m.)

12 (The Defendant conferred with Mr. Tavernier
13 off the record.)

14 THE COURT: What's your objection?

15 THE DEFENDANT: Right.

16 Your Honor, the basis of my --

17 THE COURT: You've got to stand up so she can hear
18 you. Go ahead.

19 THE DEFENDANT: The grounds for my objection is,
20 like from the previous objection, would be the photo
21 array of six individuals which, according to the United
22 States Supreme Court, they should not be arranged in a
23 fashion that they have been arranged.

24 An officer of 25 years' experience, and he arranged
25 the six individuals. You got, you got four Black males

1 on the end, on the corner ends, that are light-skinned,
2 you got two in the middle, which is me at the bottom and
3 one at the top, that are dark-skinned.

4 This brings out -- what you call it --
5 identification of me or anybody else. This just brings
6 it out. It's kind of unnecessary and suggestive. Pretty
7 much I had like five or six pictures displayed, I had
8 like a 15 percent chance of being identified. But when
9 he disassembled them -- well, when he assembled the
10 individuals with dissimilar features, he gave me like a
11 50 chance of being identified. Do you understand?

12 THE COURT: I understand what you're saying.

13 THE DEFENDANT: Me and the two, basically me and the
14 two, the guy in the middle, is the only two that are
15 being looked at. Because the two, the four at the end
16 are being separated from the two in the middle.

17 THE COURT: Okay. All right. And that's
18 obviously -- and I understand that you are making that
19 argument. That's the same argument you made last week.
20 And you are protected for the record. But I'm going
21 along with my ruling of last week that I'll allow the
22 line-up.

23 THE DEFENDANT: Okay. I just feel that he's
24 expounding upon his testimony that, you know...

25 THE COURT: Okay. And like I said, you are

1 protected for the record. Okay.

2 You can bring them back in.

3 (The jury entered the courtroom at
4 approximately 3:05 p.m.)

5 THE COURT: You can continue.

6 MS. ADAMS: Thank you, Your Honor.

7 BY MS. ADAMS:

8 Q. So, Lieutenant Reed, I think you were explaining
9 to the jury exactly who was in the room when you showed
10 this display to Catherine in the hospital room?

11 A. Of course, Catherine, myself, Officer Danielson,
12 the rape crisis counselor, and Vickie Bottoms.

13 Q: Did they participate in your conversation during
14 this procedure at all?

15 A. No, they did not.

16 Q. After you told Catherine to look at the line-up
17 and she needed to be a hundred percent sure, please tell
18 the jury exactly what she did.

19 A. I presented her with the line-up and just almost
20 immediately she looked at him and within three seconds
21 she said, "I already see him." She said, "but I'm gonna
22 do what you said, I'm gonna take my time and look at
23 everybody."

24 Approximately nine seconds later, which would be a
25 total of 12 seconds, she said, "It's him." She pointed

1 to Dennis Temple in the line-up, said "This is him." I
2 said, "Would you circle it, sign it, date it and time
3 it," which she did.

4 Q. So is that her signature at the bottom there?

5 A. Yes, it is.

6 Q. Okay. And then that's where you dated it and
7 timed it and you watched her --

8 A. No. Mine is to the lower left-hand corner. I
9 always make a document right there. Of course, I've got
10 12 seconds.

11 Q. Right here?

12 A. Yeah. That's my initials.

13 Q. So that's how you know it took her --

14 A. That's correct.

15 Q. Lieutenant Reed, what was Catherine's demeanor
16 during this entire process?

17 A. She was calm, composed.

18 Q. After you showed her the line-up, did she give a
19 written statement?

20 A. Yes, she did. She gave a written statement. And
21 I had asked Ms. Bottoms to stay and read through that
22 statement for us, which she did.

23 Q. Again, Vickie Bottoms is the victim's advocate
24 with the Oconee County Sheriff's Office?

25 A. That's correct.

1 Q. Okay. And her statement, was it very detailed?

2 A. Oh, it was very descriptive and detailed. It was
3 seven pages, and it was full of details.

4 Q. Now, based on Catherine's detailed statement that
5 she gave the morning of the 10th, did officers go back to
6 the storage unit to look for additional evidence?

7 A. That's correct. After we read the detailed
8 statement, we realized that there was some stuff in the
9 storage unit that we really needed to look for. And
10 that's what we did. We went back to the storage unit and
11 retrieved the stuff that she had hidden inside the
12 mattress.

13 Q. Okay. So the victim in her statement, obviously,
14 what did she tell you about hiding in the mattress?

15 A. A belt; two other articles, a wire and some tape,
16 I believe.

17 Q. Lieutenant Reed, based on your 25 years'
18 experience, was the evidence that was recovered in this
19 case consistent with Catherine's statement given at the
20 hospital and her testimony in court?

21 A. It most certainly is.

22 MS. ADAMS: Please answer any questions that
23 Mr. Temple has.

24 CROSS-EXAMINATION BY MR. TEMPLE:

25 Q. Yes. Mr. Reed?

1 MR. TAVERNIER: Stand up.

2 BY MR. TEMPLE:

3 Q. Is it true, Mr. Reed, that you have 25 years'
4 experience in law enforcement?

5 A. Yes, that's correct.

6 Q. And you serve the division in different, different
7 units of that division: S.W.A.T.?

8 A. Yes, sir, that's correct.

9 Q. And that you have extensive training in criminal
10 justice, photographic training, advanced, home school,
11 photograph?

12 A. That's correct.

13 Q. Is it also true that you was notified in the early
14 morning by Officer Scott Arnold, which he notified to you
15 of, of an allegedly rape victim -- victim, rather -- was
16 you notified --

17 A. Yes, I was.

18 Q. -- in the early morning hours by --

19 A. Yes, that's correct.

20 Q. -- Sergeant Scott Arnold?

21 You was also notified that Dennis Temple was a
22 suspect. Am I not right? Am I correct?

23 A. Yes, sir, I was notified that Dennis Temple rented
24 the storage building where the victim was rescued out of,
25 which automatically puts you as a suspect, that's

1 correct.

2 Q. Was you also notified that there was someone
3 else's name on the lease of the storage unit?

4 A. I was told that. I don't know when I was told
5 that. I don't think I was told that per conversations on
6 the phone, but I did learn that later, yes.

7 Q. So you, so you went to the Law Enforcement Center
8 and you, you got a picture of me and six other
9 individuals?

10 A. No. A photograph of you and five other
11 individuals.

12 Q. Five, right, five other individuals. These five
13 other individuals, you didn't notice nothing different
14 about these individuals, did you?

15 A. As far as? Five individuals or six individuals
16 are usually gonna be different, yes, sir.

17 Q. As the way their hair, the color, the complexion
18 of their skin. All of these individuals are
19 African-American?

20 A. Yes, sir, that's correct.

21 Q. However, you have the training now of photographic
22 schooling?

23 A. Yes, sir.

24 Q. Are you aware that...

25 Are you aware that there's been a ruling in

1 effect, a law in effect, that says, as probably as long
2 as you've been in law enforcement, that you must arrange
3 suspects in a certain way?

4 A. I don't know what law you are talking about. But
5 I know that you have to -- you can't put like a
6 red-headed individual in a line-up with five blond-headed
7 individuals or five dark-headed individuals, and you
8 wouldn't want to put somebody with dread locks that was a
9 suspect in with individuals that had short cropped hair.

10 Q. Because that's a dissimilar feature, right,
11 dissimilar? It's not the same?

12 A. You use people of similar, similar characteristics
13 in the photographs.

14 Q. Can we, can we heighten the brightness of the
15 picture?

16 THE COURT: Sure. If y'all can. I'm not touching
17 it.

18 THE DEFENDANT: No, heighten.

19 THE COURT: He wants to make it brighter.

20 MS. ADAMS: Oh. I'll do my best, Judge.

21 THE DEFENDANT: Thank you, ma'am.

22 THE COURT: That's as bright as it will go. Is that
23 all right?

24 THE DEFENDANT: A clearer photo would actually show
25 the color texture more visible.

1 BY MR. TEMPLE:

2 Q. These two on the left of me are brown complexion.
3 The two guys on the far end, to the right of me, are also
4 brown complexion. The two guys, two guys that are in the
5 middle are of a darker complexion. The two guys at the
6 bottom on the left side and the right side has longer
7 hair.

8 THE COURT: All right. Make sure you ask a
9 question. You have to ask him a question. You can ask
10 him if he agrees with what you just said.

11 BY MR. TEMPLE:

12 Q. Mr. Reed?

13 A. Yes, sir.

14 Q. Are you aware that the two guys on the left side
15 of me are like a brownish complexion?

16 A. If I'm gonna compare the complexions, I would
17 rather be looking at the actual photographs instead of
18 a -- that's why I do them in black and white. But I had
19 rather be looking at the photograph instead of something
20 on the screen.

21 Q. Okay, well...

22 (Ms. Adams handed a photograph to the witness.)

23 THE DEFENDANT: Is that the same photo?

24 MS. ADAMS: Your Honor, if I may, as far as I know,
25 that is the original that Lieutenant Reed testified to

1 that he showed Catherine. That is the one that she
2 signed, and that is not a copy.

3 THE COURT: Mr. Temple, if you want, you can
4 actually have that passed among the jury, to publish it
5 to the jury.

6 THE DEFENDANT: Your Honor, it's not showing their
7 actual colors.

8 MS. ADAMS: Your Honor, I'm gonna object. I think
9 it's already been ruled in. They're similar in nature.

10 THE COURT: Well, and also, this is the actual
11 picture.

12 MS. ADAMS: Yes. That is the original that was
13 shown to Catherine in the hospital.

14 THE COURT: This is the documentation.

15 THE DEFENDANT: Your Honor, this is a due process
16 violation. It's not --

17 THE COURT: Ladies and gentlemen, I'll send you out
18 for about three minutes. I'll bring you right back.
19 Please don't discuss the case.

20 (Whereupon, the jury left the courtroom at
21 approximately 3:18 p.m.)

22 THE COURT: Mr. Temple, I think your point is if
23 there's a color picture somewhere, and my understanding
24 of the testimony is there is no color picture.

25 Is that correct?

1 THE WITNESS: Yes, sir.

2 THE COURT: That is what you showed the victim, is
3 this the paper right here?

4 THE WITNESS: No, sir.

5 THE COURT: That's not a copy of what you showed
6 her, right?

7 THE WITNESS: No, sir. This is the actual
8 photograph that I showed her in the hospital that night.

9 THE DEFENDANT: Your Honor, the color gets darker
10 and darker on purpose.

11 THE COURT: That's the document. This is not a
12 copy. That's what I'm telling you.

13 THE DEFENDANT: Oh, you are saying that's the
14 original?

15 THE COURT: Yes. That's what he's testifying to:
16 That that literally is the piece of paper that had the
17 pictures on it that he showed the victim. And I think
18 the misunderstanding is -- and I'm assuming that you
19 think that at some point there was a color picture shown
20 to her. But my understanding was that there was not.

21 THE WITNESS: That's correct.

22 THE DEFENDANT: Okay, I see.

23 THE COURT: Okay. So, I mean, you can ask
24 questions. I've already ruled on its admissibility. You
25 can ask him questions about, you know, I can't tell skin

1 tones from that, but I'll allow you to ask questions on
2 it. But it's already ruled admissible, so...

3 THE DEFENDANT: Do the jury have the right to know
4 this information?

5 THE COURT: What? That this is the actual document?

6 THE DEFENDANT: No. About the photo arrangement.
7 The photo being unnecessary.

8 THE COURT: No. Because I've ruled that it's
9 admissible. So this document is into evidence and that
10 is the actual document.

11 THE DEFENDANT: Okay.

12 THE COURT: But now, like I said, you can publish
13 that document to the jury. You can actually pass it
14 around if you've got a point to be made about it, and let
15 them look at the actual thing rather than have them look
16 on the screen. I'll let you do that if you want me to.

17 (The Defendant conferred with Mr. Tavernier
18 off the record.)

19 THE DEFENDANT: Okay, Your Honor. I still got a
20 point, but that's all that was necessary.

21 THE COURT: Okay. You can bring them back in.

22 (Whereupon, the jury entered the courtroom at
23 3:21 p.m.)

24 THE COURT: All right. You can continue.

25

1 BY MR. TEMPLE:

2 Q. Mr. Reed, my basis, it's not necessarily about
3 color. It's about dissimilar features of -- 4?

4 THE COURT: What do you need?

5 THE DEFENDANT: The photo. I want to put it back on
6 the screen.

7 MS. ADAMS: I'll get it, Judge.

8 THE COURT: All right. Bring it on up.

9 MS. ADAMS: Yes, sir.

10 (Ms. Adams retrieves picture from the witness
11 and puts it back on the projection screen.)

12 BY MR. TEMPLE:

13 Q. Yeah. But my main point, Mr. Reed, was the
14 dissimilar features, which come abundantly. It doesn't
15 matter who the individual is necessarily, height, weight,
16 color.

17 But my next question to you is: Do you see a
18 dissimilar feature between the individual to the left
19 bottom of the screen, the corner, and the individual to
20 the right of the screen at the bottom? The hair
21 thickness compared to the one at the bottom in the
22 middle?

23 MS. ADAMS: Your Honor, I'm gonna object. We have
24 been through this.

25 THE COURT: I'll allow him to ask the question. I

1 mean, I've admitted it, but he can ask a few questions.

2 Just make sure you ask a question.

3 THE WITNESS: There is a difference in -- the
4 individual on the bottom right appears to have probably a
5 little thicker and longer hair, as the one in the middle
6 and the one on the left maybe, maybe darker hair and
7 maybe a hairline there.

8 BY MR. TEMPLE:

9 Q. This is what you call an unsuggestive --
10 unnecessary suggestive procedures.

11 My next question is: Mr. Reed, did you ever, in
12 your 25 years' experience, have you ever received any
13 prank calls or reports or anything of that nature? In
14 your 25 years of experience with law enforcement?

15 A. I'm not sure that I understand the question.

16 Q. Have you ever had somebody to file a false
17 complaint?

18 A. Yes, I have.

19 Q. Would you say the worst and least case scenario,
20 no matter how severe the issue was, whether it was small
21 or large?

22 A. I guess one of the most severe would be an
23 individual who alleged that he was shot by another
24 individual at one time, and once found, the truth was
25 found out -- that's what we are, searchers of the truth

1 and facts -- we found that he actually shot himself and
2 blamed it on another individual.

3 Q. You said at the hospital that you talked to the
4 victim, or the alleged victim, rather?

5 A. Yes, sir, I did, briefly.

6 Q. Did she at any moment during your conversation,
7 then or afterwards, inform you that there was anyone else
8 involved in these alleged incidents?

9 A. No, sir. From start to finish the only thing I've
10 ever heard from the victim and the only thing our
11 evidence had ever showed was there was only one
12 individual that was involved in the assault.

13 Q. Do you recall her ever telling, or hearing one of
14 your officers saying that she referred to someone else in
15 this crime?

16 A. No, sir, I've never been told that by anyone.

17 Q. And she identified Dennis Temple as the assailant?

18 A. She identified the man in the middle bottom
19 picture as the assailant, which is you, Dennis Temple.

20 THE DEFENDANT: All right. Thank you, Mr. Reed.
21 That will be all, sir.

22 THE COURT: All right. Any questions by the State?
23 REDIRECT EXAMINATION BY MS. ADAMS:

24 Q. Lieutenant Reed, she identified Dennis Temple
25 immediately, did she not?

1 A. That is correct.

2 MS. ADAMS: Nothing further, Your Honor.

3 THE COURT: All right. Thank you, sir.

4 THE DEFENDANT: Your Honor, if I may?

5 THE COURT: All right, briefly.

6 RECROSS-EXAMINATION BY MR. TEMPLE:

7 Q. Mr. Reed, are you aware that the victim, alleged
8 victim, had corrective lenses on during the whole time of
9 the incident?

10 MS. ADAMS: Your Honor, I object. Outside the
11 scope.

12 THE COURT: Yeah. That's outside the scope.

13 I'm gonna allow you to answer that question. Go
14 ahead.

15 THE DEFENDANT: Because --

16 THE COURT: I understand.

17 THE DEFENDANT: Because it will --

18 THE COURT: I understand. You asked the question.
19 What's the answer?

20 THE WITNESS: Would you mind asking me again?

21 BY MR. TEMPLE:

22 Q. Did you see the victim with glasses on?

23 A. No, sir, I have not seen her with glasses on.

24 Q. Did she -- she didn't look at the photo array with
25 her corrective lenses on, did she?

1 A. No, she did not.

2 THE DEFENDANT: Thank you.

3 THE COURT: All right. Thank you, sir.

4 All right. You can call your next witness.

5 MS. SIMMONS: The State calls Doris Yarbrough.

6 Whereupon,

7 Doris Yarbrough,

8 after first having been duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. SIMMONS:

10 THE COURT: Go ahead.

11 MS. SIMMONS: Thank you, Judge.

12 BY MS. SIMMONS:

13 Q. Good afternoon, Ms. Yarbrough.

14 A. Good afternoon.

15 Q. Where are you employed?

16 A. I'm employed by the South Carolina Law Enforcement
17 Division, also known as S.L.E.D.

18 Q. And what do you do at S.L.E.D.?

19 A. I'm a Forensic Technician in the Evidence Log-in
20 Department.

21 Q. And how are forensic technicians trained?

22 A. It's an administrative assistant's position, and,
23 but we are trained for a continuous year by our
24 co-workers.

25 Q. How long have you been in that position at

1 S.L.E.D.?

2 A. Two and a half years.

3 Q. How long have you been at S.L.E.D. overall?

4 A. Two and a half years.

5 Q. How does evidence intake work?

6 A. We receive evidence from throughout the state from
7 all law enforcement agencies into our office. The
8 submitting officer brings in there, anything that needs a
9 forensic analysis comes in through our building, through
10 our office.

11 Q. What safeguards are in place to assure the
12 integrity of the intake process and to assure samples are
13 not compromised?

14 A. The evidence comes to us sealed. Then we in turn
15 reseal it in our S.L.E.D. evidence packaging, and it is
16 again signed and dated by the submitting officer before
17 it is transferred through our building to the different
18 departments.

19 Q. Did you have occasion to be involved in S.L.E.D.
20 Case L10-05754?

21 A. I did.

22 Q. Once items are received by S.L.E.D. on a
23 particular case number, are they assigned a number within
24 that case?

25 A. Once the evidence is logged in, it receives a,

1 what we call a lab number, and that is a lab number that
2 that case has from the start to the end.

3 Q. Did S.L.E.D. receive what is commonly known as a
4 C.S.C. rape kit number L10-05754?

5 A. We did.

6 Q. What item number was assigned to the rape kit?

7 A. Item number 1 was considered the C.S.C. kit.

8 Q. And when did you receive the C.S.C. kit, S.L.E.D.
9 Item 1?

10 A. On May 27th of 2010, at 9:58 a.m.

11 Q. From whom did you receive it?

12 A. From Sergeant Patrick Merck of the Oconee County
13 Sheriff's Department.

14 Q. Do you label or enter a computer notation when you
15 receive something?

16 A. We do. It's identified, this particular item was
17 identified as a heat-sealed pouch that contained a C.S.C.
18 kit with the victim's name on it.

19 Q. Could you explain in detail what you did regarding
20 the intake of Item 1?

21 A. The, Item number 1 comes to us in a sealed box.
22 It is known as a C.S.C. kit. And it is sealed at the
23 hospital where it is -- it's unsealed at the hospital.
24 They take the items out that they use, use them, then put
25 them back and seal the kit, and then it's transferred to

1 the custody of the investigating agency.

2 Then the investigating agency in turn brings it to
3 our lab in Columbia, the forensics building, and the
4 log-in process begins there.

5 Q. And explain in detail what you do regarding Item
6 number 1.

7 A. I take that box. I open -- I note that all the
8 seals are in place. I open that box. I take the items
9 out. It varies on what could be in there. But I take --
10 there are certain items that can go to D.N.A. and certain
11 items to that can go to our toxicology department. I
12 separate those items into those separate pouches,
13 heat-seal them, have the officer that's submitting them
14 to initial and date those items, and then they are --
15 that lab number that they are assigned goes onto each
16 package with the number of the item, and then I take a
17 permanent marker and write on those packages what
18 department it's gonna go to.

19 Once it's -- I scan it to the department that it's
20 gonna go to, and it goes into our secure evidence storage
21 until it's taken to the department that it needs to go to
22 by the technician from that department.

23 Q. When did S.L.E.D. 1, the C.S.C. kit, go into
24 secure evidence storage?

25 A. It went in there at approximately 10 a.m. on that

1 same day.

2 Q. And was anyone else -- only the S.L.E.D.
3 technicians can put things in intake storage?

4 A. The person that's logging it in is the one who
5 puts it into the intake storage, and then when it's
6 requested for analysis, the person will come down and
7 asks for that item.

8 And then there's four log-in technicians and one
9 part-time evidence room technician. There are five of us
10 and one of us can go and retrieve that item and transfer
11 the custody again to the person who is gonna take it to
12 their department.

13 Q. Up until the time that you received S.L.E.D. 1
14 into your custody that morning to the point where you
15 dropped it into the D.N.A. intake refrigerator, was it in
16 your sole care, custody and control?

17 A. It was.

18 Q. Did you alter or tamper with it in any way other
19 than to sort the samples per your job?

20 A. No.

21 MS. SIMMONS: Please answer any questions the
22 Defendant may have.

23 CROSS-EXAMINATION BY MR. TEMPLE:

24 Q. So, Ms. Yarbrough, can you give me any type of
25 other information on things you received? Are you the

1 only person that is allowed to receive items?

2 A. No, sir. There are four other -- there are three
3 other technicians besides myself who log in this
4 evidence.

5 Q. So you don't necessarily examine all the items
6 yourselves?

7 A. I do not. I'm not a forensic analyst. I am a
8 technician. All I do is log the evidence in and put it
9 in the intake storage for the analyst.

10 Q. But you say you did receive these items and they
11 were not tampered with?

12 A. No, sir, they were not.

13 Q. Okay.

14 THE DEFENDANT: Thank you, ma'am.

15 No further questions, Your Honor.

16 THE COURT: Anything on redirect?

17 MS. SIMMONS: No. We ask that Ms. Yarbrough be
18 excused.

19 THE COURT: Okay. Thank you. You will be.

20 THE WITNESS: Thank you.

21 (Whereupon, the witness was excused.)

22 MS. SIMMONS: Judge, the State calls Selena Kinard.
23 Whereupon,

24 Selena Kinard,

25 after first having been duly sworn, testified as follows:

1 DIRECT EXAMINATION BY MS. SIMMONS:

2 THE COURT: All right. Yes, ma'am.

3 BY MS. SIMMONS:

4 Q. Good afternoon, Ms. Kinard.

5 A. Good afternoon.

6 Q. Where are you employed?

7 A. I'm employed with S.L.E.D., South Carolina Law
8 Enforcement Division.

9 Q. How long have you been with S.L.E.D.?

10 A. For three and a half years.

11 Q. What does your job at S.L.E.D. entail?

12 A. I am a Forensic Technician within the Evidence
13 Control Department.

14 Q. And does that involve intake of items?

15 A. Yes, ma'am, it does.

16 Q. Explain how the intake process works.

17 A. Basically we have officers from around the state,
18 police departments, sheriffs' offices, et cetera, come in
19 and they bring in their evidence. We log it into a
20 computer system. Each individual case is assigned a
21 computer, by the computer a lab number, and that lab
22 number follows that particular case throughout the lab.

23 Q. Did you have occasion to be involved with S.L.E.D.
24 L10-05754?

25 A. Yes, ma'am, I did.

1 Q. Once an item is received by S.L.E.D. on a
2 particular case, do they, do the items get sub items
3 within that case?

4 A. Yes, that's correct, and that's done by the
5 analyst that handles that evidence.

6 Q. Did you receive a belt and a set of gloves in this
7 case?

8 A. May I refer to my chain?

9 Q. Yes.

10 A. Okay. Yes, ma'am, I did.

11 Q. Just to go back for a second. The S.L.E.D. lab
12 number that we were discussing, who was the suspect on
13 that case?

14 A. The suspect on L10-05754 is Dennis Maurice Temple.

15 Q. And the victim?

16 A. Is a Catherine McGough -- McGough?

17 Q. McGough. So you did receive a belt and gloves in
18 S.L.E.D. L10-05754?

19 A. Yes, ma'am, I did.

20 Q. When did you receive the belt?

21 A. Sorry. I received the belt on October the 21st of
22 2010 at 10:56 a.m.

23 Q. And what S.L.E.D. number is the belt?

24 A. It is Item number 10.

25 Q. And when did you receive the gloves?

1 A. The gloves were on the same day.

2 Q. At the same time?

3 A. Yes, ma'am.

4 Q. And what item number eventually became the gloves?

5 A. The gloves were Item Number 8.

6 Q. And do you label or use the computer to notate the
7 intake of these items?

8 A. Yes.

9 Q. Can you explain in detail what you did regarding
10 S.L.E.D. Item 8, the gloves, and S.L.E.D. Item 10, the
11 belt?

12 A. Okay. S.L.E.D. Item 8 -- let me go back in my
13 chain of custody here -- Item 8, which was described as
14 gloves along with a camo hood, were packaged with -- the
15 gloves, the hood, and the belt were packaged together,
16 all in one box, on that day.

17 Q. Do you write on the box at all?

18 A. I actually created the box. The officer brings in
19 the sealed items, and in this particular case I'm not
20 sure if they were separate or if he had them in his own
21 box. But typically what we do is make our own box and we
22 put sealed tape on it, packing tape actually first, and
23 then S.L.E.D. seal tape where the officer has to initial
24 and date those seals, and then I would put those items
25 within that box and affix the yellow label that has the

1 lab number and the item numbers on that box.

2 Q. So you take appropriate steps to make sure the
3 items are not cross-contaminated with each other?

4 A. That's correct.

5 Q. When you complete your task of dividing out items,
6 the gloves, Item 8, and the belt, Item 10, what did you
7 do with them?

8 A. Those would have been put -- for instance, the box
9 containing the gloves -- let me go back to Item 8 --
10 those were put on what we call our evidence processing
11 intake shelf number 3, and I put that on that shelf at
12 11:01 a.m. on 10-21.

13 Q. And that was the gloves?

14 A. Yes. And also the belt, yes.

15 Q. So both items were placed at that date and time?

16 A. That's correct.

17 Q. And the shelving you described, only the four
18 technicians in this state have access to those shelves?

19 A. There's actually five. There's four of us that
20 can log in and can go, we can do the multiple duties
21 within the evidence control department. And we have one
22 person that is part-time. Her main duties are to work
23 back in the evidence room and, for instance, give out
24 evidence or to the technicians of other departments or to
25 other agencies as they come in. So there's actually five

1 of us within the department.

2 Q. Do you know who ultimately retrieved the gloves
3 and the belt from the storage shelving to which you just
4 referred?

5 A. Nikki Perry. She, on the 25th of October at 11:49
6 a.m., retrieved that from intake shelf 3 and put that
7 into her custody and then transferred the custody to
8 Josetta Blair, who is also a forensic technician, but
9 she's in the evidence processing department.

10 Q. During the time that Items 8 and Items 10, the
11 belt and gloves, were in your care, custody and control,
12 were they solely maintained by you?

13 A. Yes.

14 Q. And they were not tampered with in any way?

15 A. No, ma'am.

16 Q. Did S.L.E.D. receive socks for testing in this
17 case?

18 A. Yes, ma'am.

19 Q. Where and when did you receive socks? That was
20 S.L.E.D. Item 9.

21 A. Yes, ma'am. That was also the same day. 10-21 at
22 10:56 a.m. from Sergeant Patrick Merck with Oconee County
23 Sheriff's Office.

24 Q. What did you do once you received those items?

25 A. Once I receive those items, I put them into what

1 we call a heat-sealed pouch and heat sealed it, and
2 Sergeant Merck would initial and date the heat seal where
3 I'd heat-sealed it and then also sign and date the front
4 of the heat-sealed pouch. And on that particular day,
5 actually a minute later, the forensic scientist from the
6 D.N.A. department requested those items, and so I
7 transferred them directly to the scientist so she could
8 work on those items.

9 Q. Did you alter, destroy or contaminate the socks
10 during the one to two minutes you had them?

11 A. No, ma'am.

12 MS. SIMMONS: Please answer any questions the
13 Defendant may have.

14 THE WITNESS: Thank you.

15 CROSS-EXAMINATION BY MR. TEMPLE:

16 Q. Is it true, Ms. Yarbrough, that you received Item
17 Number L10-05754?

18 A. I'm Ms. Kinard.

19 Q. I mean, right, Ms. Kinard.

20 A. Ms. Kinard did.

21 Q. Did you receive custody of the Item Number
22 L10-05754?

23 A. Yes, I did.

24 Q. On 5-5-2010?

25 A. I'm sorry?

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Oconee County

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

SEP 28 2012

SC Court of Appeals

THE STATE,

RESPONDENT,

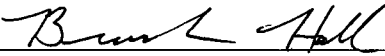
V.

DENNIS TEMPLE,

APPELLANT

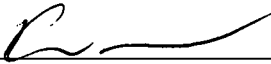
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Dennis Temple, #274802, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 28th day of September.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of September.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013.

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DENNIS TEMPLE,

APPELLANT

Appellate Case No. 2011-182806

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate DefenderALAN WILSON
Attorney GeneralSouth Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorney for Appellant

Attorneys for Respondent

RECEIVED

SEP 28 2012

SC Court of Appeals

INDEX

INDEX.....	i
PRETRIAL HEARING TRANSCRIPT DATED MAY 20, 2010 (WAIVER OF COUNSEL AND SEXUALLY TRANSMITTED DISEASES TESTING)	1
ORDER FOR SEXUALLY TRANSMITTED DISEASES TESTING DATED MAY 20, 2010.....	9
PRETRIAL HEARING TRANSCRIPT DATED JUNE 30, 2010 (BOND REDUCTION AND APPOINTMENT OF COUNSEL).....	11
PRETRIAL HEARING TRANSCRIPT DATED JULY 29, 2010 (REQUEST TO OBTAIN PRIVATE COUNSEL).....	21
PRETRIAL TRANSCRIPT DATED SEPTEMBER 14, 2010 (APPOINTMENT OF COUNSEL).....	32
<u>SCHMERBER</u> PRETRIAL HEARING TRANSCRIPT DATED SEPTEMBER 22, 2010	52
ORDER OF APPOINTMENT OF STAND-BY COUNSEL DATED SEPTEMBER 27, 2010	78
PRETRIAL HEARING TRANSCRIPT DATED OCTOBER 21, 2010 (<u>PRO SE</u> REPRESENTATION AND STAND-BY COUNSEL).....	79
AMENDED ORDER APPOINTING STAND-BY COUNSEL DATED NOVEMBER 8, 2010	111
PRETRIAL HEARING TRANSCRIPT DATED DECEMBER 7, 2010 (RAPE SHIELD STATUTE MOTION AND <u>PRO SE</u> REPRESENTATION)	119
TRIAL TRANSCRIPT DATED DECEMBER 13, 2010	211
COURT'S EXHIBIT #1 (REPORT OF DR. FRIERSON).....	670
COURT'S EXHIBIT #3 (JUROR ASKING FOR BREAK).....	676
COURT'S EXHIBIT #4 (NOTE FROM JURY FOREMAN)	677
COURT'S EXHIBIT #5 (PHOTO OF CRIME SCENE)	678
COURT'S EXHIBIT #6 (PHOTO OF CRIME SCENE)	679

STATE'S EXHIBIT #58 (ALL SAFE STORAGE RENTAL AGREEMENT).....	680
STATE'S EXHIBIT #59 (ALL SAFE STORAGE RENTAL INFORMATION).....	681
STATE'S EXHIBIT #60 (TWO STORAGE RECEIPTS).....	682
STATE'S EXHIBIT #64 (BUSINESS CARD OF DENNIS TEMPLE)	683
INDICTMENTS.....	684
CERTIFICATE OF COUNSEL	692

1 Q. On May the 5th -- 27th, 2010?

2 A. I did not. I received the items on October the
3 21st.

4 Q. You did not receive Case Number L10-05754?

5 A. I received items for that case, for that lab
6 number. The items I received actually I logged in on
7 October the 21st, not in May.

8 Q. Okay. And the only item you received was the
9 belt?

10 A. I'm sorry?

11 Q. Those items you received were the belt?

12 A. I received multiple items. On the, October 21st,
13 I received a washcloth, a camo hood and gloves, three
14 white socks, and also a brown leather belt.

15 Q. A washcloth?

16 A. I'm sorry?

17 Q. You said a washcloth?

18 A. Yes, that's correct.

19 THE DEFENDANT: Excuse me for a minute.

20 (Whereupon, the Defendant conferred with
21 Mr. Tavernier off the record.)

22 BY MR. TEMPLE:

23 Q. So, Ms. Yarbrough, could you tell me, you said you
24 received, once again, you received a washcloth, the hood
25 and the gloves?

1 A. I'm Ms. Kinard. Ms. Kinard.

2 Q. Sorry, excuse me.

3 A. That's okay. I received, on October the 21st,
4 okay, I received a purple washcloth, a camo hood and
5 gloves, three white socks, and one brown leather belt on
6 October the 21st of 2010 from Sergeant Patrick Merck.

7 Q. Could you tell me where the washcloth and, where
8 the washcloth went to?

9 A. When I logged in that evidence, it was placed
10 with -- let me refer back to my chain -- it was placed in
11 a box with the camo hood, the gloves, and, and the belt.
12 And at that time it went -- I put it on evidence
13 processing intake shelf number 3.

14 Q. And do that particular shelf have a department
15 head or a figure that it's assigned to?

16 A. It's evidence processing.

17 Q. What about the -- this is just the washcloth we're
18 talking about?

19 A. That's correct. But it was placed in the same box
20 with other items to be analyzed by evidence processing.
21 That's a different department.

22 Q. So all items, that's what you're...

23 A. I'm sorry?

24 Q. You said all items, that's what you're saying, all
25 items?

1 A. No, not all items. The items that I mentioned.

2 Q. The washcloth, the hood, the gloves, three socks,
3 the belt?

4 A. The washcloth, the hood and gloves and belt were
5 all placed in a box, and that one box was placed on
6 evidence processing intake storage shelf 3, which is
7 within our evidence room.

8 Q. These items were sealed?

9 A. Yes. They were sealed in the box, and the seal
10 would have been initialed and dated by Sergeant Patrick
11 Merck on October the 21st.

12 THE DEFENDANT: Thank you, ma'am. No further
13 questions at this time.

14 THE COURT: Anything on redirect?

15 MS. SIMMONS: No, Judge. We would ask that this
16 witness be excused.

17 THE COURT: Okay. You can be excused. Thank you.

18 (Whereupon, the witness was excused.)

19 THE COURT: Ladies and gentlemen, we'll take a
20 15-minute break. Please don't discuss the case and then
21 we'll bring you in and we'll go until five or a little
22 after five, five after, maybe. Please don't discuss the
23 case.

24 (Whereupon, the jury left the courtroom at
25 approximately 3:51 p.m.)

1 (A recess was taken.)

2 THE COURT: All right. You can bring them in.

3 (Whereupon, the jury entered the courtroom at
4 approximately 4:09 p.m.)

5 THE COURT: Thank you, ladies and gentlemen. Just
6 so you know, I just talked to the heating and
7 air-conditioning people downstairs. It is eight degrees
8 hotter where I'm sitting than where you are sitting. I
9 don't know how that's physically possible, but that's
10 what they told me. So I share your pain if you're warm.
11 I'm 10 degrees warmer.

12 You may call your next witness.

13 MS. SIMMONS: Thank you, Judge. The State calls
14 Nikki Perry.

15 Whereupon,

16 Nikki Perry,

17 after first having been duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MS. SIMMONS:

19 THE WITNESS: Nikki Perry, P-e-r-r-y.

20 BY MS. SIMMONS:

21 Q. Ms. Perry, where are you employed?

22 A. I'm currently employed with the South Carolina Law
23 Enforcement Division, commonly known as S.L.E.D.

24 Q. And how long have you been at S.L.E.D.?

25 A. I've been employed at S.L.E.D. for four and a half

1 years.

2 Q. And what is your job title with S.L.E.D.?

3 A. I'm a Forensic Technician in the Evidence Control
4 Department at the Forensic Lab.

5 Q. Can you explain how evidence intake and log-in
6 works as part of your job?

7 A. Sure. We log in and package evidence brought into
8 the lab for forensic analysis.

9 Q. And when some samples are brought in by law
10 enforcement, do you seal them and tape them in the
11 presence of that officer?

12 A. We do.

13 Q. What safeguards are in place to ensure the
14 integrity of the intake process?

15 A. We have policies and procedures put in place that
16 we adhere to. We seal all evidence that is brought in to
17 S.L.E.D., we place seals on the boxes, and we heat-seal
18 all the pouches and we have the officers initial and date
19 those seals.

20 Q. Did you have occasion to be involved in S.L.E.D.
21 Case L10-05754?

22 A. We did.

23 Q. And is the suspect in this case Dennis Temple?

24 A. It is.

25 Q. Once items are received by S.L.E.D. on particular

1 case numbers, do they get assigned numbers within that
2 case?

3 A. Yes, ma'am, they do. When additional evidence is
4 brought in and the lab number has already been
5 established, we will take additional evidence and we will
6 give items new item numbers.

7 Q. Did you receive what is commonly known as a
8 suspect blood sample in this case on September 23rd,
9 2010?

10 A. I did.

11 Q. And what S.L.E.D. item number was that assigned
12 to?

13 A. It was assigned S.L.E.D. Item Number 6.

14 Q. And where did you receive that item -- from whom
15 did you receive that item?

16 A. I received S.L.E.D. Item Number 6 from Sergeant
17 Patrick Merck of the Oconee County Sheriff's Office.

18 Q. And at what time on the 23rd of September?

19 A. At 11:10 a.m.

20 Q. Did you label the item for identification or mark
21 it in the computer?

22 A. I would have logged it in and the computer would
23 have generated Item 6 for that piece of evidence. I
24 would have placed the evidence in a heat-sealed pouch,
25 had Patrick sign and date the heat-sealed pouch. And

1 then I placed it into the D.N.A. evidence intake storage,
2 and we place a label on that particular item in that
3 heat-sealed pouch that would say the Lab Number
4 L10-05754, Item Number 6.

5 Q. So the extent of your involvement with S.L.E.D. 6
6 was the intake, heat sealing and placement in D.N.A.
7 intake storage?

8 A. Yes, ma'am.

9 Q. Did you alter or tamper with or otherwise
10 contaminate this item once it was in your custody?

11 A. No, ma'am, I did not.

12 Q. And again the D.N.A. intake storage facility, the
13 S.L.E.D. log-in technicians have access to that?

14 A. That's correct.

15 Q. But the computer reports everyone who touches that
16 item?

17 A. Correct.

18 Q. Did you later transfer Item 6 from the particular
19 location where you placed it?

20 A. I did. On December 24, 2010, at 9:28 a.m. I
21 transferred that item to Betty Butler, which is a
22 forensic technician in the evidence processing
23 department.

24 Q. Did your records indicate that anyone else had
25 moved S.L.E.D. Item 6 while it was on those shelves?

1 A. No, ma'am.

2 Q. And you did not alter or tamper with the item in
3 any way until you transferred it to Ms. Butler on
4 September 24, 2010, at 9:28 a.m.?

5 A. No, ma'am.

6 Q. Did S.L.E.D. also have occasion to receive a belt
7 and a pair of gloves in this case?

8 A. Yes, ma'am.

9 Q. And is the belt under S.L.E.D. Item 8 and gloves
10 under S.L.E.D. Item 10, or vice versa?

11 A. Yes. The gloves were logged in under Item 8 and
12 the belt was Item 10.

13 Q. What was your role with those two items?

14 A. I was notified by Josetta Blair that she requested
15 container B on this case, which included the gloves and
16 the belt. So I retrieved that box from evidence
17 processing intake shelf 3, placed it in my custody and
18 transferred it into the custody of Josetta Blair, a
19 forensic technician in the evidence processing
20 department.

21 Q. What date and time did you do that?

22 A. I did that on October 25th, 2010, at 11:49 a.m.

23 Q. Did you alter or tamper with S.L.E.D. 8 or 10 in
24 any way in the process of transferring those items to
25 Josetta Blair on the date in question?

1 A. I did not.

2 MS. SIMMONS: Please answer any questions the
3 Defendant may have.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION BY MR. TEMPLE:

6 Q. Yes. Ms. Perry, could you please tell me which
7 items you received on, in intake in reference of Case
8 Number L10-05754?

9 A. I logged in from Patrick Merck Item Number 5,
10 which was described as an empty plastic bottle, and I
11 logged in from Patrick Merck on September 23rd Item 6,
12 which was a blood standard from Dennis Maurice Temple.

13 Q. So those are the only two items that you received?

14 A. Those are the only two items that I logged in,
15 yes.

16 Q. Did you do any testing on those two items?

17 A. I did not. I do not test items.

18 Q. And you sent those items to who?

19 A. After I logged them in, I placed the blood sample
20 in D.N.A. evidence intake storage, and I placed the empty
21 plastic bottle in our latent evidence intake storage.

22 Q. Did you do any other test other than that,
23 procedures?

24 A. I'm sorry, can you say that again?

25 Q. Yes. Did you do any other procedures other than

1 that for these items?

2 A. To those items, no, I did not.

3 Q. Thank you, ma'am.

4 THE DEFENDANT: No further questions, Your Honor.

5 THE COURT: Anything on redirect?

6 MS. SIMMONS: No, Your Honor.

7 THE COURT: All right. Ma'am, do you need to be
8 excused?

9 THE WITNESS: Yes.

10 THE COURT: Okay. You're excused.

11 (Whereupon, the witness was excused.)

12 THE COURT: You may call your next witness.

13 MS. SIMMONS: The State calls Sherree Brown.

14 Whereupon,

15 Sherree Brown,

16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MS. SIMMONS:

18 THE COURT: Yes, ma'am.

19 BY MS. SIMMONS:

20 Q. Good afternoon, Ms. Brown.

21 A. Good afternoon.

22 Q. Where are you employed?

23 A. South Carolina Law Enforcement Division, also
24 known as S.L.E.D.

25 Q. What is your job title there?

1 A. I'm a Forensic Technician within the D.N.A.
2 Department.

3 Q. How long have you been at S.L.E.D.?

4 A. 16 and a half years, and the last 13 within the
5 D.N.A. department.

6 Q. What does your job in D.N.A. entail?

7 A. One of my duties at the D.N.A. department is to go
8 down to the evidence control area and retrieve evidence
9 that is brought in to the S.L.E.D. to be analyzed for
10 D.N.A. And also, if there are any samples of liquid
11 blood, part of my job is to stabilize that blood to make
12 it into a dry form.

13 Q. What safeguards are in place to ensure that
14 samples submitted to S.L.E.D. are not compromised?

15 A. We just have policies and procedures that the
16 forensics lab does, and also within the D.N.A.
17 department.

18 Q. Did you have occasion to be involved in L10-05754?

19 A. Yes.

20 Q. And was that suspect named Dennis Temple?

21 A. Yes.

22 Q. Once items are received by S.L.E.D. on a case, are
23 they assigned a number within that case?

24 A. Yes.

25 Q. Did S.L.E.D. receive what is commonly known as a

1 C.S.C. kit in this case, S.L.E.D. Item 1?

2 A. Yes.

3 Q. Did S.L.E.D. also receive a suspect sample for
4 standard in this case, S.L.E.D. Item 6?

5 A. Yes.

6 Q. When did you receive S.L.E.D. Item 1?

7 A. I took custody of it on May 28th, 2010, at 9:15
8 a.m.

9 Q. Who did you receive it from?

10 A. A forensic technician in the evidence control
11 department, Amy Stephens.

12 Q. Did you personally witness Amy Stephens retrieve
13 that item from evidence storage and hand it directly to
14 you?

15 A. Yes.

16 Q. You were with her the whole time, she had that
17 item the whole time?

18 A. Yes.

19 Q. Did you mark or label that item the moment you
20 receive it or log it in the computer?

21 A. Yes. Because I had to open up the C.S.C. kit from
22 the heat-sealed pouch and retrieve the liquid blood
23 standard that's within the kit that's collected, and I
24 took it and did all procedures throughout and made it a
25 liquid to dry on filter paper.

1 Q. And the C.S.C. kit, S.L.E.D. Item 1, was that the
2 victim's blood originally?

3 A. Yes.

4 Q. And what was your particular role in processing
5 S.L.E.D. Item 1, the victim's blood?

6 A. As a technician within the D.N.A. department, I'm
7 the first line of getting evidence, and if any case comes
8 in with the liquid blood standard, that is part of my job
9 duties is to stabilize it so when a case can be assigned,
10 the analyst doesn't have to worry about it, it's already
11 done.

12 Q. The blood is stabilized for analysis?

13 A. Yes.

14 Q. So you would only actually process a blood portion
15 of S.L.E.D. Item Number 1?

16 A. Right. I sub itemize and I created 1.1. 1.1 is
17 the blood standard from the C.S.C. kit.

18 Q. And you followed S.L.E.D. policies and procedures
19 to make sure the item was not contaminated?

20 A. Yes.

21 Q. Once you completed your task regarding the C.S.C.
22 kit, S.L.E.D. Item 1, what did you do with the item?

23 A. After it was stabilized, the next day I repackaged
24 the blood standard into a coin envelope and then it's put
25 back into the C.S.C. kit, and heat-sealed the heat-sealed

1 pouch and put my initials on it.

2 Q. And the entire C.S.C. kit, where was it stored?

3 A. It was stored in a secure area within the D.N.A.
4 department and it was the location D.N.A. storage drawer
5 30-A.

6 Q. And who ultimately retrieved the item, Item 1,
7 from D.N.A. storage 3-A?

8 A. D.N.A. analyst Amanda Webb.

9 Q. And do you know when that occurred?

10 A. According to my chain, she took custody of it on
11 June 22nd, 2010.

12 Q. Other than developing the blood sample that we
13 discussed, did you alter or tamper with or contaminate
14 the C.S.C. kit, S.L.E.D. Item 1, in any way?

15 A. No.

16 Q. And your records do not indicate that anyone else
17 had access to -- anyone else had S.L.E.D. Item 1 while it
18 was in your custody, control or possession?

19 A. Correct.

20 Q. Did you receive S.L.E.D. Item 6 in this case, the
21 defendant's blood sample?

22 A. Yes, I did.

23 Q. When did you receive that?

24 A. I took custody of it on September the 27th, 2010.

25 Q. From whom?

1 A. It was in a storage location within the D.N.A.
2 department and the location was, is D.N.A. 3rd.

3 Q. From D.N.A. storage 3rd?

4 A. Yes.

5 Q. Did you label or mark or otherwise notate in the
6 computer when you received that item?

7 A. Yes. It's when I transferred it to me, it became
8 time-stamped, that it went from location D.N.A. 3rd to my
9 custody on September the 27th, 2010, at 10:19 a.m.

10 Q. Again, what was your particular role with S.L.E.D.
11 Item 6?

12 A. Again, in this case a liquid blood standard was
13 sent in, and I went through our policies to stabilize the
14 liquid blood to make it a dry blood standard so it could
15 be analyzed at a later date.

16 Q. And you followed S.L.E.D. policies and procedures
17 to ensure the item was --

18 A. Yes.

19 Q. When you completed your task regarding
20 stabilization of the blood of S.L.E.D. Item 6, what did
21 you do with the item?

22 A. At this time it was still in my custody, and
23 before I could move it to the secure location, Amanda
24 Webb came and she personally took it from me and we did
25 it in the computer and personally she took custody of it

1 on October the 1st, 2010, at 9:30.

2 Q. You directly transferred S.L.E.D. 6 to Amanda
3 Webb?

4 A. Yes.

5 Q. Do the records indicate that anyone else had
6 access to Item 6 during your possession for processing up
7 until the time it was transferred?

8 A. No.

9 MS. SIMMONS: Please answer any questions the
10 Defendant may have.

11 THE WITNESS: Okay.

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION BY MR. TEMPLE:

14 Q. Ms. Brown, is it true that you received Item
15 Number 1 on September --

16 A. What item are you referring to, sir?

17 Q. Item Number 1.1.

18 A. Item 1.1 was created by me.

19 Q. The blood standard from --

20 A. From the C.S.C. kit.

21 Q. Okay. So did you also receive -- is it true that
22 you also received blood standards from the Defendant,
23 Dennis Temple?

24 A. Could you tell me what item number you are
25 responding about?

1 Q. Item Number 6.

2 A. Yes, sir.

3 Q. Did you do any type of test to those items?

4 A. No test was performed, just stabilized the blood
5 standards.

6 Q. After your stabilizing, did you pass them on to,
7 pass both items on to the next person, Amanda Webb?

8 A. Item Number 6 was passed to Amanda Webb, but Item
9 Number 1 and 1.1 was put in a storage drawer.

10 Q. How long did they stay there, ma'am?

11 A. I put the evidence, item 1 and 1.1, which is both
12 in the same heat-sealed pouch, transferred it to D.N.A.
13 storage drawer 3-A on 6-8-2010, and D.N.A. Analyst Amanda
14 Webb took custody of it on June 22nd, 2010.

15 Q. So, according to the department storage drawer in
16 which the item number 1 was received and, on 6-8-2010,
17 and the date that the Forensic Scientist, Amanda C. Webb,
18 received this item was 14 days? Is that true?

19 A. When are you talking, when it first come in the
20 door or when I had it?

21 Q. When it was stored. You had it on 5-28?

22 A. Yes.

23 Q. Item Number 1?

24 A. It stayed in my custody from 5-28 until I
25 transferred it to D.N.A. storage drawer 3-A on 6-8-2010.

1 Q. Okay. According to your records, though, how long
2 did it stay in that storage room?

3 A. It was scanned into the drawer and physically put
4 into the drawer on 6-8-2010, and D.N.A. Analyst Amanda
5 Webb put it in her custody on 6-22nd, 2010.

6 Q. My question is, so did it stay in the drawer
7 during that time, the whole time?

8 A. From the 6-8 to the 6-22 it stayed in the drawer,
9 that particular storage drawer in a secure location
10 within the D.N.A. department.

11 Q. So how many days was that, Ms. Brown?

12 A. Eight, 16 -- 12 days.

13 Q. 12 days. Then after 12 days the Forensic
14 Scientist, Amanda C. Webb, received it. Did you do any
15 other tests to it?

16 A. No, I did not.

17 Q. What about Item Number 6?

18 A. I took custody of it on September the 27th, 2010.

19 Q. So, so who was it sent to at the -- well, what did
20 you do to it while you had it?

21 A. While it was in my custody, I prepared it through
22 S.L.E.D. and D.N.A. policies and procedures to stabilize
23 the liquid blood to a dry form.

24 Q. And you did no further tests to it?

25 A. No.

1 THE DEFENDANT: Thank you, ma'am.

2 Thank you, Your Honor.

3 THE COURT: Anything on redirect?

4 MS. SIMMONS: Just a couple follow-up.

5 REDIRECT EXAMINATION BY MS. SIMMONS:

6 Q. When something is placed in storage at S.L.E.D.,
7 no one alters or tampers with that item once it's locked
8 in storage, correct?

9 A. Correct.

10 Q. And there is a chain, is it a bar code system or
11 log-in system that would indicate anyone who had touched
12 that?

13 A. Yes. According to our policies and procedures,
14 any time you take custody -- I mean, you have to take
15 custody of something in order to analyze it or open up
16 the heat-sealed pouch.

17 Q. That would explain when it was picked up and
18 somebody picked it up and handed it to you, even though
19 you were physically there the whole time, she bar-coded
20 it as you having touched it?

21 A. Yes.

22 MS. SIMMONS: Thank you.

23 THE COURT: All right. Thank you, ma'am. You may
24 step down.

25 (Whereupon, the witness was excused.)

1 THE COURT: Have you got someone else you can fit
2 in, you think?

3 MS. SIMMONS: Our last law enforcement witness is
4 Sergeant Patrick Merck. I anticipate he will be in the
5 30-minute range.

6 THE COURT: Y'all come over here a minute.

7 (Discussion at sidebar.)

8 THE COURT: All right. You can call your next
9 witness.

10 MS. SIMMONS: The State calls Sergeant Patrick
11 Merck.

12 Whereupon,

13 Patrick Merck,
14 after first having been duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MS. SIMMONS:

16 Q. Sergeant Merck, where are you employed?

17 A. The Oconee County Sheriff's Office.

18 Q. How long have you been in law enforcement?

19 A. Almost 19 years.

20 Q. What do your job duties entail currently?

21 A. I am currently assigned to the Evidence and Crime
22 Scene Division.

23 Q. And how long have you been there?

24 A. Approximately 12 years.

25 Q. Does part of your job involve evidence collection

1 and evidence transport to S.L.E.D.?

2 A. Yes, ma'am.

3 Q. What procedures are in place within your
4 department at the Sheriff's Department to ensure that
5 evidence is handled in an efficient and appropriate way
6 and is not contaminated?

7 A. We've, any time we are handling evidence we wear
8 gloves. Plus, also everything is sealed and remains in a
9 sealed state.

10 Q. Were you dispatched to a call on May 9th or
11 10th -- on May 10th, actually, 2010, regarding a rape and
12 kidnapping at All Safe Storage in Seneca, South Carolina?

13 A. Yes, ma'am.

14 Q. And All Safe is in Oconee County?

15 A. Yes, ma'am.

16 Q. What time did you first receive your call
17 regarding this incident?

18 A. Approximately 2:30 a.m. on the 10th.

19 Q. Where did you go first?

20 A. I first went to the Oconee Medical Center.

21 Q. What did you do at the Oconee Medical Center?

22 A. I met with Lieutenant Reed, and he advised me of
23 what the situation was. I waited for the victim to have
24 the evidence collection kit performed, and then
25 photographed the victim's injuries and wounds.

1 Q. And those photographs have been previously
2 introduced into evidence?

3 A. Yes, ma'am.

4 Q. Did you later have occasion to execute two search
5 warrants on the Defendant's storage unit, unit [REDACTED]?

6 A. Yes, ma'am.

7 Q. When did you do that?

8 A. The first one was on May 10th and the second on
9 May 11th of 2010.

10 Q. Describe what you found at the storage units when
11 you executed the search warrant.

12 A. On May 10th I found -- actually, I collected some
13 sheets, found the storage unit itself kind of in
14 disarray. There was what appeared to be a bed in the
15 storage unit. On top of the bed, sheets, torn pieces of
16 sheet, some tied together.

17 Around the walls of the storage unit appeared to
18 be just various items stacked and stored. Shoes,
19 personal documents, things of that nature.

20 Q. Do you recall the color of the sheets that you saw
21 in the storage unit?

22 A. Pink and white, I believe.

23 Q. Is the physical evidence you personally saw
24 consistent with the information you were provided by the
25 victim?

1 A. Yes, ma'am.

2 Q. Did you see cleaner within the storage unit?

3 A. Yes, ma'am.

4 Q. Did you see a bottle within the storage unit?

5 A. Yes, ma'am.

6 Q. Where was the bottle located?

7 A. The bottle was located in what appeared to be a
8 five-gallon bucket on the, put in what was a makeshift
9 bed on the left side of that bed, and it was kind of up
10 against the wall.

11 Q. Was the cleaner near the bucket?

12 A. Yes, ma'am.

13 Q. Did you see bindings or strips of sheets?

14 A. Yes, ma'am.

15 Q. Sergeant Merck, I'm going to show you what has
16 been previously marked State's Exhibits 62 and 63. Were
17 these items personally collected by you?

18 A. Yes, ma'am.

19 Q. Tell me a little bit about the sealing and taping
20 process when you are dealing with it.

21 A. On each, each item of evidence, depending on what,
22 what type of evidence it is, I place it into a container,
23 seal that container, and log it in and it remains in that
24 sealed state. These particular items, the torn pieces of
25 sheets, I just placed in a plain brown paper bag, labeled

1 the bag, and then sealed the bag itself.

2 Q. Could you open those items and show them to the
3 jury?

4 A. Okay.

5 Q. And, Sergeant Merck, have those items been in your
6 care, custody and control the entire time they have been
7 in evidence?

8 A. Yes, ma'am.

9 Q. And are they in substantially the same condition
10 they were in when you collected them?

11 A. Yes, ma'am.

12 MS. SIMMONS: Judge, we would move State's Exhibits
13 62 and 63 into evidence, and the Defendant was provided
14 access to these items on December 1st.

15 THE COURT: All right. Any objection to the
16 admission of these items?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: All right. Without objection.

19 (State's Exhibits 62 and 63 were received in
20 evidence.)

21 BY MS. SIMMONS:

22 Q. Do you recognize -- these items, where did you
23 find them?

24 A. These particular pieces were on the floor inside
25 unit [REDACTED], beside, beside the bed in front of the door in

1 kind of a little hallway there.

2 Q. Again, consistent with the victim's statement?

3 A. Yes, ma'am.

4 Q. And can we open item 63, please?

5 A. Sure. (Witness puts cloths back in State's
6 Exhibit 62 and opens State's Exhibit 63 and removes cloth
7 pieces.)

8 Q. Where were these items recovered, Item 63?

9 A. These were the items recovered outside of unit
10 [REDACTED].

11 Q. And would these be consistent with the responding
12 officers' account of what happened?

13 A. Yes, ma'am.

14 Q. Thank you, Sergeant Merck.

15 A. (Places items back in bag.)

16 Q. Did you also find socks during your processing of
17 the Defendant's unit, [REDACTED]?

18 A. Yes, ma'am.

19 Q. And why were you looking for socks?

20 A. It was told to the investigators that socks had
21 been placed in the victim's mouth to gag her.

22 Q. Were you also looking for a belt during your
23 search?

24 A. Yes, ma'am.

25 Q. I show you what has been marked as State's Exhibit

1 56. Is this the item you recovered from the Defendant's
2 storage unit?

3 A. Yes, ma'am, it is.

4 Q. Is it substantially, other than the markings
5 notated by S.L.E.D., in the same condition as when you
6 found it, and do you recognize it as the particular
7 leather belt that you recovered?

8 A. Yes, ma'am, I do.

9 MS. SIMMONS: Judge, we move into evidence State's
10 Exhibit 56.

11 THE COURT: Any objections?

12 THE DEFENDANT: Well, Your Honor -- no -- well, I
13 object. My previous argument in the suppression hearing.

14 THE COURT: Subject to those, I'll allow it to be
15 admitted. And your previous arguments are incorporated
16 into your objection.

17 THE DEFENDANT: Okay. Thank you, sir.

18 (State's Exhibit 56 was received in
19 evidence.)

20 BY MS. SIMMONS:

21 Q. Were you also looking for a head lamp when you
22 were processing the Defendant's storage unit?

23 A. Yes, ma'am, I was.

24 Q. I show you what's previously been marked as
25 State's Exhibit 55, and the Defendant was provided access

1 on December 1st of 2010. Do you recognize State's
2 Exhibit 55?

3 A. Yes, ma'am, I do.

4 Q. And tell me what that is and where you recovered
5 it.

6 A. This is a green and black small head lamp, and I
7 recovered it from unit [REDACTED]. It was at the head of the
8 bed, on the top of the bed.

9 Q. During your processing of the unit, did you
10 observe any pink Nike shoes?

11 A. Yes, ma'am, I did.

12 Q. Were both shoes, that the victim said she was
13 wearing at the time of the attack, recovered from her
14 unit, unit [REDACTED]?

15 A. That was my understanding. They were turned in to
16 me through the temporary storage.

17 Q. Did you take into evidence any, a washcloth in
18 this case?

19 A. Yes, ma'am, I did.

20 Q. Could -- describe the scene that you were
21 processing. I mean, was it a lot of clutter or was it
22 neat?

23 A. It was basically in disarray. There was a lot of
24 clutter, a lot of things stacked around, a lot of pieces
25 of torn sheets and sheets wrinkled up on the bed and on

1 the floor, also.

2 Q. Were there a lot of rags around?

3 A. Yes. Yes, ma'am.

4 Q. The washcloths that you recovered, could the
5 victim positively identify it?

6 A. No, ma'am.

7 Q. Did you also have occasion to take photographic
8 documentation of All Safe Storage unit number [REDACTED] on two
9 separate occasions?

10 A. Yes, ma'am, I did.

11 Q. Did this include the inside and the outside of the
12 unit?

13 A. Yes, ma'am.

14 Q. And have you previously looked at State's 35, 26,
15 37, 42, 38, 48, 49, 50, 34, 39, 40, 47, 46, 45, 44, 43,
16 52, 51 and 53 in this matter?

17 A. Yes, ma'am.

18 MS. SIMMONS: Judge, these have been previously
19 shown to the Defendant before this afternoon.

20 THE COURT: Any objections to these?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: All right. Without objection.

23 MS. SIMMONS: Judge, we would move all of these
24 items into evidence and ask that they be published to the
25 jury.

1 THE COURT: Any objection to that?

2 THE DEFENDANT: Well, I think I have a previous
3 objection to the...

4 THE COURT: You are protected there. Yeah. You are
5 protected there. I'll allow them into evidence.

6 (State's Exhibits Numbers 35, 26, 37, 42, 38,
7 48, 49, 50, 34, 39, 40, 47, 46, 45, 44, 43,
8 52, 51 and 53 were received in evidence.)

9 BY MS. SIMMONS:

10 Q. Sergeant Merck, since you processed this crime
11 scene, I'm going to show you these photos, and if you
12 could just describe what you're seeing.

13 A. Okay. That is basically the entranceway to unit
14 [REDACTED]. As I walked in, that was my path down, down the
15 little makeshift hallway there.

16 Q. And what is that on the floor?

17 A. That is the pieces of torn sheets that I
18 recovered.

19 MS. SIMMONS: Judge, let the record reflect that is
20 what has been admitted as State's 36.

21 THE COURT: All right.

22 THE WITNESS: That's merely a closer view of those
23 same torn sheets, kind of an overhead view.

24 BY MS. SIMMONS:

25 Q. Can you describe what area that is within the

1 unit? Is that your foot?

2 A. Yes, ma'am. That is my foot. That's basically
3 the floor and that's just like a little walkway.

4 MS. SIMMONS: And, Judge, so the record will
5 reflect, that was State's 35.

6 THE COURT: All right.

7 BY MS. SIMMONS:

8 Q. I'm now going to show you State's 37.

9 A. Okay. That, that is as I was entering unit [REDACTED],
10 you can see to the left in the photograph is the
11 mattresses blocking the doorway of unit [REDACTED]. The bed is
12 extending to the right in the photograph. The green and
13 black head lamp is there in the middle of the head of the
14 bed, and the bed is extending to the right.

15 Q. Any other items recovered off the sheet that you
16 can see there?

17 A. The socks and the other shoes.

18 Q. I show you what has been admitted as State's
19 Number 42.

20 A. Those are the pink and white tennis shoes.

21 Q. Were they recovered within the unit?

22 A. Yes, ma'am. Or actually I didn't, didn't recover
23 those.

24 Q. Did you see them in the unit?

25 A. Yes, ma'am, I did.

1 Q. I show you what has been admitted as State's

2 Number 38. What do you see there?

3 A. That is inside unit [REDACTED]. That's including the
4 bed. That is the five-gallon bucket with the cleaning
5 solution and the empty bottle inside the bucket.

6 Q. And showing you what has been admitted as State's
7 Number 48.

8 A. Okay. That is showing the hole in the side of the
9 mattress.

10 Q. And what has been admitted as State's 49, does
11 that provide a little bit better representation of what
12 you are describing as the hole in the mattress?

13 A. Yes, ma'am, it does.

14 Q. And is that consistent with the victim's
15 statement?

16 A. Yes, ma'am.

17 Q. To retrieve the items in the mattress, what did
18 you do?

19 A. In order to photograph those in place before
20 recovering those, we actually tore a hole in the box
21 spring to photograph the items still inside the box
22 springs.

23 Q. I'm showing you what's previously been admitted as
24 State's 50. Tell me what you see there.

25 A. That is the hole that we actually tore in the box

1 spring. It shows the metal hanger, a leather belt, and a
2 roll of electrical tape.

3 Q. And I'm showing you what has previously been
4 admitted as State's 34.

5 A. This also is just another photograph of the
6 entrance of [REDACTED] showing the torn sheets, the mattresses,
7 the bed, and the other items stacked in unit [REDACTED].

8 Q. Sergeant Merck, I'm showing you State's 39.

9 A. That is a little makeshift shelf along the back
10 wall of unit [REDACTED] that has toiletry items and things like
11 that.

12 Q. Personal hygiene items?

13 A. Yes, ma'am.

14 Q. And what has been admitted as State's 40?

15 A. That is a black duffle-style bag inside unit [REDACTED]
16 with one of the pink and white shoes inside of it.

17 Q. I'm showing you what has been previously admitted
18 as State's 51.

19 A. That is a photograph I took inside the evidence
20 department in the lab area. As I, in order to submit the
21 socks to S.L.E.D., I actually removed them from the
22 sheets and packaged them separately, and that is the
23 photograph I took prior to repackaging the three socks.

24 Q. And showing you State's 52.

25 A. That's just a close-up of those three socks.

1 Q. And showing you State's 47.

2 A. That is inside unit [REDACTED] showing some business
3 cards of Dennis Temple.

4 Q. And did you also take those business cards into
5 evidence?

6 A. I took one of those, yes, ma'am.

7 Q. Do you have it with you today?

8 A. Yes, ma'am. It is actually in the box of items I
9 have back there.

10 MS. SIMMONS: Judge, may I?

11 THE COURT: Sure.

12 THE WITNESS: It should be in a small brown manila
13 envelope.

14 MS. SIMMONS: I'll move on until they find it. How
15 about that?

16 BY MS. SIMMONS:

17 Q. Sergeant Merck, showing you what has been admitted
18 as State's Number 46. What is that?

19 A. That is a piece of mail inside unit [REDACTED] bearing
20 the name of Dennis Temple.

21 Q. I'm showing you what has been admitted as State's
22 45. Can you tell me what that is?

23 A. That is another document found inside unit [REDACTED]
24 also bearing the name of Dennis Temple.

25 Q. I'm showing you what has been marked as State's

1 44. If you would tell me what that is?

2 A. Also another piece of mail inside unit [REDACTED] bearing
3 the name of Dennis Temple.

4 Q. I'm showing you State's Number 43.

5 A. Also another document bearing the name of Dennis
6 Temple inside [REDACTED].

7 Q. And back to what's been previously admitted as
8 State's Number -- the photograph which has previously
9 been admitted as State's 47, did you actually collect
10 that item?

11 A. Yes, ma'am, I did.

12 MS. SIMMONS: Beg the Court's indulgence for one
13 moment.

14 (State's Exhibit 64, business card of Dennis
15 Temple, was marked for identification.)

16 BY MS. SIMMONS:

17 Q. Sergeant Merck, I'm showing you what's been marked
18 for identification purposes as State's Exhibit 64.

19 THE COURT: Any objection?

20 THE DEFENDANT: No, Your Honor.

21 (Received in evidence was State's Exhibit
22 64.)

23 BY MS. SIMMONS:

24 Q. Could you open that item and explain to me what
25 that is?

1 A. It is a business card with the name Global
2 Providers, bearing the name of Dennis Temple. It has a
3 phone number, email address, and some products that he
4 was currently offering.

5 MS. SIMMONS: Your Honor, may I publish this to the
6 jury?

7 THE COURT: Yes, ma'am.

8 BY MS. SIMMONS:

9 Q. Sergeant Merck, reading that card, is it referring
10 to shoes?

11 A. Yes, ma'am, it does.

12 Q. Thank you. And all of the photographs and the
13 items that we observed, all of these things were
14 personally observed by you in your processing of unit
15 ■■■ -- I mean ■■■?

16 A. Yes, ma'am.

17 Q. Did you also have occasion to take one photograph
18 of the victim's unit, number 53, State's Number 53?

19 A. Yes, ma'am.

20 MS. SIMMONS: Judge, this has also been previously
21 provided to the Defendant.

22 THE DEFENDANT: Yes, Your Honor. That's my previous
23 objection.

24 THE COURT: All right. Subject to previous
25 objection, it's admitted.

1 (State's Exhibit 53 was received in
2 evidence.)

3 BY MS. SIMMONS:

4 Q. I'm just gonna show you State's Number 53 which
5 has now been admitted. What do you see here?

6 A. It's a pair of glasses that I was told was the
7 victim's broken glasses.

8 Q. They were found inside her unit?

9 A. Inside [REDACTED], yes, ma'am.

10 Q. And when you found them, were they broken?

11 A. Yes, ma'am.

12 Q. Sergeant Merck, did you also process the victim's
13 car in this case when it was recovered?

14 A. Yes, ma'am, I did.

15 Q. I'm gonna show you 7, 8, 9 and 10.

16 MS. SIMMONS: Judge, these have been previously
17 shown to the Defendant.

18 BY MS. SIMMONS:

19 Q. Are these a fair and accurate representation of
20 the vehicle as you processed it on what date?

21 A. Yes, ma'am. And I processed it on May 11th, 2010.

22 Q. And you can testify about the appearance of the
23 inside and the outside of the vehicle?

24 A. Yes, ma'am.

25 MS. SIMMONS: Judge, we would move these items into

1 evidence.

2 THE COURT: Any objection to those, subject to the
3 same....

4 (Ms. Simmons shows State's Exhibits 7, 8, 9
5 and 10 to Mr. Temple).

6 THE DEFENDANT: Did I previously object to them? I
7 don't think so.

8 THE COURT: Okay. Without objection.

9 THE DEFENDANT: Your Honor, I object. Disclosure
10 violation.

11 THE COURT: All right.

12 BY MS. SIMMONS:

13 Q. Number 7. Tell me what you see.

14 A. It is the victim's vehicle. The tag number did
15 come back to the victim's name and address.

16 Q. State's Number 10?

17 A. That is the back seat area. That is a piece of
18 metal art in the back seat.

19 That is the front passenger's side floorboard
20 showing the camouflage hood and pair of gloves.

21 Q. Were those items collected by you for evidence
22 processing?

23 A. Yes, ma'am.

24 Q. And Number 9?

25 A. That is the trunk of the vehicle.

1 Q. Are all the photographs that we looked at
2 consistent with the statement and the investigation?

3 A. Yes, ma'am.

4 Q. Did you also have occasion to take in items of
5 physical evidence in this case during your processing of
6 the crime scene?

7 A. Yes, ma'am, I did.

8 Q. What items of evidence did you receive -- did you
9 retrieve and take into your custody from the victim's
10 recovered vehicle?

11 A. The hood, the gloves, and I think those were the
12 main items.

13 Q. Did you receive the C.S.C. kit in this case which
14 has been previously referred to as S.L.E.D.'s 1?

15 A. Yes, ma'am, I did.

16 Q. When did you receive it?

17 A. That was on May 13th.

18 Q. Who did you receive it from?

19 A. I received it actually from temporary storage, a
20 refrigerated locker inside the evidence department.

21 Q. And who had placed it in temporary storage?

22 A. Brian Danielson.

23 Q. Okay. Has anyone altered or bothered that item
24 since it was placed there by Deputy Danielson?

25 A. No, ma'am.

1 Q. What did you do with the item once you retrieved
2 it?

3 A. Once I retrieved it, it was logged in to the
4 evidence department and I placed it in refrigerated
5 storage inside of the evidence department.

6 Q. Did you later retrieve that item from your secure
7 storage facility and take it to S.L.E.D.?

8 A. Yes, ma'am, I did.

9 Q. And when did you do that?

10 A. That was May 27, 2010.

11 Q. And S.L.E.D. heat-sealed it?

12 A. Yes, ma'am.

13 Q. Was it received by them in your presence and
14 sealed by them in your presence?

15 A. Yes, ma'am, it was.

16 Q. Who did you leave it with at S.L.E.D.?

17 A. Doris Yarbrough.

18 Q. Pursuant to a Court Order was a blood sample in
19 this case collected from the Defendant on September 22nd,
20 2010, which has been referred to thus far as S.L.E.D. 6?

21 A. Yes, ma'am.

22 Q. Where was that sample taken?

23 A. The sample was collected inside the courtroom in
24 the Oconee County Courthouse.

25 Q. Who drew that sample?

1 A. Christie Shiflett, a nurse with the Oconee County
2 Detention Center, drew that blood.

3 Q. Were you present the entire time that she drew
4 that blood from the Defendant?

5 A. Yes, ma'am.

6 Q. Was the blood immediately transferred to you?

7 A. Yes, ma'am, it was.

8 Q. And what did you do with it?

9 A. I immediately took it to the Oconee County Law
10 Enforcement Center, logged it in to evidence and placed
11 it in refrigerated storage.

12 Q. Is that a secure facility?

13 A. Yes, ma'am, it is.

14 Q. Did you later retrieve what is identified as the
15 Defendant's sample, S.L.E.D. 6, and take it to S.L.E.D.?

16 A. Yes, ma'am, I did.

17 Q. When was it taken to S.L.E.D.?

18 A. September 23rd, 2010.

19 Q. Who did you leave it with at S.L.E.D.?

20 A. Nikki Perry.

21 Q. And was that sealed and received in your presence?

22 A. Yes, ma'am, it was.

23 Q. Did you alter, destroy or tamper with that item in
24 any way?

25 A. No, ma'am, I did not.

1 Q. What date did you recover a pair of gloves from
2 the victim's car?

3 A. The gloves were recovered on May 11th, 2010.

4 Q. That is what is being referred to thus far as
5 S.L.E.D. 8. What did you do with the gloves when you
6 recovered them?

7 A. I took them back to the Law Enforcement Center,
8 logged them in, and put them in storage in the evidence
9 department.

10 Q. Is that a secure facility?

11 A. Yes, ma'am, it is.

12 Q. Did you later retrieve the gloves and take them to
13 S.L.E.D.?

14 A. Yes, ma'am, I did.

15 Q. Did you alter or tamper with them in any way on
16 the way to S.L.E.D.?

17 A. No, ma'am, I did not.

18 Q. Who did you leave the gloves with?

19 A. With Selena Kinard in S.L.E.D.

20 Q. Was that heat-sealed and received in your
21 presence?

22 A. Yes, ma'am, it was.

23 Q. What date was the belt recovered from the bed
24 inside the Defendant's storage unit?

25 A. That was also May 11th, 2010.

1 Q. What did you do with the belt when you recovered
2 it?

3 A. Packaged it and took it back to the Law
4 Enforcement Center, logged it in and placed it in
5 storage.

6 Q. Was the belt later transported to S.L.E.D.?

7 A. Yes, ma'am, it was.

8 Q. Did you tamper, alter or destroy that item in any
9 way?

10 A. No, ma'am, I did not.

11 Q. Who did you leave it with at S.L.E.D.?

12 A. Selena Kinard, also.

13 Q. The socks that were recovered from 193 that we
14 just looked at the pictures, when did you recover them?

15 A. Actually, we recovered those on May 10th, 2010.

16 Q. Where did you store them once you recovered them?

17 A. Inside the Oconee County Evidence Department.

18 Q. Again, in a secure facility?

19 A. Yes, ma'am.

20 Q. Did you later retrieve the socks which later
21 became known as S.L.E.D. 9 and take them to S.L.E.D.?

22 A. Yes, ma'am, I did.

23 Q. Did you alter, tamper with or destroy them in any
24 way on the way to S.L.E.D.?

25 A. No, ma'am, I did not.

1 Q. Were they received and heat-sealed and initially
2 processed in your presence?

3 A. Yes, ma'am, they were.

4 Q. Were all items that were tested at S.L.E.D.
5 returned to you after testing?

6 A. Yes, ma'am.

7 Q. Have those items been in your care, custody and
8 control since that time?

9 A. Yes, ma'am.

10 Q. During the times that the items of evidence have
11 been in your care, custody or control, have you altered,
12 tampered with or destroyed these items in any way?

13 A. No, ma'am, I have not.

14 Q. Have you taken appropriate steps to ensure the
15 integrity of the evidence preservation in this matter?

16 A. Yes, ma'am.

17 MS. SIMMONS: Please answer any questions the
18 Defendant might have.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Y'all come over here a moment.

21 (Discussion at sidebar.)

22 THE COURT: All right, ladies and gentlemen. We'll
23 break for today and we'll resume questioning tomorrow.
24 As I said, please don't discuss this case, please don't
25 read, listen to or watch anything concerning this case on

1 TV, including radio or the papers. I don't see any point
2 in hiding from you the fact that there is publicity about
3 it. So please don't look at it. You can save
4 everything, have somebody save it for you and you can
5 look at it later in the week.

6 All right. We'll see you tomorrow. And the way we
7 are moving, it's possible we will finish this case
8 tomorrow or at least give it to you tomorrow. So we'll
9 do our best. See you tomorrow morning at 10:00.

10 (Whereupon, the jury left the courtroom at
11 approximately 5:09 p.m.)

12 THE COURT: All right. See you all tomorrow
13 morning.

14 MS. SIMMONS: Thank you, Judge.

15 (Whereupon, the trial of the *State of South*
16 *Carolina v. Dennis Temple* adjourned on
17 December 14, 2010, at approximately 5:10
18 p.m., to resume on Wednesday, December 15,
19 2010, at approximately 10:00 a.m.)

20 ***

21

22

23

24

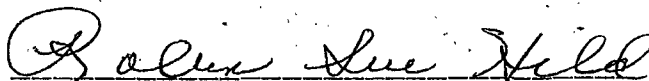
25

Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Oconee County, South Carolina, on the 14th day of December, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 27, 2010



Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

2010-GS-37-00886, 00887,
00888, and 00889

December 15, 2010
Walhalla, South Carolina

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter
Post Office Box 9
Walhalla, SC 29691

1	INDEX	
2		
3	WITNESSES	PAGE
4		
5	Patrick Merck	
6	Cross-Examination by Mr. Temple	339
7	Redirect Examination by Ms. Simmons	358
8	Recross-Examination by Mr. Temple	361
9	Betty Butler	
10	Direct Examination by Ms. Simmons	365
11	Cross-Examination by Mr. Temple	367
12	Josetta Blair	
13	Direct Examination by Ms. Simmons	367
14	Cross-Examination by Mr. Temple	371
15	Amanda Webb	
16	Direct Examination by Ms. Adams	372
17	Cross-Examination by Mr. Temple	392
18	Redirect Examination by Ms. Adams	400
19	Recross-Examination by Mr. Temple	401
20		
21	Defendant's Motions	401
22	Court's Ruling on Defendant's Motions	404
23	Court's Explanation Defendant's Right to Testify	406
24	Defendant's Motion	410
25	Court's Ruling on Defendant's Motion	412
	Closing Argument on behalf of the State (law)	415
	Closing Argument by the Defendant	420
	Closing Argument on behalf of the State (facts)	426
	The court's charge on the Law	429
	Verdict of the Jury	447
	Defendant's Motions	448
	Court's Ruling on Defendant's Motions	448
	Sentence of the Court	457
	Certificate of Court Reporter	459

1	EXHIBITS	
2		
3	NUMBER AND DESCRIPTION	ID./EV.
4	Defendant's Exhibit Number 1, rag	364/351
5	Defendant's Exhibit Number 2, bottle	364/351
6	Court's Exhibit 4-T, note from juror foreman	339
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 ** Start of Requested Certified Transcript of Record **

2 (Whereupon, the trial of the *State of South*
3 *Carolina versus Dennis Temple* resumed on
4 Wednesday, December 15th, 2010, at
5 approximately 10:50 a.m., day three of three
6 days.)

7 THE COURT: I've got a note from a juror that
8 (reading):

9 At the last break before leaving court yesterday the
10 jurors were frustrated and started to mumble things under
11 their breath. No deliberations have taken place.
12 However, further admonition may be necessary so that no
13 jurors talk about the case.

14 I'll take care of that.

15 Anything we need to take up before we start?

16 MS. ADAMS: No, sir. Your Honor, would you like
17 Patrick Merck to take the stand?

18 THE COURT: Yes, ma'am.

19 (Marked for identification was Court's
20 Exhibit 4-T, note from Juror Foreman.)

21 (Whereupon, the jury entered the courtroom at
22 approximately 10:53 a.m.)

23 THE COURT: All right. Ladies and gentlemen, first
24 let me tell you that the reason we're late this morning
25 is again my fault. I had some matters I had to take care

1 of other than this case. But all the parties have been
2 sitting here waiting on me and I apologize for that.

3 The other thing is I have a note from the jury that,
4 I don't want to read the whole thing, but the gist of it
5 is that some of the jurors may be getting a little
6 frustrated and there has been some indication that there
7 was some mumbling under your breath, whatever. Just make
8 sure, ladies and gentlemen, that you don't deliberate on
9 this case amongst yourselves. Please keep any thoughts
10 you might have to yourself. And, as I said earlier, you
11 can form an opinion about the evidence as it's coming in,
12 but don't form an opinion about the whole case until you
13 have heard the whole case. And if there continues to be
14 a problem with it, I may have to take some action. But I
15 guess the bottom line is keep your thoughts to yourself
16 and don't talk to each other about it.

17 Again, there has been some publicity. I'm assuming
18 that nobody has read anything or watched anything on
19 television about this case. If that is not so, you need
20 to let me know just so I can resolve that issue, too. (No
21 response.)

22 All right. Yesterday we stopped after the direct so
23 we'll begin with the cross.

24 All right. Yes, sir.

25

1 CROSS-EXAMINATION BY MR. TEMPLE:

2 Q. Sergeant Patrick Merck, where are you employed?

3 A. The Oconee County Sheriff's Office.

4 Q. How long have you been employed there, sir?

5 A. At the Sheriff's Office itself, approximately a
6 little over 14 years.

7 Q. And do you have any type of special training or
8 skills in a particular field?

9 A. Yes, sir, I do, in crime scene and evidence,
10 various classes in each of those fields.

11 Q. On May the 10th, 2010, did you receive a call in
12 regards to a C.S.C., criminal sexual conduct crime?

13 A. Yes, I did.

14 Q. And who was that call from?

15 A. That was from our dispatch at the Sheriff's
16 Office.

17 Q. And were you deployed to a scene in reference to
18 this, this crime?

19 A. Yes. I was asked to respond to Oconee Medical
20 Center, initially to respond there.

21 Q. And that response was in reference to you doing
22 what?

23 A. I'm sorry, could you repeat the question?

24 Q. Was you instructed to do a specific thing while
25 you was there?

1 A. I was asked to respond to the Medical Center to
2 meet with investigators in reference to a C.S.C. case.

3 Q. While you was there, did you take pictures of
4 anybody?

5 A. Yes, I did.

6 Q. And who was that?

7 A. The victim.

8 Q. The victim in this case?

9 A. Yes, the victim.

10 Q. Is it also true, Sergeant Merck, that a search
11 warrant was issued in reference to a storage unit number
12 193 at All Safe Storage in Seneca?

13 A. Yes, sir, it is.

14 Q. Did you and other officers search and seize
15 evidence inside of this particular unit?

16 A. Yes, we did.

17 Q. Did you take any pictures while you was there?

18 A. Yes, I did.

19 Q. The search warrant that was in reference to this
20 search, did it describe particular things that you were
21 in, in this particular unit to be seized?

22 A. Yes, it did.

23 Q. Could you tell us what those things were? Do you
24 need a little help?

25 A. I would have to look at the search warrant.

1 Q. Okay.

2 THE DEFENDANT: Your Honor, may I present this
3 search warrant to him, please?

4 THE COURT: Sure.

5 MS. SIMMONS: Judge, the search warrant has already
6 been admitted. It's a Court's exhibit.

7 THE DEFENDANT: All right. They're admitted.
8 Which ones are they?

9 MS. ADAMS: I'll be happy to hand them to him.

10 THE DEFENDANT: For reference --

11 THE COURT: Hold on just a second. Let her hand it
12 to him.

13 MS. SIMMONS: Beg the Court's indulgence for one
14 moment.

15 Judge, for the record, the search warrants dealing
16 with the Defendant's unit are, have been previously
17 marked as Court's 2 and Court's 3, and I'm handing them
18 to Sergeant Merck.

19 THE COURT: All right.

20 BY MR. TEMPLE:

21 Q. Could you name those items on that search warrant
22 list, please, sir?

23 A. Yes. On Exhibit Number 2 is a search warrant
24 dated 5-10-2010. The description of property sought, as
25 stated on the search warrant, search to include but not

1 limited to any and all personal property items, papers,
2 fibers, blood, semen, clothing, shoes, and any other
3 photographic documentation.

4 Q. Those specific items that you, that was noted in
5 the search warrant, that were taken from the unit, do you
6 have a list?

7 A. Of the items actually taken?

8 Q. Yes.

9 A. On the search warrant is pieces of torn white
10 sheets. Number two is a purple washcloth. Number three,
11 one empty plastic bottle. Number four, one green and
12 black headlight. Number five, one black bag with
13 miscellaneous clothing items. Number six, the bed sheet
14 from the top of bed (two mattresses stacked with pieces
15 of torn bed sheets and socks). Number seven is one
16 business card. And number eight is photographic
17 documentation.

18 MS. SIMMONS: And, Judge, I'm going to object to
19 this line of questioning. I believe there's already been
20 a pretrial ruling on the validity of the search warrant.
21 I think we are just relitigating that issue.

22 THE COURT: What is your issue about the search
23 warrant?

24 THE DEFENDANT: This is not the search warrant. I'm
25 going into about his testimony yesterday in reference to

1 the search warrant. She just didn't mention the search
2 warrant, but everything that was seized --

3 THE COURT: Okay. I'll allow you a little leeway.
4 Make sure you don't talk -- I mean, I've ruled on the
5 search warrant. Just make sure you ask some questions
6 that are relevant.

7 THE DEFENDANT: Okay.

8 BY MR. TEMPLE:

9 Q. Sergeant Merck, could you please tell us about, a
10 little more about the water bottle and why it became an
11 item of interest in the search warrant?

12 A. The water bottle was based on the victim's
13 statements. It was an area that we focused on based on
14 the victim's statements.

15 Q. So that's why you seized it?

16 A. Yes.

17 Q. And it was, it was collected as evidence --

18 A. Yes, it was.

19 Q. -- by you?

20 And did you -- what happened after it was
21 collected?

22 A. After it was collected I logged it into evidence.
23 It was secured in Evidence at the Oconee County Sheriff's
24 Office, and later it was submitted to S.L.E.D. for
25 analysis.

1 Q. Sergeant Merck, I also notice you mentioned a
2 couple of washcloths on this list as well. Was it also
3 an item of interest?

4 A. Yes, it was.

5 Q. Where did you find this washcloth in the unit?

6 A. It was laying on top of the makeshift bed. As I
7 entered unit [REDACTED], it would have been on the right side of
8 the bed nearest to the entrance where I went in.

9 Q. Were there any other washcloths in that area?

10 A. There were numerous other pieces of cloth in [REDACTED].

11 Q. Why didn't you collect these?

12 A. This was one that was, again, based on witness
13 statements, or victim's statements, that closely fit the
14 description that was given by the victim.

15 THE DEFENDANT: Your honor, at this time I would
16 like to -- there is a purple washcloth, and marked as
17 item number --

18 THE COURT: What number is it?

19 THE DEFENDANT: Five.

20 MS. SIMMONS: Judge, I object. The victim cannot
21 identify this washcloth, and it was not even presented to
22 her by the Defense.

23 THE DEFENDANT: Your Honor, these were an item of
24 interest that were seized due to Officer Merck's
25 interpretation of the victim's statement which --

1 THE COURT: Ladies and gentlemen, I need to send you
2 out of the room. But please don't discuss the case.

3 (Whereupon, the jury left the courtroom at
4 approximately 11:05 a.m.)

5 THE COURT: What question do you want to ask him
6 about?

7 THE DEFENDANT: What question? This evidence is
8 damaging to the State. They don't want me to enter it
9 into evidence because of that fact. I want to enter it
10 into evidence on the Defense side.

11 THE COURT: So you want to introduce the blue cloth
12 that we discussed two days ago that was brought out here,
13 right? I mean, I'm just asking.

14 THE DEFENDANT: I'm entitled to --

15 THE COURT: I'm just asking: Is that what you want
16 to do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there an objection to that?

19 MS. SIMMONS: Yes, Your Honor. The victim's
20 statement says a blue cleaning rag was used. The
21 washcloth we're talking about is a purple washcloth. If
22 he wanted to introduce this through this washcloth, he
23 would need to authenticate it through the victim as
24 identifying that this washcloth was the washcloth that
25 was used, and she can't identify it.

1 THE COURT: Was this something that this officer
2 collected?

3 MS. SIMMONS: He collected a washcloth, yes; but we
4 don't know if it was the one used.

5 THE COURT: I understand. But all he's trying to do
6 is introduce it into evidence. I think he can do that if
7 it was collected.

8 MS. SIMMONS: Judge, I want to make sure that he --
9 this officer did not do any testing on that washcloth, he
10 just collected it.

11 THE COURT: Right. All you can do --

12 THE DEFENDANT: I understand that --

13 THE COURT: Wait a minute -- let me -- all you can
14 do is introduce it. If he collected it, you can
15 introduce it, and it's in. And all he knows I assume is
16 that he collected the washcloths. I don't know anything
17 that would prevent him from introducing something that
18 was collected for his own purposes, whatever they are.
19 Okay.

20 THE DEFENDANT: Thank you, sir.

21 MS. ADAMS: Your Honor, if I may, that's fine as
22 long as he's not trying to say that this is the washcloth
23 that Catherine says was used on her.

24 THE COURT: And I don't know. I mean, I understand
25 why you are objecting, but I don't know where he's headed

1 yet. We'll have to deal with that when it comes up.

2 Yes, sir.

3 THE DEFENDANT: Your Honor, Sergeant Merck, a
4 14-year veteran, read the victim's statement, conducted a
5 search warrant and seized evidence in reference to the
6 victim's statement. He said he saw numerous washcloths
7 inside the unit.

8 THE COURT: I'll let you introduce it. But that's
9 all you can ask him, is: "Did you collect this?" "Why
10 did you?"

11 THE DEFENDANT: Yes, sir, I understand.

12 THE COURT: Okay. All right.

13 THE WITNESS: It's in the box, yes. The one
14 underneath it.

15 (The jury entered the courtroom at
16 approximately 11:08 a.m.)

17 THE WITNESS: Yes, that one, that one, the one
18 Philpott has. Yes, sir. Yes, sir.

19 (Discussion off the record.)

20 THE WITNESS: Do you want to maintain the chain on
21 this?

22 THE COURT: Yes. We'll maintain the chain, so he's
23 gonna -- of evidence.

24 Do you understand that, Officer? So that we can
25 track where everything has been, so he's just gonna be

1 careful.

2 THE WITNESS: (Nodded head.)

3 THE DEFENDANT: Okay.

4 THE COURT: Okay.

5 THE DEFENDANT: Yes, Your Honor, I would like to
6 enter that purple washcloth marked as item 5 and one
7 empty bottle, one empty plastic bottle, numbered as item
8 number 6, from the Oconee County Sheriff's Office
9 evidence collection log that was found, the washcloth was
10 found at the edge of the bed.

11 THE COURT: I understand.

12 Do you have the bottle?

13 THE WITNESS: Yes, sir. That's in that box right
14 there.

15 THE COURT: Do you have an objection?

16 MS. ADAMS: Your Honor, if he wants to talk about
17 the S.L.E.D. results of the washcloth and the bottle,
18 that's fine.

19 THE COURT: He's just going to introduce it.

20 MS. ADAMS: That's fine. I mean if he's -- okay.

21 THE COURT: All he's doing is introducing them. And
22 I'm gonna allow him to introduce them, because those were
23 two items that were mentioned on the search warrant.

24 All right. You want to introduce those into
25 evidence; is that correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. I'll allow you to introduce
3 them. Go ahead. Do you have a question about them?

4 THE DEFENDANT: Yes, sir. If I'm not mistaken, if I
5 don't introduce them now, future reference to these items
6 is void. Am I correct? I mean, could I bring these
7 issues back up as evidence?

8 THE COURT: Yeah. Don't go there. No. You've
9 introduced them as Defense Exhibits Numbers, what, 1 and
10 2?

11 THE DEFENDANT: 5 and 6.

12 THE COURT: Okay. We'll sort that out at a break.
13 Don't open it yet.

14 You don't need him to open it. You just want it
15 introduced, right?

16 THE DEFENDANT: That's right.

17 THE COURT: Okay. And just leave it like that.

18 And just for the record, it's continued with its
19 chain of custody seal, so, all right, go ahead.

20 (Defendant's Exhibits 5, washcloth, and 6,
21 empty plastic bottle, were received in
22 evidence, later re-marked as Defendant's
23 Exhibits 1 and 2.)

24 BY MR. TEMPLE:

25 Q. So one empty plastic bottle, item number 6, was

1 found in a five-gallon bucket in the storage unit.

2 THE COURT: All right. Make sure you ask a
3 question.

4 THE DEFENDANT: Well, Your Honor, I was going
5 through the ritual of introducing --

6 THE COURT: It's in. You're done.

7 BY MR. TEMPLE:

8 Q. Well, Sergeant Merck, you also stated in -- is it
9 true that there was a black bag with a bunch of Nike shoe
10 boxes inside that bag when you searched the unit?

11 A. Yes, there was.

12 Q. Did you collect this black bag for evidence as
13 well?

14 A. The black bag that I collected was on the bed, and
15 it contained clothing items, including -- it's not the
16 bag that contained the shoes, this was a smaller bag on
17 the bed.

18 Q. There was also a reference in the victim's
19 complaint that there was a bag that was, contained Nike
20 shoe boxes. Did you collect this?

21 A. No, sir, I did not collect that one. It is in the
22 photographs, though. I did collect a black bag, but it
23 was a smaller black bag on the bed.

24 Q. So was the bag of shoes in -- was there any
25 fingerprinting taken of the shoeboxes inside the bag?

1 A. No, sir, I did not.

2 Q. Why not?

3 A. First of all, those type boxes are not very good
4 sources for fingerprints; and based on what we had
5 discussed, areas we wanted to concentrate on in the
6 storage unit, those areas were not checked.

7 Q. Within the victim's statement she stated that the
8 assailant packed the bag of shoes, the Nike shoeboxes,
9 and put them in a bag. If the assailant packed his bag,
10 he touched those shoeboxes. Those shoeboxes should have
11 contained some type of fingerprints. You didn't even
12 attempt to collect them?

13 A. At that time I was not aware of that. No, sir, I
14 did not check those boxes.

15 Q. In reference to the, to the search warrant, I
16 notice you also seized a belt. Did you put it in an
17 evidence log?

18 A. Yes, I did.

19 Q. For fingerprinting?

20 A. No, sir, not the belt.

21 Q. The belt was not fingerprinted?

22 A. No, sir. Basically a leather belt such as that
23 one cannot be fingerprinted.

24 Q. But it was sent to a forensics laboratory?

25 A. Yes, it was.

1 Q. Did you also, Sergeant Merck, do a collection of
2 evidence on the vehicle that was allegedly stolen?

3 A. Yes, I did.

4 Q. Did you dust for prints, fingerprints?

5 A. Yes, I did, on the exterior.

6 Q. Not in the interior?

7 A. On certain portions of the interior, most of the
8 interior of a vehicle is not a good source for
9 fingerprints based on the texture and the fabric. And
10 those areas are basically, you can't get a fingerprint
11 off cloth unless it's, has a solid finish to it.

12 Q. Sergeant Merck, what about the mirror and the
13 window, each side window of the vehicle? Did you dust
14 for prints the mirror, the glass, the window, the
15 console?

16 A. The mirror, yes, the mirror was checked. That is
17 one area that can be checked. But, like I said, there
18 are not many areas in a vehicle, based on the way they
19 are manufactured today, that you can recover identifiable
20 prints.

21 Q. But did you dust for prints on that mirror?

22 A. Yes, I did.

23 Q. You did?

24 A. On that, on the mirror, yes, I did.

25 Q. And the windows, on both sides of the front

1 windows?

2 A. I don't remember doing the windows. Those can be
3 checked visually for fingerprints. You don't necessarily
4 have to dust a piece of glass in order to find a
5 fingerprint. You can visibly see fingerprints on a piece
6 of glass.

7 Q. So no prints was found?

8 A. I did recover one print on the exterior back
9 windshield. They were not very good prints, though.
10 There was one left.

11 Q. Did you recover -- this, this cloth that belonged
12 to the victim, did you recover the fingerprints of the
13 victim on the cloth?

14 A. No, sir, I did not.

15 Q. So can you, can you tell us who was driving the
16 car, who had it, based upon the evidence you collected?

17 A. No, sir. I can't.

18 Q. You can't say for sure who was driving?

19 A. No, sir.

20 Q. What about the locks, Sergeant Merck, on the
21 storage shed; where they seized and -- in this case?

22 A. No, sir, they were not.

23 Q. No fingerprinting taken [sic] either, right?

24 A. No, sir. I did check the lock of the victim's
25 storage unit -- actually, I did not check that lock. At

1 that time I was told the officers had to actually touch
2 that lock in order to get the unit opened, and they had
3 already touched that lock, so I did not check it.

4 Q. Did you touch the handle that you -- the door, the
5 door opens and the door closes a certain way.

6 A. Right.

7 Q. There should be some type of handles.

8 A. I checked those areas, the handles of the door on
9 the victim's unit, I did check those and the exterior
10 portion of the door in certain areas.

11 Q. What about on the inside, did you check any other
12 items inside of the unit?

13 A. Inside the victim's unit?

14 Q. Well, the assailant unit.

15 A. I'm sorry?

16 Q. In the Defendant unit. If there was -- the victim
17 alleged that the -- was inside the storage unit?

18 A. Which --

19 Q. Inside the storage unit. Either one.

20 THE COURT: Repeat your question. Just ask -- what
21 was the question?

22 BY MR. TEMPLE:

23 Q. Did you find any fingerprints inside the storage
24 unit?

25 A. In which storage unit?

1 Q. Let's say the, the one that the, the victim said
2 she was raped in.

3 A. Inside unit [REDACTED], no, sir, I did not.

4 Q. You found no evidence?

5 A. No, I did not.

6 Q. Did you find any fingerprints in the victim's
7 storage unit on the sunglasses, the broken sunglasses, or
8 anything inside of it?

9 A. No, I did not.

10 Q. Not on the door handles?

11 A. No, I did not. I found one. On the victim's unit
12 there was one partial print on the outside of the door
13 frame; that was the only halfway decent print that was
14 recovered. But, as I said, it was on the exterior
15 portion on the outside of the storage unit, not on the
16 interior.

17 Q. Is it also true you, that day you collected other
18 items, such as socks?

19 A. Yes, I did.

20 Q. Sheets, you collected sheets?

21 A. Yes, I did.

22 Q. That were involved in this crime?

23 A. Yes. Yes, I did.

24 Q. Did you find the assailant -- well, you couldn't
25 determine that, so...

1 But they placed the evidence, they placed into
2 evidence these items?

3 A. The socks and the sheets?

4 Q. Right.

5 A. Yes, they were.

6 Q. When you inspected the car, did you notice any
7 damage to the car?

8 A. The victim's vehicle?

9 Q. Excuse me?

10 A. The victim's vehicle?

11 Q. Yeah. The victim's, the victim's vehicle.

12 THE COURT: The car. The car, you asked?

13 THE DEFENDANT: Yes, sir.

14 THE WITNESS: I don't recall any damage.

15 BY MR. TEMPLE:

16 Q. No kind of indication where there might have been,
17 anybody had been in an accident or --

18 A. No, sir.

19 Q. -- a bump or a scrape, dent?

20 A. Not right off, I don't recall any damage.

21 THE DEFENDANT: Thank you, Sergeant Merck.

22 Your Honor, no further questions.

23 THE COURT: Redirect?

24 MS. SIMMONS: Judge, just briefly.

25

1 REDIRECT EXAMINATION BY MS. SIMMONS:

2 MS. SIMMONS: I beg the Court's indulgence for just
3 one moment so I can get it turned on.

4 BY MS. SIMMONS:

5 Q. Sergeant Merck, while we're waiting for it to warm
6 up, I'm just gonna backtrack a little bit with you. You
7 indicated that you found a pair of gloves in the victim's
8 vehicle; is that correct?

9 A. Yes, that's correct.

10 Q. If you were in that car wearing gloves, would it
11 be consistent with finding no fingerprints?

12 A. Yes, it would.

13 Q. You also indicated you found no prints at all in
14 the victim's vehicle; is that correct?

15 A. Inside, yes, that is correct.

16 Q. Based on your training and experience, could that
17 be consistent with the inside of a vehicle being wiped
18 down?

19 A. Yes, ma'am, it could be.

20 Q. And on the storage units, the Defendant said that
21 you didn't find any prints. In fact, prints were not
22 attempted because you knew ownership of both of these
23 units, right?

24 A. Correct.

25 Q. Bringing you back to, a little further back as far

1 as your processing -- do you see that all right?

2 A. Yes.

3 Q. -- your processing of the Defendant's storage
4 unit, unit [REDACTED], the bottle in question has been admitted
5 by the Defendant. Can you point it out in that picture
6 and tell me where it was found?

7 A. In the center of the photograph in the white
8 five-gallon bucket, that is the bottle in the top of it.

9 Q. Right there?

10 A. Yes, ma'am.

11 Q. And that bottle, was it empty when you recovered
12 it?

13 A. Yes, ma'am.

14 Q. And what is that immediately to the left of the
15 bucket sitting in the floor with the large bottle?

16 A. The one with the white and yellow label is a
17 cleaning solution.

18 Q. And based on the victim's statement -- you have
19 been in this storage unit -- how many feet do you
20 estimate from where the incident, from where she said the
21 rape occurred to where this bucket was located?

22 A. Two to three feet.

23 Q. As to the purple washcloth, you did, you did
24 obtain a purple washcloth from inside the unit, correct?

25 A. Yes, ma'am, I did.

1 Q. And you have testified that numerous other pieces
2 of cloth rags were found inside the unit?

3 A. Yes, ma'am.

4 Q. And is it indeed true that the victim cannot
5 identify this washcloth and the one that was used in her
6 attack?

7 A. Yes, ma'am, it is.

8 Q. And numerous rags were found in [REDACTED] in the
9 clutter?

10 A. Yes, ma'am.

11 Q. And not all, not all rags were collected?

12 A. No, ma'am, they were not.

13 Q. Would that have been physically impossible?

14 A. Yes, ma'am.

15 MS. SIMMONS: Thank you.

16 THE COURT: All right. Thank you, sir. You can
17 step down.

18 THE DEFENDANT: Your Honor, can I recross, please?

19 THE COURT: Just one question, please, one or two
20 questions.

21 RECROSS-EXAMINATION BY MR. TEMPLE:

22 Q. Sergeant Merck, this vehicle, was this vehicle
23 abandoned? Was it allegedly abandoned, left out in the
24 open?

25 A. To my knowledge, yes. I was not there when it was

1 recovered.

2 Q. Well, do you know if this vehicle's doors was
3 opened or closed?

4 A. I do not know. As I stated, I was not there when
5 the vehicle was recovered.

6 Q. So you don't know if it was exposed to other
7 people or not? You don't know if anyone went inside?

8 A. I don't have any idea.

9 Q. Also, you said this was cleaning agent. What kind
10 of cleaning agent is it if it's cleaning agent?

11 A. As far as a particular brand, I couldn't tell you.
12 I know it had the odor of a pine cleaner that I am used
13 to.

14 Q. Did you sample it or smell it?

15 A. Yes, I smelled it.

16 Q. You smelled it?

17 A. Yes, sir, I did.

18 Q. But you didn't look at the label?

19 A. No, sir, not at that time.

20 Q. When you took photos, when you got these photos
21 when you entered into this unit, you mentioned a lot of
22 rags was in there. But you mentioned only one rag at the
23 corner of the bed. If this, if all these rags was
24 involved in this incident, wouldn't they be somewhere in
25 the vicinity, or, of the, where all the other items was

1 found or -- this was the only rag that caught your
2 attention. For some reason all the other rags you
3 excluded. Did this rag have any importance to you, any
4 interest?

5 A. The one reason, it was on the bed.

6 Q. The rag was on the bed?

7 A. Yes, it was.

8 Q. Or by the bed, the edge of the bed?

9 MS. SIMMONS: Objection, Your Honor, asked and
10 answered.

11 THE COURT: Yeah. Just ask one question and let him
12 answer it.

13 THE DEFENDANT: Okay.

14 BY MR. TEMPLE:

15 Q. On the bed. Was this also the same bed that you
16 recovered the socks and the sheets and the such and such,
17 the blanket?

18 A. Yes, it was.

19 THE DEFENDANT: Thank you. No further questions.

20 THE COURT: Anything?

21 MS. SIMMONS: No.

22 THE COURT: Okay. You can step down.

23 (Whereupon, the witness was excused.)

24 THE COURT: Ladies and gentlemen, I'm gonna send you
25 out. We need to mark a piece of evidence and get that

1 straightened out. Don't discuss the case. It will only
2 take us ten minutes.

3 (Whereupon, the jury left the courtroom at
4 approximately 11:36 a.m.)

5 (The Court Reporter and Judge conferred off
6 the record.)

7 THE COURT: Yeah. What do you all have as
8 Defense -- what was Defense Exhibit 1 through 4?

9 MS. ADAMS: Judge, I don't think there are any.

10 THE DEFENDANT: No, sir.

11 THE COURT: You mentioned five and six. I've got it
12 as one and two would be the rag and the bottle.

13 MS. SIMMONS: Your Honor, I think he means one and
14 two.

15 THE COURT: You meant one and two?

16 THE DEFENDANT: Well, on the Oconee County Sheriff's
17 evidence collection bottle, it's labeled item five and
18 six.

19 THE COURT: So Defense 1 and 2 would be, 1 would be
20 the rag and 2 would be the bottle, which is still in its
21 container, and I intend to keep it there to keep it safe.
22 You all weren't gonna use it, are you?

23 MS. ADAMS: No, sir.

24 THE COURT: Well, if you do, we'll deal with it.
25 So it's 1 and 2. That was the confusion. Let's

1 take five minutes.

2 (Defendant's Exhibit Number 1, rag, was
3 marked for identification, formerly marked as
4 Defendant's Exhibit Number 5.)

5 (Defendant's Exhibit Number 2, bottle, was
6 marked for identification, formerly
7 Defendant's Exhibit Number 6.)

8 (Discussion off the record.)

9 (A recess was taken.)

10 THE COURT: Thanks. Have a seat.

11 Okay. You can call them in.

12 (The jury entered the courtroom at
13 approximately 12:00 p.m.)

14 THE COURT: All right. You can call your next
15 witness.

16 MS. SIMMONS: Thank you, Judge. We would call Betty
17 Butler.

18 Whereupon,

19 Betty Butler,

20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. SIMMONS:

22 THE COURT: Yes, ma'am.

23 BY MS. SIMMONS:

24 Q. Good morning, Ms. Butler.

25 A. Good morning.

1 Q. Where are you employed, Mrs. Butler?

2 A. The State Law Enforcement Division, also known as
3 S.L.E.D.

4 Q. And what is your job title there?

5 A. Forensic Technician.

6 Q. And how long have you been at S.L.E.D.?

7 A. Over 15 years.

8 Q. What does your job as a forensic technician
9 entail?

10 A. As a forensic technician we take in evidence where
11 we do a chemical test, and sometimes we pick up evidence
12 and deliver it other places.

13 Q. On September 23rd, 2010, did S.L.E.D. receive what
14 is commonly known as a suspect blood sample?

15 A. Yes, we did.

16 Q. Is that S.L.E.D. Item 6?

17 A. Yes. I received the suspect blood on September
18 24th, 2010.

19 Q. Had it been altered or tampered with in any way at
20 all?

21 A. No, it was not.

22 Q. Who did you receive the suspect blood from?

23 A. From Forensic Technician Nikki Perry.

24 Q. What did you do with it?

25 A. When I received the item, I put it into my

1 custody, and I went to the third floor and placed it into
2 our refrigerator, which is a secured area in that
3 particular location.

4 Q. And what time did you deposit the suspect blood
5 into the third floor storage?

6 A. It was September 24, 2010, at 9:34.

7 Q. And that is a secure storage facility?

8 A. Yes, it is.

9 Q. Did anyone else have access to the suspect blood
10 while it was in your possession up until the time you
11 deposited it on the third floor?

12 A. No, they did not.

13 MS. SIMMONS: Please answer any questions the
14 Defendant might have.

15 CROSS-EXAMINATION BY MR. TEMPLE:

16 Q. Ms. Butler, would you please state again what day
17 that you deposited blood?

18 A. September 24th, 2010.

19 Q. And this was item number -- do they have an item
20 number?

21 A. Item Number 6.

22 Q. And you did no further testing?

23 A. No, I did not.

24 THE DEFENDANT: Thank you, ma'am. That's all of my
25 questions.

1 THE COURT: Anything else?

2 MS. SIMMONS: Nothing, Judge.

3 THE COURT: Ma'am, you can be excused.

4 (Whereupon, the witness was excused.)

5 MS. SIMMONS: Your Honor, the State calls Josetta

6 Blair.

7 Whereupon,

8 Josetta Blair,

9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. SIMMONS:

11 Q. Good morning, Ms. Blair.

12 A. Good morning.

13 Q. Where are you employed?

14 A. South Carolina Law Enforcement Division, commonly
15 known as S.L.E.D.

16 Q. And what is your job title at S.L.E.D.?

17 A. A Forensics Technician.

18 Q. How long have you been at S.L.E.D.?

19 A. For approximately two and a half years.

20 Q. Explain to me what you do as a forensic
21 technician.

22 A. I receive evidence from the submitting agencies
23 throughout South Carolina. Once I receive that evidence,
24 I process the evidence for any type of biological fluids,
25 hairs, and fibers.

1 Q. Did you have occasion to be involved in S.L.E.D.
2 Case L10-05754 regarding this Defendant?

3 A. Yes, I did.

4 Q. Did S.L.E.D. receive a belt and a pair of gloves
5 in this case?

6 A. Yes.

7 Q. And when were those received by S.L.E.D.?

8 A. When did I receive it?

9 Q. When did you receive it -- I apologize -- the belt
10 and gloves?

11 A. Okay. I received the belt and gloves on October
12 25th, 2010, at 11:49.

13 Q. From whom?

14 A. Nikki Perry.

15 Q. Did you mark, notate for identification when you
16 received those items?

17 A. Yes. When I received those items, they were taken
18 into my custody, and while processing them I marked them
19 with my initials, the lab number and the I.D. number.

20 Q. Had they been altered or tampered with in any way
21 when you received them?

22 A. No. The seals were intact.

23 Q. What was your particular role with the belt and
24 gloves?

25 A. With the belt and the gloves, I was -- the request

1 for the belt and gloves were ownership and touch D.N.A.
2 in processing the gloves, I took two swabs from the
3 exterior of the gloves for touch D.N.A. and two swabs
4 from the interior of the gloves for ownership. And on
5 the belt I took the swab from the ends of the belt for
6 touch D.N.A. and also from the swab from the center of
7 the belt for touch D.N.A.

8 MS. SIMMONS: Judge, may I approach the witness?

9 THE COURT: Yes, ma'am.

10 BY MS. SIMMONS:

11 Q. Ms. Blair, I am going to show you what has already
12 been admitted into evidence as State Number 56, and I
13 have placed some gloves for you. This is the belt. Can
14 you show to the jury your markings on the belt?

15 A. Yes. (Witness opens bag.) On the outside you can
16 see where I had marked the Item Number 10, and the Lab
17 Number L10-05754, and the date was October 26th, 2010,
18 with my initials.

19 On the belt here you can see where I marked the
20 Item Number, 10, S.L.E.D.'S Item Number 10, Lab Number
21 L10-05754, and my initials. And also you will see where
22 I did the swabs, took the swabs on the belt.

23 Q. There are multiple spots on the belt?

24 A. Correct. For the Item Number 10.1 is the swab
25 from the belt ends, which you will see 10.1 here and 10.1

1 here. And then in the center you will see 10.2 where I
2 took the swab from the center of the belt.

3 Q. And once you collected the swabs or scrapings from
4 the gloves and the belt, what's the next thing you do
5 with those?

6 A. Once I have scraped and swabbed the items, they
7 are placed in a heat- -- in a coin envelope -- excuse
8 me -- in a coin envelope. Once they are dry they are
9 placed in that envelope and they are placed in a
10 heat-sealed pouch which has my initials, the lab number,
11 and the item number.

12 Q. And these are separately heat-sealed to prevent
13 cross-contamination?

14 A. Correct, they are separately heat-sealed in a
15 coin, sealed in coin envelopes, separate.

16 Q. And once you had placed those in envelopes, where
17 did they go?

18 A. They actually were transferred to Amanda Webb. I
19 physically gave her those swabs once I finished
20 processing the case.

21 Q. Did anyone else have access to the belt and gloves
22 and the swabs you produced from them during the time you
23 were processing them up to the point you deposited them
24 with Amanda Webb?

25 A. No, no one had access.

1 MS. SIMMONS: Please answer any questions the
2 Defendant may have.

3 THE COURT: Any questions?

4 (Mr. Tavernier and the Defendant conferred
5 off the record.)

6 CROSS-EXAMINATION BY MR. TEMPLE:

7 Q. Ms. Blair, so you did no further testings on these
8 items?

9 A. Once I took the swabs from those items, no, sir, I
10 did no further testing.

11 Q. And these were the only two items that you
12 received?

13 A. No, sir. I received other items besides the
14 gloves and belt.

15 Q. What was those items?

16 A. S.L.E.D. Lab Item Number 7 was a washcloth,
17 S.L.E.D. Number Item 8.1 was a hood, S.L.E.D. Lab Number
18 8.2 was a pair of gloves, Item 8.3 was a car charger, and
19 Item 8.10 was a belt.

20 THE DEFENDANT: Thank you, ma'am. No further
21 questions.

22 THE COURT: Anything else from the State?

23 MS. SIMMONS: No, Your Honor.

24 THE COURT: Thank you, ma'am. If you need to be
25 excused, you can be excused, okay?

1 (Whereupon, the witness was excused.)

2 MS. ADAMS: Your Honor, the State calls Amanda Webb.

3 Whereupon,

4 Amanda Webb,

5 after first having been duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MS. ADAMS:

7 THE COURT: All right, yes, ma'am.

8 MS. ADAMS: Thank you, Your Honor.

9 BY MS. ADAMS:

10 Q. Amanda, where are you employed?

11 A. With the South Carolina Law Enforcement Division,
12 also known as S.L.E.D.

13 Q. What is your occupation there, what's your
14 occupation?

15 A. I'm a D.N.A. Analyst.

16 Q. And how long have you been employed with S.L.E.D.?

17 A. Approximately three years.

18 Q. Please tell the jury a little bit about your
19 educational background and training.

20 A. I have a Bachelor's of Science Degree in Forensic
21 Chemistry from Marshal University in West Virginia. And
22 I have a Master's Degree in Forensic Science, also from
23 Marshal University. And once I was employed with
24 S.L.E.D., I went through about a year and a half of
25 training before doing my own independent casework.

1 Q. And when you say you go through a year and a half
2 of training, what does that entail?

3 A. I am trained by a Court-Qualified D.N.A. Analyst,
4 I first learn how to handle evidence, how to do the
5 testing, how to run the instrumentation, and how to
6 interpret results. There is also a series of tests that
7 I must pass and get correct results for in order to be
8 allowed to work on any evidence.

9 Q. So have you testified in court before?

10 A. Yes, I have.

11 Q. And have you been qualified as an expert before?

12 A. Yes, I have.

13 MS. ADAMS: Your Honor, at this point I would like
14 to qualify Amanda Webb as an expert in Forensic Serology
15 and D.N.A. Analysis.

16 THE COURT: Any objection?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: She's qualified.

19 MS. ADAMS: Thank you, Your Honor.

20 BY MS. ADAMS:

21 Q. Please tell the Court what D.N.A. is.

22 A. D.N.A. is a molecule found in the body. It's
23 inherited from our parents. We get half of our D.N.A.
24 from our mothers and half from our fathers. Each
25 individual has their own D.N.A. that's different for each

1 person; except in the case of identical twins, identical
2 twins do have the same D.N.A.

3 And in forensics we test 16 different locations on
4 the D.N.A., and those 16 locations as a whole generates
5 what's called a D.N.A. profile. And a D.N.A. profile are
6 developed from evidence items and also known standards.
7 Known standards are D.N.A. collected from people that you
8 know it originates from, like victims or suspects. And
9 then any D.N.A. profile generated from evidence is
10 compared to the victim or the suspect.

11 Q. All right. So what type of fluids do you test?

12 A. I can test for blood, semen, and saliva.

13 Q. So in this particular case did you receive known
14 blood samples from the victim, Catherine McGough, and the
15 Defendant, Dennis Temple, for comparison purposes?

16 A. Yes, I did.

17 Q. And had those known samples been altered or
18 tampered with in any way?

19 A. No, they had not.

20 Q. Okay. And how do you know that?

21 A. I know because the packaging was intact when I
22 received it. The heat-sealed pouches that we have been
23 mentioning were attached and sealed properly and
24 initialed by anyone who had handled the evidence before.

25 I believe the blood standard from Dennis Temple

1 came from the D.N.A. technician, Sherree Brown. That had
2 been opened by Sherree Brown, because the blood samples
3 come in tubes of blood, and in order for us to make it
4 more usable and workable with the D.N.A. analysis, the
5 blood is just simply poured on paper, and that way I can
6 cut out pieces of the paper for my further testing. So
7 Sherree did pour the blood, but that's just to preserve
8 it, and that's all that was done to that standard.

9 Q. Now, Amanda, you also received several different
10 pieces of evidence in this case to test for D.N.A.:
11 Swabs from gloves, swabs from the belt that was mentioned
12 earlier, socks, the victim's rape kit, and obviously,
13 just like you said before, when you receive it, you would
14 obviously know if it had been intact or not because
15 everything is sealed properly from Process, correct?

16 A. Yes, that's correct.

17 Q. So all those items that you received were intact,
18 as they should have been?

19 A. Yes, that's correct.

20 Q. So once you receive these known blood standards
21 from the victim and the Defendant, again you compare them
22 to evidence that law enforcement sends you that's
23 collected at the crime scene; is that correct?

24 A. Yes, that's correct.

25 Q. Explain to the jury the different kinds of results

1 that you can get when you test evidence.

2 A. Basically the first thing I look for when
3 interpreting data of D.N.A. analysis, first I look to see
4 if there is a D.N.A. profile developed at all. If not,
5 then I say no D.N.A. profile was developed from those
6 items in my report.

7 If I do see a D.N.A. profile, I then look to see
8 if it's from one individual, which is called a single
9 source profile, or a mixture of two or more individuals.
10 If it's a single source, one individual, I can then
11 compare that evidence to standards that I can say match,
12 which means it's the same profile as a known individual,
13 or I can say excluded, which is a non match. And
14 sometimes there's not enough D.N.A., and I say it's
15 insufficient for interpretation.

16 If there is a mixture of two or more individuals,
17 sometimes one individual will deposit more D.N.A. on an
18 item than the other. We call those major contributors
19 just because they are contributing more D.N.A., and I'm
20 able to differentiate between individuals on those items,
21 and the person contributing less D.N.A. to that item
22 would then be the minor contributor.

23 Sometimes you can't discern between two different
24 individuals and that's just simply, you just call it a
25 mixture. But if you have enough, you can still include

1 or exclude someone.

2 Q. And that means basically if you exclude someone,
3 then their profile is not involved at all, so they didn't
4 touch it or whatever the case may be with a particular
5 evidence test?

6 A. That's correct. Their D.N.A. would not be on that
7 item.

8 Q. Okay. Now, before we start, the Defendant
9 mentioned, which is Defendant's Exhibit 1, this purple
10 washcloth or the rag. Did you test the rag for semen and
11 also to determine if the victim's D.N.A. and/or the
12 Defendant's D.N.A. was on it?

13 A. Yes, that's correct. I tested the swabs from the
14 rag.

15 Q. All right. And please tell the jury what your
16 findings were from that rag.

17 A. I tested two cuttings from the rag, and I tested
18 those for semen, and I didn't find any semen on those
19 cuttings.

20 And then there were two swabs taken from the rag,
21 and that was to check for touch D.N.A., which is just to,
22 just to see if anyone could have handled the rag or if it
23 was, if it was on their person and they could have gotten
24 D.N.A. on the item.

25 And the two swabs from the rag, from one of the

1 swabs I developed a mixture of at least two individuals,
2 and the D.N.A. profile of the major contributor to this
3 mixture, meaning the person who donated the most D.N.A.
4 to this rag, matches Dennis Temple.

5 And I was also looking for the victim on this rag,
6 and Catherine McGough was excluded as a possible
7 contributor of D.N.A. to this item, meaning I did not
8 find her D.N.A. on the rag.

9 And then the other swab from the rag was a single
10 D.N.A. profile, and it also matches Dennis Temple.

11 Q. So Amanda, specifically, if this rag had been
12 soaked in a cleaning solution, would you expect to find
13 anyone's D.N.A. on it?

14 A. No, I would not if it had been soaked. Usually
15 cleaning solutions are harsh agents and they can degrade
16 D.N.A. or sterilize D.N.A. We use cleaning solutions.
17 For instance, we use bleach in the lab, and that's one of
18 the things we use to sterilize our work spaces and get
19 rid of any residual D.N.A. that may be left, and we clean
20 in between cases to make sure that it doesn't carry over.
21 So I know cleaning agents do sterilize or destroy D.N.A.

22 Q. So, since you found the Defendant's D.N.A. along
23 with someone else 's and not Catherine's, is it highly
24 likely then that this is not the rag that Catherine said
25 the Defendant used to wipe her and clean her with?

1 A. I would say that would be highly likely, because a
2 rag soaked in a cleaning solution I would -- it would be
3 nearly impossible to find anyone's D.N.A. on it.

4 Q. Now the bottle. Was the bottle tested -- and this
5 is the bottle that we believe actually that the Defendant
6 used to clean Catherine out -- was the bottle tested for
7 a cleaning agent?

8 A. Yes, it was.

9 Q. Okay. And what were the results?

10 A. No cleaning solution was found.

11 Q. Okay. When was that bottle tested?

12 A. It was tested in November.

13 Q. All right. So the bottle was tested approximately
14 six months after the incident occurred?

15 A. Yes, that's correct.

16 Q. All right. Does it surprise you that you did not
17 find a cleaning agent or solution when you tested that
18 bottle?

19 A. No, it doesn't surprise me, because cleaning
20 solutions can decrease over time, can dissipate over
21 time. And since it had been six months since the
22 incident, and -- the packaging needs to be a certain way,
23 and it was in a paper bag, and when I received the item,
24 it was a Gatorade bottle, and there was kind of a screw
25 top from the mouthpiece, and it wasn't screwed down all

1 the way, so if there was anything inside the bottle, like
2 a cleaning solution, I would imagine that it could have
3 evaporated out of that bottle.

4 For instance, if you have used cleaning solution
5 before, which I'm sure you have, the smell from the
6 cleaning solution is kind of the indicator that we test
7 for for what makes that smell, the chemicals that do,
8 that's kind of what we test for. And you notice that
9 after you have cleaned, you can still smell the solution,
10 but if you wait a couple hours or so and come back, you
11 can't smell it anymore. That's because it has
12 evaporated. And I would say that that's a likely
13 scenario here, six months after the fact.

14 Q. And when you swabbed that bottle, it was empty,
15 correct?

16 A. Yes, that's correct.

17 Q. All right. Now, you also -- we asked you to test
18 the mouth of the bottle for the victim's D.N.A., correct?

19 A. Yes, that's correct.

20 Q. All right. And what were the results of that?

21 A. There was a partial D.N.A. profile developed from
22 the mouth of the bottle, but it was insufficient for
23 reliable interpretation. What that means is that I did
24 find a little bit of D.N.A., but there was not enough
25 there for me to make a comparison.

1 Q. Are those results also consistent with that bottle
2 being in a cleaning solution?

3 A. Yes, they are. If there was any D.N.A. on the
4 bottle and the cleaning solution came in contact, it
5 could have sterilized the D.N.A.

6 Q. So again, the lack of Catherine's D.N.A. is also
7 consistent with her statement?

8 A. Yes, that's correct.

9 Q. And just because you didn't find a cleaning
10 solution in that bottle doesn't mean that there wasn't a
11 cleaning solution in it six months earlier?

12 A. Yes, that's correct.

13 Q. All right. Let's go now, Amanda, to the swabs you
14 received that were taken from the inside and outside of
15 the gloves that were found in the victim's car. What are
16 you usually looking for with evidence such as gloves?
17 What are you testing? What do we want to know?

18 A. In this case we were testing for -- the common
19 practice in S.L.E.D. is to test gloves for ownership or
20 touch D.N.A., meaning who could have been wearing the
21 gloves and if they touched anyone while wearing those
22 gloves. And as item comes in to S.L.E.D., a swab, there
23 is a swab of the exterior of the glove taken and then a
24 swab of the interior of the glove taken. And the
25 exterior is looking to see if someone wearing it touched

1 someone, and the interior would be to see who was wearing
2 them.

3 Q. So tell the jury what your results were first from
4 the swabs taken from the outside of the gloves.

5 A. The swab from the outside of the gloves was a
6 mixture of at least two individuals. Catherine McGough
7 and Dennis Temple cannot be excluded as possible
8 contributors to this mixture. And that just means that I
9 found Catherine McGough's and Dennis Temple's D.N.A. on
10 the outside of those gloves.

11 Q. What were your results of the swabs taken from
12 inside of the gloves found in Catherine's car?

13 A. The inside of the gloves were again a mixture of
14 two individuals. Here I was able to discern a major
15 contributor, meaning someone who donated more D.N.A., and
16 that matched Dennis Temple. And Catherine McGough could
17 not be excluded as a possible minor contributor of D.N.A.
18 to the item. So her D.N.A. was also found on the inside
19 of the glove.

20 Q. And again I want to make sure the jury
21 understands, as a major contributor, does that mean that
22 Dennis Temple had prolonged contact with the inside of
23 those gloves?

24 A. That would be one possibility, yes, that he was
25 wearing them perhaps and maybe got more, more of his skin

1 cells on the gloves.

2 Q. Okay. Now, the victim in this case, Catherine
3 McGough, says that the Defendant wore gloves during this
4 nine-hour ordeal as he was coming in and out. But she
5 never touched gloves --

6 THE DEFENDANT: Objection, Your Honor.

7 BY MS. ADAMS:

8 Q. -- she never put those gloves on.

9 THE COURT: Hold on.

10 What's your objection?

11 THE DEFENDANT: She never, she never stated that in
12 her report.

13 MS. ADAMS: Your Honor, I apologize.

14 THE COURT: Well, she can ask the question. And if
15 she says she didn't state it, then --

16 All right. Go ahead.

17 BY MS. ADAMS:

18 Q. If the victim said that she had never touched
19 those gloves, please explain to the jury how her D.N.A.
20 can be on the outside and inside of those gloves.

21 A. What the victim's statement is saying that he was
22 wearing the gloves off and on, taking them off and on.
23 And if he had touched her without wearing the gloves and
24 possibly gotten her skin cells or some of her body fluid
25 on his hands, and then touched the gloves to put them on,

1 that would put them on the exterior of the gloves. And
2 then putting his hands inside of the gloves, that could
3 also transfer her D.N.A. from his hands to the inside of
4 the gloves.

5 Q. Did you also receive samples taken from the
6 leather belt that's already been admitted into this case?

7 A. Yes, I did.

8 Q. All right. What were you testing for on the
9 leather belt?

10 A. It was requested that we test for victim D.N.A.

11 Q. Based on her statement, obviously, she had been
12 strangled with the belt, right?

13 A. Yes, that's correct.

14 Q. All right. Tell the jury again where the swabs
15 were taken?

16 A. There were two swabs taken, one from the center of
17 the belt and one from the ends of the belt.

18 Q. What were your results?

19 A. The swabs that I tested, both from the ends of the
20 belt and the center of the belt, I didn't test them
21 together, I tested them separately, but they ended up
22 having the same result. So in the statement it was one
23 result.

24 Both of these swabs from the belt were mixtures of
25 at least two individuals. The D.N.A. from the major

1 contributor to this mixture matches Catherine McGough,
2 and Dennis Temple cannot be excluded as a minor
3 contributor to the belt.

4 Q. So what did that mean?

5 A. That means that both Catherine McGough and Dennis
6 Temple's D.N.A. was found on this belt, but Catherine had
7 left more D.N.A. behind. She contributed more to the
8 item.

9 Q. So that would be consistent with prolonged contact
10 with that belt?

11 A. Yes. Prolonged contact. And if you are being
12 choked with a belt, I can imagine it's rubbing, and so
13 that would also deposit more skin cells.

14 Q. So again, your findings are consistent with
15 Catherine McGough?

16 A. Yes, that's correct.

17 Q. Did you also receive three socks found at the
18 crime scene?

19 A. Yes, I did.

20 Q. And you actually received the socks, right? Not
21 the swabs or cuttings?

22 A. I took the whole socks into my custody.

23 Q. Explain to the jury what you did with the socks
24 and why.

25 A. It was requested that I test the socks for saliva

1 and the victim's D.N.A. because the victim had stated
2 that the suspect, Dennis Temple, had gagged her with the
3 socks, and so they were inside of her mouth and I wanted
4 to test for saliva. I tested all three of the socks for
5 saliva using an alternate light source, that's the
6 different shade of light that you see and it makes things
7 fluoresce, and I noticed some areas of fluorescence on
8 the socks, and I cut those areas out and I tested for
9 saliva with the chemical test, and saliva was indicated
10 on all of these socks. And the areas where I found
11 saliva I took out and I did D.N.A. analysis, and on all
12 of the socks that I did D.N.A. analysis on --

13 Q. Amanda, before you give me your results, tell me,
14 you just did one profile?

15 A. Just one profile on all three of the socks,
16 correct.

17 Q. Tell the jury the condition of the socks. In
18 other words, did they appear to be new, worn?

19 A. They appeared to be fairly new and pretty clean.
20 They looked nice and clean.

21 Q. I'm sorry. So tell the jury the results.

22 A. The D.N.A. profile developed from the socks
23 matches the D.N.A. profile of Catherine McGough, and the
24 probability of randomly selecting an unrelated individual
25 having a D.N.A. profile matching these items is

1 approximately one in 340 trillion.

2 Q. What does that number mean?

3 A. Basically it means if someone other than Catherine
4 McGough had left D.N.A., the D.N.A. profile on those
5 socks, the probability that her D.N.A. profile would also
6 match would be one in 340 trillion. Basically it's just
7 a calculation of how rare her profile is. And so her
8 profile in the population would be found one out of 340
9 trillion times. That exceeds the world's population.

10 Q. Which is, what, six billion?

11 A. Six billion, approximately.

12 Q. And this is 340 trillion?

13 A. Trillion, that's right.

14 Q. Why is it you are unable to develop a statistical
15 number for the socks as opposed to the belt and the
16 gloves that we just talked about?

17 A. It's S.L.E.D. protocol to make statistical match
18 statements to items that are more easily attainable for
19 calculation. And in this case it is a single source.
20 It's a D.N.A. profile developed from one individual. The
21 ones I was talking about before was a mixture of two or
22 more individuals.

23 And if you can put a statistic to a single
24 individual instead of a mixture, it gives a more true
25 representation of how rare that individual's profile is.

1 And any statistic that I would have developed for any of
2 the other items, the mixtures, would have been around the
3 same or a little bit less. But since I have the best
4 statistical calculation here, I then just say also
5 matches for the other items.

6 Q. So that's just basically you develop a number
7 here, too, because it's a single source and that's really
8 just your own policy? It doesn't mean that there is any
9 less Catherine's D.N.A. on any item or any less of the
10 Defendant's D.N.A.?

11 A. Yes, that's correct.

12 Q. Okay. All right. Did you also receive a sexual
13 assault evidence collection kit taken from Catherine at
14 the hospital?

15 A. Yes, I did.

16 Q. And you received vaginal swabs that were taken
17 from Catherine, correct?

18 A. Yes, that's correct.

19 Q. And what were you testing for?

20 A. I was testing for semen.

21 Q. What were your results on the vaginal swab for
22 semen?

23 A. No semen was found.

24 Q. Would you expect to find semen if the vaginal
25 canal had been injected with a cleaning solution and the

1 vaginal area wiped with a rag soaked in cleaning
2 solution?

3 A. It would be much less likely that I would find any
4 D.N.A. or any semen after someone had been cleaned with a
5 cleaning solution, again, for the reasons that we use it
6 in the lab. It just sterilizes any D.N.A. So I would
7 say, no, it would be very difficult.

8 Q. So again, as Catherine stated, she was injected
9 with a cleaning solution. Your findings of no semen are
10 consistent with her account?

11 A. Yes.

12 Q. All right. Did you receive rectal swabs from the
13 victim?

14 A. Yes, I did.

15 Q. Again, what were your results on the rectal --
16 because again, what are you looking for on the rectal
17 swabs as well?

18 A. Semen as well.

19 Q. And what were your results on the rectal swabs?

20 A. Semen was identified, and since semen was
21 identified, I then tested the item and tried to develop a
22 D.N.A. profile from the item.

23 Q. Now, explain for the jury before we get to your
24 results why, if there is no allegation of anal
25 intercourse, how you would find and indicate semen on a

1 rectal swab and not a vaginal swab?

2 A. It's found quite commonly, and I've seen it in
3 many cases before, where there is no rectal penetration,
4 but vaginal. And what happens is most likely the victim
5 is lying on their back, which I believe the victim says
6 she was in this instance. Gravity can sort of take over,
7 and the semen can sort of drain or drip from the vaginal
8 canal into the rectal canal.

9 Q. And Catherine was on her back during the attack,
10 and so your findings are consistent again with her
11 statement, because there was a time frame, too, in
12 between the actual rape and the cleaning?

13 A. Yes,, that's correct. It would give it time to
14 drip down. And then also I can imagine that if there was
15 no anal penetration, then that area might not have been
16 cleaned.

17 Q. What were your results from the semen found on
18 Catherine's rectal swabs?

19 A. The D.N.A. profile developed from the semen on the
20 rectal swabs matches the D.N.A. profile of Dennis Temple,
21 and the probability of randomly selecting an unrelated
22 individual having a D.N.A. profile matching the semen on
23 the rectal swabs is one in 330 trillion.

24 Q. Please tell the jury what that number means.

25 A. If Dennis Temple was not the one who left his

1 semen on the rectal area of the victim, then the
2 probability that whoever would have left it just so
3 happened to have the same profile as Dennis Temple, would
4 be one in 330 trillion. Again, that's just a calculation
5 of how rare his D.N.A. profile is in the population.

6 Q. So why is it that when you developed Catherine's
7 profile, it was one in 340 trillion and this one is one
8 in 330? How do you get the different numbers?

9 A. It's because it's unique to each individual D.N.A.
10 profile. I'm looking at that person's profile and
11 calculating their uniqueness. And since a person has a
12 different profile, there's different numbers and
13 frequencies of the D.N.A. involved, and it gives a
14 different calculation result.

15 Q. But both numbers are extremely high, correct?

16 A. Yes. In all of my casework that I have done and
17 others I reviewed, these are rare profiles.

18 Q. So in your opinion, in your expert opinion, to a
19 reasonable degree of scientific certainty, does the semen
20 found on Catherine's rectal swabs match the Defendant,
21 Dennis Temple?

22 A. Yes, the semen found on the rectal swab matches
23 Dennis Temple.

24 Q. Which means it came from Dennis Temple, correct?

25 A. In my opinion, I would say so.

1 MS. ADAMS: Thank you, Amanda. Please answer
2 anything the Defendant has.

3 CROSS-EXAMINATION BY MR. TEMPLE:

4 Q. Ms. Webb, would you please state how many years
5 you have been working for the forensics laboratory at
6 S.L.E.D.?

7 A. Approximately three years.

8 Q. And you have training, you have a Bachelor's
9 Degree, forensic chemistry degree, A Bachelor of Science
10 Degree. Am I correct?

11 A. Yes, that's correct.

12 Q. And you analyzed the suspect blood?

13 A. Yes, I did.

14 Q. Is it also true that you tested the washcloth for
15 D.N.A. samples?

16 A. Yes, I did. I tested cuttings from the washcloth
17 and swabs from the washcloth.

18 Q. Is it true that the major contributor to this
19 mixture was Dennis Temple?

20 A. Yes. You were the major contributor to the
21 washcloth.

22 Q. Is it true that you also found another individual
23 present?

24 A. Yes, that's correct. There were at least two
25 individuals on this washcloth, you and someone else.

1 Q. And you exclude Catherine?

2 A. Yes, that's correct. I did not find her D.N.A. on
3 the washcloth.

4 Q. Did you receive any other washcloths?

5 A. No, I did not.

6 Q. At any time?

7 A. No, sir.

8 Q. Did you, when you analyzed this washcloth, did you
9 analyze it for cleaning solution?

10 A. No, I did not.

11 Q. Could your equipment, technology did [sic] such a
12 thing? Could it do -- could the technology that you had
13 at your, in your presence, could it detect such fluids or
14 substances?

15 A. I don't believe there would have been a method
16 that could have identified cleaning solution on the
17 washcloth the way it was received into the lab because it
18 had been six months after the incident and it wasn't
19 packaged and sealed to where the cleaning solution would
20 not have evaporated.

21 Q. Could you tell me what date were these tests
22 concluded?

23 THE WITNESS: If I could refer to my notes?

24 THE COURT: Yes, ma'am.

25

1 BY MR. TEMPLE:

2 Q. When the, when tests originally started on these
3 criminal sexual conduct kits of the victim and the
4 suspect?

5 A. I tested the washcloth on 10-31-10, and when the
6 original testing of the criminal sexual conduct kit was
7 in 6-22-10.

8 Q. So that's one month after the, roughly 45 days
9 after the incident occurred, not six months at all.

10 A. It was about a month for the testing of the
11 criminal sexual conduct items, but the washcloth was
12 tested in October -- well -- and that was approximately
13 five months after the incident. It was not received at
14 S.L.E.D. until October.

15 Q. You stated that you would not be able to detect
16 any D.N.A. findings due to the, due to the rag being
17 soaked in the cleaning solution. The victim stated that
18 the rag was soaked first and wiped after. So technically
19 the D.N.A. should have been still present on top. Would
20 you agree?

21 A. I would expect that the cleaning solution would
22 have soaked into the fabric of the rag, and if it was
23 dipped and then directly used to wipe the victim, I would
24 still expect it to degrade or sterilize any D.N.A. that
25 was on the rag due to the fact that the cleaning solution

1 would still have been fresh on the rag.

2 Or, if the rag was in a cleaning solution and then
3 a month or so later used to wipe someone, then I would
4 not expect the cleaning solution to still be as potent
5 and I would not expect it to sterilize any D.N.A.

6 Q. Because if the D.N.A. was placed on the rag first
7 and then soaked, it would kill the D.N.A., period, right?

8 A. Yes, that's correct. If it was within a short
9 amount of time that the cleaning solution was on the rag
10 and then used to wipe someone, it wouldn't have mattered
11 if they were wiped first before the cleaning solution was
12 added or after the cleaning solution was added, because
13 the cleaning solution would still be pretty saturated on
14 the rag, it would still be pretty potent and be able to
15 destroy any D.N.A. that might be on the rag.

16 Q. So are you saying that cleaning solution saturates
17 at a faster rate than D.N.A. --

18 MS. ADAMS: Your Honor, I object. Asked and
19 answered.

20 BY MR. TEMPLE:

21 Q. -- than the D.N.A.?

22 THE COURT: Hold on. All right.

23 Overruled. I'll allow him to answer the question.

24 You need to just ask, let her answer and move on to
25 the next question. Go ahead.

1 You can answer that question. Go ahead.

2 THE WITNESS: Um, I don't know that one necessarily
3 saturates faster than the other. It's just the fact that
4 the presence of the cleaning solution being on the rag,
5 together with the D.N.A., and they come into contact, it
6 would break open and destroy the D.N.A.

7 BY MR. TEMPLE:

8 Q. Is it true, is it true that, that an item that is
9 touched by anybody, D.N.A. can be left there without an
10 incident occurring?

11 A. Yes, that's correct. Just anyone touching an
12 object can leave D.N.A. behind. I've found that it's
13 more common that if a person has prolonged contact with
14 an item that it's more likely that their D.N.A. is gonna
15 be there instead of just touching it for a couple of
16 seconds and placing the item back down, you might not
17 transfer enough skin cells having been touching it for
18 not a long enough time to deposit the D.N.A. But yes, if
19 someone touches and handles, they can transfer their
20 D.N.A. to that item.

21 Q. So basically I could walk into the grocery store
22 and touch something and leave behind D.N.A.?

23 A. It's a possibility. It would depend on the
24 conditions. If your hands are all sweaty, it might leave
25 more D.N.A. behind. And again, it also depends also on

1 how long you have been handling the item. And there have
2 been instances, they're rare, but there have been
3 instances where if you touch for a couple seconds, you
4 might leave D.N.A. behind.

5 Q. So is it true that if a person used the bathroom
6 and wiped themselves with an item that belongs to someone
7 else, is it possible that you could transfer that D.N.A.?
8 Could that D.N.A. stick to them?

9 A. I'm not sure which, which transfer you are talking
10 about. The person who owns the items, their D.N.A.
11 transfers to the person who's wiping themselves, or the
12 person wiping themselves transferring their D.N.A. to the
13 item?

14 Q. Either or. It could be either one.

15 A. Either scenario is likely. It -- I would say it
16 would be more likely that just because a person owned an
17 item, they would have had to have been touching it or
18 wearing it for a long time before -- and get a larger
19 amount of D.N.A. on that item before it's transferred to
20 the person who wiped themselves with that item.

21 Q. If I was, if I went into Burger King or something
22 and I went to use the bathroom, and there was no tissue
23 in there and I saw some tissue on the floor, not on a
24 roll, and I took the tissue and after I used, after I
25 used the bathroom, I wiped myself, it's possible that I

1 could have transferred to somebody else who may have used
2 that tissue to wipe their nose, or could I, could I
3 possibly transfer that D.N.A. on myself?

4 A. Yes, that could be a possibility.

5 Q. Is it true that you tested other items, as well?

6 A. Yes, I did.

7 Q. What other items did you test?

8 MS. ADAMS: Your Honor, if he can ask about a
9 specific item, we don't object. I mean, there's a lot of
10 evidence submitted in this case.

11 THE COURT: Do you have a specific item you're
12 interested in?

13 THE DEFENDANT: Yes. The hood.

14 THE COURT: All right. Ask about the hood.

15 Sustained for that.

16 THE WITNESS: Yes. I tested swabs from a hood in
17 this case. I believe the hood is a hoodie sweatshirt.

18 BY MR. TEMPLE:

19 Q. And what was your finding?

20 A. Well, the D.N.A. developed from the hood is a
21 mixture of at least three individuals. Catherine McGough
22 and Dennis Temple cannot be excluded as possible
23 contributors of D.N.A. to this mixture, meaning I found
24 both Catherine McGough's and Dennis Temple's D.N.A. on
25 this sweatshirt.

1 Q. Nobody else? You said three, at least three?

2 A. Yes, there is a third individual.

3 Q. So would you find that normally in a situation
4 where only two individuals were involved, or allegedly
5 involved?

6 A. All I can attest to is that there were at least
7 three, three people's D.N.A. found on the item.

8 (The Defendant conferred with Mr. Tavernier
9 off the record.)

10 BY MR. TEMPLE:

11 Q. Ms. Webb, sorry, ma'am. Is it true that, that the
12 failure to secure certain items by either party, any
13 individual that would preserve those characteristics of
14 those items, could be lost?

15 A. Um, yes. You mean the cleaning solution, if it's
16 not the items believed to have cleaning solution on them
17 or contain cleaning solution, it can be lost over time if
18 it's not packaged correctly. And sometimes even if it is
19 packaged correctly, a prolonged amount of time will also
20 have the solution to evaporate.

21 Q. So to make a positive affirmative disposition
22 about that particular item, it would be hypothetical,
23 wouldn't you think? It would be -- it would not be -- it
24 would be an error to make such a conclusion, since this,
25 the package that the items were sealed in were not

1 preserved?

2 A. The only conclusions that can be made is that the
3 item was tested and no cleaning solution was found. And
4 yes, it is. It's not a definite, but it's just a
5 possibility that the solution was there and evaporated.
6 But the only definite one that can be made is that it was
7 tested but there was none found.

8 Q. Can I open the package?

9 A. Sure.

10 Q. If I open the bag of chips, two days later they
11 wouldn't have the same freshness as they had when it was
12 first opened.

13 THE DEFENDANT: Thank you, Ms. Webb. No further
14 questions. Thank you, ma'am.

15 THE COURT: Anything on redirect?

16 REDIRECT EXAMINATION BY MS. ADAMS:

17 Q. Just to be clear, Amanda, the hood that the
18 Defendant was referring to that was found in Catherine's
19 car with the gloves. This third individual, is it
20 possible, obviously, that Mr. Temple could have let
21 someone else wear that sweatshirt long before this
22 incident and you would find their D.N.A.?

23 A. Yes. That could definitely be a possibility.
24 Especially if the shirt had not been laundered since it
25 had been worn and shared by someone else.

1 Q. And again, since Catherine had never touched these
2 items, the most likely scenario is her D.N.A. was placed
3 on these items when the Defendant touched them after
4 touching her?

5 A. Yes, that would be a likely scenario.

6 MS. ADAMS: Thank you, Your Honor.

7 THE COURT: Anything else?

8 THE DEFENDANT: Yes.

9 RECROSS-EXAMINATION BY MR. TEMPLE:

10 Q. Likely, but not the only scenario, right?

11 A. That's correct. I'm trying to imagine how else
12 her D.N.A. would have gotten on a sweatshirt that she
13 didn't touch if it wasn't from someone touching her and
14 placing it, and transferring it to the item, unless she
15 had worn the item also or brushed up against it.

16 Q. Are we talking about a sweatshirt here?

17 A. I thought that's what we were talking about. Did
18 you mean something else?

19 Q. I thought we was talking about, the State
20 mentioned a hood.

21 MS. ADAMS: The hoodie shirt.

22 THE WITNESS: I believe, I believe the hood in this
23 case is, the item is a hoodie sweatshirt. It was
24 submitted to S.L.E.D. with a description of "hood," so I
25 believe it's a hoodie sweatshirt.

1 THE DEFENDANT: Okay. Thank you, ma'am.

2 THE COURT: Anything else? (No response.)

3 All right. You can step down. You may be excused.

4 MS. ADAMS: May she be excused?

5 THE COURT: Yes. That's what I just said.

6 (Whereupon, the witness was excused.)

7 MS. ADAMS: Your Honor, the State rests.

8 THE COURT: All right. Ladies and gentlemen, I'm
9 gonna send you to lunch. We've got some matters that we
10 have to take care of, so please don't be back in the jury
11 room until 2:30. Don't discuss the case and be prepared
12 to sit here this afternoon for a while. Have a good
13 lunch.

14 (Whereupon, the jury left the courtroom at
15 approximately 1:10 p.m.)

16 THE COURT: The State has rested. Any motions?

17 (The Defendant conferred with Mr. Tavernier
18 off the record.)

19 DEFENDANT'S MOTIONS:

20 THE DEFENDANT: Okay. Yes, sir. I'm not familiar
21 with this part here. But I would like to preserve the
22 past previous motions that I have filed in this case in
23 any hearing that I've had.

24 Do I need to state them, Your Honor?

25 THE COURT: No. Anything that, any motions you made

1 in our hearing last week or anything you made today or
2 during this week is protected for the record.

3 THE DEFENDANT: Thank you, sir. Also, I have one
4 new one, a new motion.

5 THE COURT: All right.

6 THE DEFENDANT: Which would be a mistrial. And the
7 grounds for that would be that the State has admitted
8 evidence of, or consistently stated that cleaning
9 solution was used in the alleged victim. They failed to
10 put forth the evidence in reference to that. Even not by
11 the doctor, not by Belton (phonetic) or Stauber
12 (phonetic) or S.L.E.D. or -- and it was extremely
13 prejudicial, it was damaging, it was -- it deprived me of
14 rights. That's all the -- the Gatorade bottle, too, Your
15 Honor.

16 THE COURT: Okay. And ask Mr. Tavernier, if you
17 want, if there's any other motion you need to make, just
18 briefly..

19 (The Defendant conferred with Mr. Tavernier
20 off the record.)

21 THE COURT: Let me say this. You don't need to be
22 specific. Stand up, if you would. I assume you would
23 want to make a directed verdict motion at this stage.

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Okay. Go ahead. And you don't have to

1 be too specific. Just generally I would assume you would
2 want me to grant a directed verdict motion because the
3 evidence has been insufficient to convict you at this
4 point.

5 THE DEFENDANT: Yes, sir. Because that is true,
6 Your Honor. Because I didn't know this proceeding right
7 here was -- this is my first time in trial. I didn't
8 know that this is the particular time -- well, I did, but
9 any lapse, Your Honor, for this specific motion.

10 COURT'S RULING ON DEFENDANT'S MOTIONS:

11 THE COURT: Motion, okay. Okay. On the directed
12 verdict -- and what I want to make sure of and what I've
13 tried to make sure of all along is everything is
14 preserved and any rights you might have will be
15 protected.

16 Your directed verdict motion is denied.

17 And the motion for mistrial is denied basically
18 because the issue of the lack of cleaning solution is a
19 factual issue for the jury. It's something that
20 obviously you can argue in closing if that's what you
21 want to do. So those motions are denied.

22 I need to talk to you about your Fifth Amendment
23 rights. Have you had enough time to talk with
24 Mr. Tavernier and think about whether you are going to
25 present any evidence or testify?

1 THE DEFENDANT: I would like to present two
2 witnesses.

3 THE COURT: Okay.

4 THE DEFENDANT: Well, actually, they're State
5 witnesses. I would like to bring them back as my witness
6 and label them as hostile witnesses.

7 MS. SIMMONS: Judge, he didn't present a witness
8 list at the beginning of this case.

9 THE COURT: Well, I understand. You don't have any
10 new witnesses. You've got State witnesses you want to
11 re-call?

12 THE DEFENDANT: No, no new witnesses.

13 THE COURT: All right. Who do you want to call?

14 THE DEFENDANT: That would be Nurse Chapman and
15 Catherine McGough.

16 MS. SIMMONS: Judge, we have released Nurse Chapman.

17 THE COURT: Nurse Chapman has been released. She's
18 not here. And we released her from her subpoena.

19 MS. ADAMS: And, Your Honor, he had ample
20 opportunity to cross-examine Catherine.

21 THE COURT: What do you want to bring up new? I
22 mean, you had your --

23 THE DEFENDANT: It was during the State's direct
24 examination, they failed to bring up certain matters. So
25 this information I think was pertinent to the case, and I

1 feel that it's pertinent in this case.

2 THE COURT: All right. You are protected for the
3 record for wanting to call them. But you had an
4 opportunity to cross, and that was your opportunity to
5 bring up that information. But I assume that you
6 would -- like I said, you are protected for the record if
7 you want to appeal my denial if you want to call her
8 back.

9 Also, we have released Nurse Chapman. What do you
10 want to ask Nurse Chapman? And you don't have to tell me
11 specifically, but generally so the record is clear.

12 THE DEFENDANT: It was in reference to, to the
13 credibility of the victim.

14 THE COURT: Okay. All right. And again, you are
15 protected for the record, but I wouldn't let you re-call
16 the victim, or if you could get Nurse Chapman here,
17 obviously I'm not sure, but she's not here. And I assume
18 no subpoenas were issued and we have released her.

19 Other than those two, is there anybody you would --
20 and have you talked specifically to Mr. Tavernier about
21 whether you're gonna testify?

22 THE DEFENDANT: No.

23 COURT'S EXPLANATION OF DEFENDANT'S RIGHT TO TESTIFY:

24 THE COURT: All right. Well, let me do this. And
25 just take it -- I want to take a minute to explain what

1 your rights are. And some of this I need to do for the
2 record and some of it, if you don't understand, you need
3 to make sure that you understand. You can ask me
4 questions or ask Mr. Tavernier questions.

5 We have reached the point where the State has rested
6 where you have got the opportunity to testify if you want
7 to.

8 You have the right to claim the protection of the
9 Fifth Amendment. And just basically in general and in
10 part, the Fifth Amendment says no person shall be
11 compelled in any criminal case to be a witness against
12 themselves. That means that I can't or the State can't
13 require you to testify against yourself, but you do have
14 the right to testify. Nobody can make you. It's a
15 personal right that you have to waive if you want to
16 waive it. You do need to understand that if you did
17 testify, you would be subject to the rules of
18 cross-examination. You could be examined on certain
19 convictions involving dishonesty or false statements or
20 that might carry a year or more in prison.

21 The question is, that I have for you and that I need
22 to put on the record is whether or not you thought about
23 this issue, whether or not you had time to discuss this
24 with your family or anyone else that you need to discuss
25 it with, and if you have made a freely, voluntarily,

1 knowingly and intelligently made decision not to testify.

2 If you decide not to testify, I'll explain to the
3 jury that you have a right not to testify, the Fifth
4 Amendment grants you that right, it is a substantial
5 right, and that they cannot discuss during their
6 deliberations the fact that you didn't testify.

7 So have you talked about that with Mr. Tavernier and
8 other parties?

9 MR. TAVERNIER: (Nodded head.)

10 THE DEFENDANT: Yeah, I think we have -- I might --
11 we -- Fifth Amendment, yes, we have. Yes, Your Honor.

12 THE COURT: Okay. Do you have any questions to me
13 about your Fifth Amendment rights only?

14 THE DEFENDANT: Yeah, I do, Your Honor.

15 THE COURT: All right. What is it?

16 You can talk to Mr. Tavernier.

17 MR. TAVERNIER: Your Honor, for the record we have
18 discussed it and gone over -- I have not made any
19 advisement to him other than to give him what his options
20 are. And based on what he is saying, I think I
21 probably -- if you can give us a couple minutes so we can
22 go back over it and he can come back and address the
23 Court?

24 THE COURT: Yeah. The reason I -- do you want to do
25 that?

1 MR. TAVERNIER: If we can. And I told him some
2 options, but I think he's having some confusion on what
3 those options are.

4 THE COURT: Okay. I'll let you do that over lunch.
5 I want everybody back at 2:30. Because assuming -- if I
6 make the assumption you're not gonna testify and not call
7 any other witnesses, we'll move right into closing
8 arguments and the jury charge.

9 If you are, obviously it's gonna make a difference.
10 So be back at 2:30 and we'll go back on the record. I'll
11 question you again and make sure you understand it and
12 we'll go from there.

13 Okay. We're adjourned for about an hour.

14 (A luncheon recess occurred.)

15 End of Morning Proceedings

16 ***

17

18

19

20

21

22

23

24

25

1 AFTERNOON PROCEEDINGS

2 (Approximately 2:38 p.m.)

3 THE COURT: Mr. Temple, during lunch have you had
4 time to think about whether or not you're going to
5 testify, and also have you had time to speak with your
6 advisory counsel?

7 THE DEFENDANT: Yes, Your Honor. And I will not
8 testify.

9 THE COURT: All right. And you understand your
10 Fifth Amendment rights and you don't have any questions
11 about that? That's a freely, voluntarily, knowingly and
12 intelligently made decision you made; is that correct?
13 Nobody has forced you to make it?

14 THE DEFENDANT: No, sir.

15 THE COURT: Thank you. Do you have any evidence
16 that you are gonna put up or will you just rest?

17 (The Defendant conferred with Mr. Tavernier
18 off the record.)

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You need to make a motion, to renew a
21 motion?

22 DEFENDANT'S MOTION:

23 THE DEFENDANT: Yeah. Because I'm renewing my
24 motion on -- well, it was kind of like a, when I
25 questioned, cross-examined the victim in this case, when

1 I finished, I stated, "Your Honor, no more questions at
2 this time." I didn't state that I was not gonna, had no
3 intentions of cross-examining her again. My intention
4 was to bring her up on direct as a witness. I intended
5 to bring her in as my witness.

6 THE COURT: All right. What do you want to get from
7 her? That's what I'm trying to understand.

8 THE DEFENDANT: I'm trying to prove that what she's
9 saying is lying, which, which I didn't do during, when I
10 was cross-examining her. I got to prove that she's lying
11 about several different things that she said. Plus, I
12 can prove that she said there was more people there at
13 that time than me and her.

14 THE COURT: What's y'all's position?

15 MS. SIMMONS: Judge, those are all things that were
16 within the scope of, could have been within the scope of
17 his cross-examination of her. Those were not things that
18 came out later in the trial. And he had a full and fair
19 opportunity to cross-examine her at that time.

20 THE DEFENDANT: Your Honor, as you know, as
21 witnesses came and came and came, different issues did
22 come up which make up the whole of my intentions or my
23 request, you know, to bring her back up. That was
24 intended as a trial strategy only, you know?

25

1 COURT'S RULING ON DEFENDANT'S MOTION:

2 THE COURT: Okay. All right. And I understand what
3 motion you are making, and again I'm gonna deny your
4 motion to allow you to -- and my opinion at this point
5 that was something that could have been directed to her
6 in cross. And again, I understand you want to protect
7 your rights in that regard, so you are protected for
8 that.

9 THE DEFENDANT: Okay. Can I argue the issues or the
10 facts of her statement on opening statement?

11 THE COURT: Yeah. Go ahead.

12 All right. So the Defense is resting, right? Is
13 that correct?

14 THE DEFENDANT: Yes, sir. I rest.

15 THE COURT: Okay. So we'll move on to closing. And
16 y'all will close and then he'll reply.

17 MS. ADAMS: Your Honor, since he introduced
18 evidence, it's my understanding I'm gonna open on the
19 law, he goes and then I go.

20 THE COURT: I think you have to open in full and
21 then he gets to reply. I think that's where this whole
22 discussion -- I mean -- what did he introduce?

23 MS. ADAMS: He admitted evidence.

24 THE COURT: What?

25 MS. ADAMS: So he lost his right for closing

1 argument. Defendant's Exhibits 1 and 2, remember, he
2 admitted the bottle and the rag.

3 THE COURT: Right, and I understand that.

4 So what's your intention?

5 MS. ADAMS: Well, Your Honor, it's my understanding
6 based on the law that since he admitted evidence, that he
7 loses his right to final argument, closing argument, so
8 I --

9 THE COURT: Show me where it says that. I mean, I'm
10 just asking. I think he has a right to reply even though
11 he puts in evidence. The old rules were that. The new
12 rules are you open and close in full and he replies and
13 that's it. The old rules are where you had to open or
14 close on the law, then he replies and you sandwiched in
15 with the facts. I'm confused about where you come up
16 with that, though, but I'll be happy to look at it.

17 MS. ADAMS: I think I gave some of the cases to
18 Hillary. It was, it was my understanding that it's Rule
19 59 that is no longer in existence, that basically --

20 THE COURT: I'm not talking about the issue of where
21 he doesn't put in evidence.

22 MS. ADAMS: Right. So when he does, that means he,
23 it's just like putting forward testimony, which means he
24 doesn't get final argument.

25 THE COURT: All right.

1 Any objection to that?

2 (The Defendant conferred with Mr. Tavernier
3 off the record.)

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: All right. That's fine. It's a tempest
6 in a teapot. That's fine.

7 Anything else from the State or Defense? Because
8 I'm going right into closing when we bring them back in.
9 Anything in rebuttal?

10 THE DEFENDANT: I'm fine, Your Honor.

11 MS. ADAMS: I open, he goes, and then if I want
12 to...

13 THE COURT: Right.

14 MS. ADAMS: Okay.

15 THE COURT: Okay. Let's bring them in.

16 (The jury entered the courtroom at
17 approximately 2:45 p.m.)

18 THE COURT: All right. Ladies and gentlemen, you
19 have heard all the testimony that you're gonna hear in
20 this case. The Defense has rested. As I told you
21 earlier, the Defendant is not in any way forced to
22 testify. In fact, you cannot discuss -- and I'll tell
23 you this again in my charge -- you can't discuss the fact
24 that he's not testified when you begin your
25 deliberations. And because the burden is on the State to

1 prove each and every element, he doesn't have to put up
2 any evidence and he's made that decision.

3 So you have heard all the testimony. We'll move to
4 closing argument. After the closing arguments, I have to
5 read to you verbatim about 20 pages' worth of law. So
6 once the closing arguments are finished, if you need a
7 break, let me know. Otherwise I'll move right into the
8 charge and we'll give this case to you for your
9 deliberations.

10 But let me also remind you that closing arguments
11 are not evidence and shouldn't be considered by you as
12 evidence. They're merely the opportunity for the State
13 and the Defense to argue their position and tell you
14 again why you should agree with them on their position.

15 All right. Yes, ma'am.

16 MS. ADAMS: Thank you, Your Honor, may it please the
17 Court.

18 CLOSING ARGUMENT ON BEHALF OF THE STATE (LAW):

19 MS. ADAMS: Ladies and gentlemen, it's now time to
20 turn this case over to you. It is time for you to find
21 the Defendant, Dennis Temple, guilty of every single
22 crime that he has been charged with.

23 As the Judge just told you, when we are done, he's
24 gonna instruct you on the law, and you must take the law
25 as he gives it. But I'm gonna take an opportunity right

1 now to go over the law with you and explain to you why
2 there is no doubt that the Defendant is guilty of every
3 single crime charged. And after the Defendant has an
4 opportunity to speak, I will again be able to address
5 you.

6 But first let's start with the law.

7 The Defendant has been charged, as you know, with
8 two counts of criminal sexual conduct in the first
9 degree. These are the elements. I have to prove to you
10 beyond a reasonable doubt each and every element of every
11 single crime charged.

12 The Defendant engaged in a sexual battery with the
13 victim, Catherine. Sexual battery is sexual intercourse,
14 cunnilingus, fellatio, anal intercourse, or any
15 intrusion, however slight, of any part of a person's body
16 or of any object into the genital or anal openings of
17 another person's body.

18 Sexual battery. Ladies and gentlemen, the first
19 count of criminal sexual conduct deals with the penile
20 penetration of the Defendant into Catherine's vagina.
21 That is the sexual battery, that is the penetration, all
22 right? We know that that occurred. There was
23 overwhelming evidence that that occurred. You have the
24 Defendant's semen on the rectal swabs that was taken from
25 Catherine at the hospital. One in 330 trillion. It

1 belongs to one person, and that person is the Defendant,
2 Dennis Temple.

3 Now, you heard from Amanda Webb, the D.N.A. expert.
4 There was no anal intercourse. But the fact that semen
5 came from a rectal swab is very common. Ladies and
6 gentlemen, it's graphic. It's graphic. And Catherine
7 was lying on her back during a sexual assault, and there
8 was a time frame, he told you, before he got up and
9 cleaned her out. There is no doubt that the Defendant
10 had sexual intercourse with Catherine.

11 Now, the second count deals with what happened when
12 he got up after he had sexual intercourse with her.
13 Because the law says, for any intrusion, however slight,
14 of any person's body or of any object into the genital
15 opening of another person's body. The object is the
16 bottle, the Gatorade bottle. When he inserted that
17 bottle into Catherine's vaginal area, he committed a
18 second and separate criminal sexual conduct. It is a
19 distinct and separate crime. It's what the law says, and
20 that is what he is charged with.

21 When he stuck that bottle in her, in an attempt to
22 destroy all the evidence, he injected a cleaning solution
23 into her to destroy his semen. And ladies and gentlemen,
24 it was a cleaning solution in that bottle. Catherine
25 told you she smelled it in the bucket and Sergeant

1 Patrick Merck told you he smelled the cleaning solution
2 in the bucket. Amanda Webb, the expert, told you she was
3 not surprised they didn't find it in the Gatorade bottle
4 when they tested it because it had evaporated.

5 Ladies and gentlemen, you need to remember when you
6 walk into this courtroom, you do not leave your common
7 sense out there, you bring that in here, too. All the
8 evidence is overwhelming and supports exactly what
9 Catherine said happened. And that bottle is a second and
10 separate offense and crime.

11 Now, I also have to prove to you that he used
12 aggravated force to accomplish this sexual battery, or --
13 not both -- or the victim submitted to sexual battery
14 while she was, while she was also the victim of forcible
15 confinement, or kidnapped. We have both for criminal
16 sexual conduct. We have aggravated force and we have
17 kidnapping. But kidnapping, again, is a second offense.
18 We'll get to that in a minute.

19 What is aggravated force? It is the use of physical
20 force or physical violence of a high and aggravated
21 nature to overcome the victim. And it also includes the
22 threat of using a deadly weapon, ladies and gentlemen.
23 He forced Catherine into her unit. She fought. He
24 strangled her, he punched her. And then he took the belt
25 you have in evidence, wrapped it around her neck, like

1 you would put a choke collar on a dog, and drug her 83
2 feet at least across a gravel parking lot. She lost
3 consciousness, she urinated over herself, which is
4 consistent with being to the point of passing out. And
5 when she wakes up she's on a mattress, he gags her and he
6 ties her. You got the socks with her saliva all over
7 them, and you have strips of sheet that he used to bind
8 her.

9 You have the pictures. The marks are consistent.
10 She has scratches all over her body, bruises all over her
11 body. He punched her on the nose, her nose is swollen.
12 Everything is consistent. Ladies and gentlemen, if that
13 is not aggravated force, I don't know what aggravated
14 force is.

15 Kidnapping is a second and separate offense, even
16 though it's a part of criminal sexual conduct.

17 I have to prove to you each and every element of
18 kidnapping. It's that the Defendant, Dennis Temple,
19 knew, knowingly and unlawfully, seized, confined,
20 inveigled, decoyed, kidnapped, abducted, or carried away
21 another person. Seize means to take hold of suddenly or
22 forcibly. Confine means to limit, restrict or enclose,
23 kidnap is to remove a person against her will, and abduct
24 means to carry off secretly or by force, and for an
25 illegal purpose.

1 Ladies and gentlemen, Catherine's D.N.A. is on the
2 inside of that belt because it was around her neck for so
3 long. Even worse, fear. That's what kidnapping is. He
4 locked her in his unit for over nine hours. She could
5 not escape. That is kidnapping. He tied her up
6 repeatedly. That's kidnapping.

7 And finally, ladies and gentlemen, he stole her car.
8 Grand larceny. Taking and carrying away personal
9 property is the car valued at more than \$5,000. The car
10 was worth \$19,000, the wholesale value, and he intended
11 to deprive her of it. Ladies and gentlemen, you do not
12 leave your common sense outside there when you come in
13 here. He stole her car.

14 The Defendant is now gonna have an opportunity to
15 talk to you, and I'll be back.

16 THE COURT: Yes, sir.

17 THE DEFENDANT: May I use this, Your Honor?

18 THE COURT: Yes.

19 Ms. Adams, would you cut that on for him?

20 MS. ADAMS: Turn it on, yes.

21 THE COURT: Please.

22 CLOSING ARGUMENT BY THE DEFENDANT:

23 THE DEFENDANT: The prosecution wants y'all to
24 believe that this is, these are crimes that I committed,
25 which are not consistent. I haven't had a full

1 opportunity --

2 Can I go into this, Your Honor?

3 THE COURT: Sure.

4 THE DEFENDANT: I really haven't had a full
5 opportunity to defend myself because my strategy was
6 based upon my re-calling of ---

7 MS. ADAMS: Your Honor, objection.

8 THE DEFENDANT: Okay.

9 THE COURT: Yeah, sustained.

10 THE DEFENDANT: But my thing is it's not consistent.
11 I'm gonna show you why.

12 The victim states -- well, on the date of rape she
13 stated that -- she stated several things, a seven-page
14 story. College student.

15 She stated that when she arrived at All Safe, she
16 came in the gate. She saw the assailant leaving out. If
17 you recall, when the manager of All Safe testified, she
18 said that the only way to get in with a car is you have
19 to punch a code in. The only way to come out with a car
20 or to come out for the gate to go back period, the only
21 way for the gate to open when you are inside is you have
22 to be in the car.

23 So if the victim said that I was walking, the only
24 way out would be up under the gate, not by the gate
25 opening, or even going out where she come, which would be

1 the wiser choice instead of going up under the gate.

2 All right. Well, here we have -- if she came in,
3 Catherine McGough, if she came in here, which would be
4 4:38, then I was going out at that same time. She said
5 that -- this, this document here shows that I came in at,
6 allegedly came in at 4:41. So if I entered according to
7 this document at 4:41, and she stated in her statement
8 that I left two or three times, then where is it
9 documented in this report a second time after I arrived
10 behind her? That's one thing I wanted to point out.

11 But also another thing I wanted to point out is the
12 fact that in her statement she said that, she said that I
13 have drug her to my unit.

14 Let me put that up here, too.

15 MS. ADAMS: Your Honor, objection. He's getting
16 ready to show them something that I don't think is in
17 evidence.

18 THE COURT: What are you getting ready to show?

19 THE DEFENDANT: Your Honor, the prosecution told the
20 jury during direct examination with the witness that I
21 drug her from my storage shed, from her storage shed to
22 my storage shed. I'm gonna prove to the jury that she
23 stated in her statement to the police that I had drug
24 her.

25 THE COURT: That you have drug her?

1 THE DEFENDANT: Yeah. Not only that. The
2 prosecution also stated that, and the victim admitted to
3 her that she was --

4 THE COURT: I'll tell you what. Come around here
5 behind the screen.

6 (Discussion at sidebar.)

7 THE COURT: Ladies and gentlemen, I need to send you
8 out for a few minutes. We need to find something on a
9 tape. Please do not discuss this case yet.

10 (Whereupon, the jury left the courtroom at
11 approximately 3:06 p.m.)

12 THE COURT: Let me just put on the record -- and,
13 Mr. Temple, I don't want to misstate anything that was
14 said here because a lot was said. But basically you
15 wanted at first to first introduce a portion of the
16 victim's statement. Since that's not into evidence, I
17 told you behind the curtain that you couldn't do that.

18 And then you want to, us to play a portion, the very
19 last portion of the 9-1-1 tape where the dispatcher asks,
20 "Does he have a weapon?" That's the portion you want; is
21 that right?

22 THE DEFENDANT: Well ---

23 THE COURT: Stand up. She can't hear you if you sit
24 down. I don't care, but...

25 THE DEFENDANT: Yes, Your Honor. The particular

1 part is when the 9-1-1 operator asks the question and her
2 response. That's -- there's more contradicting
3 statements on that tape, but I'll settle for --

4 THE COURT: All right. She's gonna try to find it.
5 We'll take just a quick break, like four minutes. See if
6 you can find it. You can come up here with her and make
7 sure y'all are at the right spot, and then I'll bring
8 them back in.

9 (Ms. Simmons and Mr. Temple confer.)

10 (A recess was taken.)

11 THE COURT: Mr. Temple, is it all right if she stays
12 here, starts, and tell her to stop and she'll do it?

13 THE DEFENDANT: You're in charge. You're the boss.

14 THE COURT: I'm glad somebody recognizes it. But I
15 don't want to play any more than you want to hear, that
16 you want them to hear.

17 All right. You can bring them in.

18 Just say "stop" and she'll stop.

19 MS. SIMMONS: And then I'll sit down.

20 (The jury entered the courtroom at
21 approximately 3:17 p.m.)

22 THE COURT: Thank you, ladies and gentlemen.
23 Go ahead, Mr. Temple.

24 THE DEFENDANT: Can I tell them why?

25 THE COURT: Yeah. You can go ahead and tell them

1 why. Sure.

2 THE DEFENDANT: Your Honor, this is one of the
3 inconsistencies that I noticed. This was the 9-1-1 tape,
4 when the victim alleged she called the police. And this
5 is the conversation. This is like at the end of the
6 tape. It says -- the 9-1-1 operator said, do you
7 remember -- no -- he says, he says, he asked the
8 question: Do you remember did he have any weapons? And
9 he said something like when he, looking like there's
10 something more during that statement.

11 The victim stated, Um, he used a knife to cut my tie
12 one time. Um, I didn't see it. I don't know.

13 9-1-1 says, Well, he said, I don't know.

14 Then she says what they did and I could not find it
15 here. This supposed -- this blank portion is supposed to
16 have been read like this: I don't know what he did
17 with -- no; it says: I don't know what they did, not he,
18 with the knife and I could not find it in here. That's
19 what it says. The statement said, I don't know what they
20 did.

21 Your Honor, if I did this crime, kidnapping,
22 criminal sexual conduct, I stole a car, why is the
23 evidence show speaking, the evidence itself speaking of
24 more than one people? And she says during the whole
25 event that it was one assailant. Nobody else was

1 mentioned. So why is, why wasn't it noted in the
2 beginning that -- I mean, this right here shows itself
3 inconsistent. Then it said it's involving more than one
4 person. So if she's lying here, I mean, what else is she
5 lying about?

6 But you can play the tape, ma'am, please.

7 (Whereupon, the 9-1-1 recording was played by
8 Ms. Simmons for the jury.)

9 THE DEFENDANT: Could you rewind that part?

10 MS. SIMMONS: (Complies.)

11 (The 9-1-1 recording continued to be played
12 by Ms. Simmons for the jury.)

13 THE COURT: Do you want to stop it?

14 THE DEFENDANT: Yes, sir.

15 MS. SIMMONS: That was the 9-1-1 CD.

16 THE DEFENDANT: That's another inconsistent thing I
17 was gonna bring up during, on direct examination. But
18 there's many others as well. Like I said, when --

19 Well, you told me not to go into that so I'm not.

20 But just consider all the facts. That's all I ask.

21 Thank you.

22 THE COURT: Yes, ma'am.

23 CLOSING STATEMENT ON BEHALF OF THE STATE (FACTS):

24 MS. ADAMS: Catherine McGough will never forget the
25 nightmare that she endured on Mother's Day of this year.

1 4:38 Sunday afternoon, broad daylight, she was literally
2 at the wrong place at the wrong time. Because when she
3 punched her code in and saw the Defendant walking out,
4 the Defendant, Dennis Temple, also saw her. Because that
5 entry log showed him coming in three minutes later. She
6 knew what he wanted because he saw Catherine alone in her
7 car. And he gave her time to get to her unit and start
8 unloading, and he approached her. He saw she was visibly
9 flustered.

10 And he leaves for just a few seconds to go back to
11 his unit. He's prepared, because he knows what he wants,
12 and it's Catherine, and he's not taking no for an answer.
13 He had a belt flung over his shoulder. He tries to get
14 her to go to his unit willingly with, Will you help me
15 move something? Because he knows what he wants, and it's
16 Catherine.

17 And when she doesn't go, he's prepared, because he
18 has a belt around his shoulder and then he puts it around
19 her neck and drags her to his unit. The evidence is
20 overwhelming. I cannot say it enough, ladies and
21 gentlemen.

22 And when he gets her back, he rapes her, he rapes
23 her again with the bottle of the cleaning solution, he
24 steals her car, he ties up her feet. Catherine wasn't
25 going anywhere.

1 And when you get back in that jury room, I want you
2 to look at all the evidence. I want you to look at all
3 the pictures again. And I want you to notice something
4 about Catherine's car, because the car really is
5 important, it says a lot. Catherine told you when she
6 last saw her car, there was stuff still in the trunk.
7 Those pictures, when the car was recovered, there's
8 nothing in the trunk. And her mother's Mother's Day gift
9 is in the back seat. Catherine left it in the trunk.

10 The Defendant was coming back. He knew what he had
11 to do.

12 It truly does not get any worse than this. When you
13 think about Catherine's D.N.A. being on the inside of a
14 pair of gloves and a hoodie that she never touched, her
15 D.N.A. got there because he touched her. He touched her
16 when he strangled her with his bare hands, he touched her
17 when he punched her, he touched her when he wrapped the
18 belt around her neck and drug her across the parking lot
19 like an animal. He touched her when he forced her on to
20 his mattress in his unit. He touched her when he gagged
21 her repeatedly throughout a nine-hour ordeal.

22 He touched her when he tied her up. He touched her
23 when he hogtied her. He touched her when he pulled her
24 tired body to the edge of his mattress. He touched her
25 when he pulled her shorts and panties down. He touched

1 her when he raped her aggressively and violently, just
2 like she said. And he touched her when he raped her the
3 second time with the bottle in an attempt to destroy the
4 evidence, his semen that he left inside of her. And then
5 when he touched those gloves, he left Catherine inside
6 those gloves.

7 It is time for Catherine's nightmare to end, and it
8 ends right here, right now with y'all. You find this
9 man, Dennis Temple, guilty, guilty as charged. Thank
10 you.

11 THE COURT: All right. Ladies and gentlemen, does
12 anyone need a break before I charge you on the law? If
13 you do, that's fine.

14 A JUROR: (Shook head.)

15 A JUROR: (Shook head.)

16 THE COURT'S CHARGE ON THE LAW:

17 THE COURT: All right. Ladies and gentlemen, thank
18 you very much for your patience. And now it's time for
19 me, as I told you at the beginning of this trial, to
20 charge you on the law. As I told you at the time we
21 began, you and I have very different roles. You have had
22 to listen to the testimony in this case. You will have
23 in the jury room anything that's been admitted into
24 evidence, so anything that's up here that's marked up
25 here you will have. And you have to make a determination

1 about what the facts are.

2 As the Judge I have been required during the course
3 of this trial to make several determinations on legal
4 matters, and, quite frankly, one of the biggest things
5 I've had to do is put together this charge on the law.

6 First let me tell you the same thing that I told you
7 at the beginning of the trial. You will have with you in
8 the jury room these indictments. The fact that a
9 defendant has been indicted in this state should never be
10 discussed by you. These indictments are literally, as
11 you will see, pieces of paper that start the process that
12 ends here today. So you will have them with you, but
13 please don't discuss them. Please understand that the
14 presumption of innocence that Mr. Temple has about him
15 remains with him. As I told you earlier, I used the
16 example as the robe of righteousness or innocence. That
17 robe of innocence and that presumption of innocence is
18 still about his shoulders and will remain about his
19 shoulders until you, the jury, make a determination after
20 due deliberation that that robe of righteousness or
21 innocence should be taken from him.

22 And I also told you and I'll tell you in a few
23 minutes again in a more formal way, the State has the
24 burden of proving each and every element of the crimes
25 charged and must meet that burden.

1 All right. Ladies and gentlemen, the indictments
2 charge the Defendant with two counts of criminal sexual
3 conduct, first degree; kidnapping, and grand larceny of a
4 motor vehicle. I want to remind you again, the fact that
5 the Defendant was arrested, charged and indicted in this
6 case is not evidence in this case and cannot be
7 considered by you as evidence of guilt in this case. Nor
8 does it create any presumption or inference of guilt.
9 The documents simply state the formal charges against the
10 Defendant and also are the formal written instrument
11 which contains those charges.

12 As I said, there are several different charges
13 contained in these indictments. Each charge is a
14 separate and distinct offense. What you will need to do
15 as a jury is you must decide the guilt or innocence of
16 each charge separately.

17 And what I'm gonna ask you to do, Mr. Foreman, and
18 I'll explain to you a little bit more at the very end of
19 this charge, but on the back of each indictment there's a
20 portion that says verdict. All I'll need you to do is
21 write "not guilty" or "guilty" on each separate
22 indictment for each separate charge, sign your name, put
23 the date, and that will be sufficient.

24 Ladies and gentlemen, again, as I've charged you
25 before and told you, the Defendant has pled not guilty to

1 each indictment, and that plea puts the burden on the
2 State to prove the Defendant guilty. A person charged
3 with committing a criminal offense in South Carolina is
4 never required to prove themselves innocent. I charge
5 you that it's an important rule of law that the Defendant
6 in a criminal trial, no matter what the seriousness of
7 the charge may be, will always be presumed to be innocent
8 of the crime for which the indictment was issued unless
9 guilt has been proven by evidence satisfying you of that
10 guilt beyond a reasonable doubt.

11 The presumption of innocence, I charge you, is not
12 merely a legal theory, it's not just a legal phrase.
13 It's a substantial right to which every Defendant is
14 entitled to unless you, the jury, are satisfied from the
15 evidence of the Defendant's guilt beyond a reasonable
16 doubt.

17 You may have a question, what is reasonable doubt?
18 Reasonable doubt is the kind of doubt that would cause a
19 reasonable person to hesitate to act.

20 Now, ladies and gentlemen, I charge you, there are
21 two types of evidence which are generally presented
22 during a trial, there is direct evidence and
23 circumstantial evidence. Direct evidence is testimony of
24 a person who claims to have actual knowledge of a fact,
25 such as an eyewitness. It is evidence which immediately

1 establishes the main fact to be proved.

2 Circumstantial evidence is proof of a chain of facts
3 and circumstances indicating the existence of a fact. It
4 is evidence which immediately establishes collateral
5 facts from which the main fact may be inferred.

6 Circumstantial evidence is based on inference and not on
7 personal knowledge or observation.

8 I charge you that the law makes absolutely no
9 distinction between the weight or value to be given
10 either direct or circumstantial evidence, nor is a
11 greater degree of certainty required of circumstantial
12 evidence than of direct evidence. You should weigh all
13 the evidence in this case, and after weighing all the
14 evidence, if you are not convinced of the guilt of the
15 Defendant beyond a reasonable doubt, I charge you that
16 you must find the Defendant not guilty.

17 Ladies and gentlemen, I charge you that necessarily
18 as a part of your duties you must determine the
19 credibility of witnesses who have testified in this case.
20 Credibility simply means believability in South Carolina
21 under the law. It becomes your duty as jurors to analyze
22 and evaluate the evidence and determine which evidence
23 convinces you of its truth.

24 In determining the believability of witnesses who
25 testified, you may believe one witness or you may believe

1 none of the witnesses. You can believe a portion of what
2 a witness tells you and disregard the remainder of the
3 witness's testimony. You can believe a portion of any
4 person's testimony and disregard the remainder of that
5 testimony.

6 Ladies and gentlemen, I charge you the Rules of
7 Evidence ordinarily do not permit witnesses to testify as
8 to opinions or conclusions. An exception exists for
9 witnesses we call expert witnesses. A witness who by
10 education and experience has become expert in some art,
11 science, profession or calling may state an opinion as to
12 relevant and material matter in which the witness claims
13 to be an expert and may also state the reasons for that
14 opinion.

15 You should consider an expert opinion received in
16 evidence in this case, and, like any other evidence, give
17 it the weight that you think that it deserves. If you
18 decide that the opinion of the expert witness is not
19 based on sufficient education and experience, or if you
20 conclude that the reasons given in support of the opinion
21 are not sound, or that the opinion is outweighed by other
22 evidence, you may disregard the opinion in its entirety.

23 An expert witness's testimony is to be given no
24 greater weight than that of other witnesses simply
25 because the witness is an expert. Further, you are not

1 required to accept an expert's opinion, even though it is
2 not contradicted.

3 Now, ladies and gentlemen, as I said several times,
4 I charge and instruct you and emphasize that the fact
5 that the Defendant did not testify is not a factor to be
6 considered by you in any way in your deliberations and in
7 your consideration of the question of the guilt or
8 innocence of the Defendant. It must not be considered by
9 you in any manner whatsoever.

10 The Defendant, Mr. Temple, in this case has the
11 Constitutional right to remain silent, and the assertion
12 of this right must not be considered by you in
13 deliberations. I repeat that under your oath you are to
14 draw no conclusion whatsoever from the fact that the
15 Defendant in this case did not testify. The fact that
16 this Defendant did not testify should not even be
17 discussed by you in the jury room.

18 The burden, as I stated, is on the State. The
19 Defendant is not required to prove his innocence. The
20 burden of proof remains on the State to prove his guilt
21 beyond a reasonable doubt.

22 Now, ladies and gentlemen, an issue in this case is
23 the identification of the Defendant as the person who
24 committed the crimes charged. The State has the burden
25 of proving identity beyond a reasonable doubt. You must

1 be satisfied beyond a reasonable doubt of the accuracy of
2 the identification of the Defendant before you may
3 convict the Defendant.

4 Identification testimony is an expression or belief
5 or impression by a witness. You must determine the
6 accuracy of the identification of the Defendant. You
7 must consider the believability of each identification
8 witness in the same way as any other witness. You may
9 consider whether the witness had an adequate opportunity
10 to observe the offender at the time of the offense.

11 This will be affected by things like how long or
12 short a time was available, how far or close the witness
13 was, the lighting conditions, and whether the witness had
14 the chance to see or know the person in the past. Once
15 again, I instruct you that the burden of proof is on the
16 State in every element, to prove every element of the
17 crime charged, and this specifically includes the burden
18 of proving beyond a reasonable doubt the identity of the
19 Defendant as the person who committed the crime. If
20 after examining the testimony you have a reasonable doubt
21 as to the accuracy of the identification, you must find
22 the Defendant not guilty.

23 Now, ladies and gentlemen, in order to establish
24 criminal liability, criminal intent is required. For
25 example, the mental state to be proven by the State for a

1 particular crime might be purpose, intent, knowledge,
2 recklessness or criminal negligence. Criminal intent
3 must be proven by the State beyond a reasonable doubt.

4 Criminal intent is always a matter that must be
5 determined by you, the jury, from the circumstances
6 surrounding the situation. There is obviously no way to
7 prove intent to a mathematical certainty. There is no
8 way we can dissect the Defendant's mind to determine what
9 a person had in mind. So the law says that criminal
10 intent may be inferred from the circumstances shown to
11 have existed at the time of the alleged crime. This is
12 how you make a determination of whether or not the
13 element requiring intent was present.

14 It's not necessary to establish intent by direct or
15 positive evidence. But intent may be established by
16 inference in the same way as other facts, by taking into
17 consideration the acts of the parties and all other facts
18 and circumstances of the case.

19 I charge you that criminal intent is a mental state,
20 a conscious wrongdoing. It's up to you to determine what
21 the Defendant intended to do based on the circumstances
22 shown to have existed. Criminal intent can arise from
23 action or by failure to act. It may arise from
24 negligence, recklessness or indifference to duty or to
25 consequences that is considered by the law to be the

1 equivalent of criminal intent.

2 Now, ladies and gentlemen, the Defendant is charged
3 with two counts of first degree criminal sexual conduct.
4 When two or more acts of criminal sexual conduct occur at
5 or about the same time, each act, each act is a separate
6 crime rather than one continuing crime.

7 The first element that the State must prove beyond a
8 reasonable doubt to prove criminal sexual conduct in the
9 first degree is that the Defendant engaged in a sexual
10 battery with the victim. A sexual battery is sexual
11 intercourse, cunnilingus, fellatio, anal intercourse or
12 any intrusion, however slight, of any part of a person's
13 body or of any object into the genital or anal openings
14 of another person's body, except when the intrusion is
15 accomplished for medically recognized treatment or
16 diagnostic purposes.

17 If you find that the State has not shown beyond a
18 reasonable doubt that a sexual battery occurred, you
19 would stop deliberating and your verdict would have to be
20 not guilty. If you find a sexual battery did occur, you
21 must then decide whether the State has proven beyond a
22 reasonable doubt one or two of the following
23 circumstances: That the Defendant used aggravated force
24 to accomplish the sexual battery.

25 I charge you that aggravated force means the use of

1 physical force or physical violence of a high and
2 aggravated nature to overcome the victim. This includes
3 the threat of using a deadly weapon. Or the State must
4 prove that the Defendant committed the sexual battery
5 while the victim was also the victim of forcible
6 confinement, kidnapping, robbery, extortion, burglary,
7 housebreaking, or any other similar act or offense.

8 Now, ladies and gentlemen, the subject -- the
9 Defendant is also charged with kidnapping in violation of
10 16-3-910 of the South Carolina Code. The State must
11 prove beyond a reasonable doubt that the Defendant
12 knowingly and unlawfully seized, confined, inveigled,
13 decoyed, kidnapped, abducted or carried away another
14 person without the authority of law. To do a thing
15 unlawfully is to do it willfully against the law.
16 Knowingly under the law means that, with knowledge,
17 consciously and not accidentally. Seize means to take
18 hold of a person suddenly or forcibly. Confine means to
19 limit, restrict or enclose within bounds, imprison, or
20 shut or keep in. Inveigle means to lure, entice or lead
21 astray by false representation, promises or other
22 deceitful means. Decoy means to lure by, or as if by
23 decoy. A decoy is something to entice a person into a
24 trap. Kidnap is to remove a person against his will by
25 unlawful force or by fraud. Abduct means to carry off

1 secretly or by force for an illegal purpose. Carry away
2 means to remove.

3 The State does not have to prove that the Defendant
4 did all of these things. Instead, if you find beyond a
5 reasonable doubt that the Defendant did any of these
6 things, you may find the Defendant guilty of kidnapping.
7 Something done without the authority of law is something
8 the law does not sanction, permit, allow, condone or
9 provide justification for. The kidnapping does not have
10 to be for personal or monetary gain or for any illegal
11 purpose. It may be for any reason whatsoever.

12 Now, ladies and gentlemen, the Defendant is also
13 charged with grand larceny of a motor vehicle. The State
14 must prove to you beyond a reasonable doubt that the
15 Defendant took a motor vehicle that belonged to someone
16 else against the will or without the consent of the other
17 person. The slightest removal of the vehicle or the
18 complete possession of the motor vehicle, even for an
19 instant, by the Defendant is enough to show a taking or a
20 carrying away of the motor vehicle.

21 The State must also prove beyond a reasonable doubt
22 that the Defendant intended to permanently deprive the
23 owner of the motor vehicle. Finally, the State must
24 prove that the value of the motor vehicle taken was
25 \$5,000 or more.

1 Now, ladies and gentlemen, there are several
2 different verdicts that you can find as you begin your
3 deliberations. You can find the Defendant guilty or
4 innocent of each individual crime set forth in these
5 indictments. But as I said earlier, you have to look at
6 each indictment separately. So you find him guilty or
7 innocent on one and then you move to the next. How you
8 go about that is up to you. Which one you take first is
9 up to you. But you have to address each one
10 individually. Your verdict has to be unanimous. You
11 have to all agree on the guilt or innocence of this
12 person.

13 What I'm gonna do is I'm gonna send you back now and
14 ask you not to begin your deliberations. I'm gonna give
15 both parties the opportunity to ask me to charge
16 something else. They have not had input into what my
17 charge is. If I decide to change or alter or add to my
18 charge or subtract from it, I'll bring you back in and do
19 that.

20 If I decide to leave my jury charge on the law as it
21 is, in just a few minutes we'll deliver to you all the
22 evidence and the indictments.

23 Mr. Foreman, as I said, if you look on the back -- I
24 think it's pretty clear -- but it's in the bottom
25 left-hand portion of this and it says "Verdict." On each

1 indictment you need to write "guilty" or "not guilty" and
2 sign your name.

3 And again, if you have a question or a problem,
4 communicate with me through the pad, just write out the
5 problem or question, sign your name, put the time on it
6 and knock on the door and they'll bring it to me.

7 If you want me to recharge any portion of this
8 charge, I'll be happy to do it. If you want me to read
9 the whole thing to you again, I'd be happy to do it.
10 Whatever you need, I'll do, as long as the law allows me
11 to do that. If you ask me a question that I can't
12 answer, or won't answer, I'll bring you back in and tell
13 you I can't answer it or won't answer it. So I'll
14 address any problem you have.

15 If you need any portion of the testimony replayed,
16 we can arrange that. It's all on tape. We have to find
17 it, so it might take us a minute. So what I will need
18 you to do now is each of you except for the two
19 alternates go back to the jury room and give me just a
20 minute. I suspect that in just a few minutes I'm going
21 to deliver all the evidence and these indictments, and at
22 that point you can begin your deliberations.

23 Mr. Bibb, here's a pad.

24 (Whereupon, the jury left the courtroom at
25 approximately 3:46 p.m., except for the two

1 alternate jurors.)

2 **THE COURT:** I need you all to step back there, too.
3 But you can't go in the jury room. Y'all just wait out
4 in the hall and I'll be out in just a second.

5 (Whereupon, the two alternate jurors left the
6 courtroom.)

7 I never had that happen. I didn't know who they
8 were.

9 All right. From the State, any additions,
10 subtractions, or alterations?

11 **MS. SIMMONS:** No, Your Honor. It seems to be what
12 we were previously provided.

13 (The Defendant conferred with Mr. Tavernier
14 off the record.)

15 **THE COURT:** Anything from Mr. Temple? I'll give you
16 a minute if you need it.

17 **THE DEFENDANT:** Um, yes, Your Honor. You might have
18 covered this issue, but I'm not quite sure. The fact
19 that informing the jury that anything that I said in my
20 opening as well as the State may not be considered as
21 evidence?

22 **THE COURT:** The fact that the opening and closing
23 aren't evidence?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** I mean, I told them that once before. I

1 don't mind bringing them back in and telling them again
2 if you want me to, again, in the abundance of caution.

3 (The Defendant conferred with Mr. Tavernier
4 off the record.)

5 THE DEFENDANT: Yeah. Also in the testimony that in
6 regards to the witnesses...

7 (The Defendant conferred with Mr. Tavernier
8 off the record.)

9 THE DEFENDANT: My questions during...

10 (The Defendant conferred with Mr. Tavernier
11 off the record.)

12 MS. SIMMONS: Judge, if I may, I can maybe clear it
13 up.

14 THE COURT: Again, it's a smaller courtroom.

15 I think the issue is that you might want me to
16 instruct them that at any time in your questioning you
17 use the first person "I" instead of referring to the
18 perpetrator, they should disregard that.

19 THE DEFENDANT: Yeah. Mr. Tavernier told me that
20 previously, but I forgot.

21 THE COURT: That's all right.

22 Any objection to that?

23 MS. SIMMONS: Judge, no objection to that.

24 THE COURT: All right. In the abundance of caution,
25 I'm gonna tell them that. Okay.

1 Bring them back in one more time.

2 (The jury entered the courtroom at

3 approximately 3:50 p.m.)

4 THE COURT: Y'all have extra gloves, don't you?

5 MS. SIMMONS: Yes, Your Honor.

6 MS. ADAMS: Yes, Your Honor.

7 THE COURT: Ladies and gentlemen, I did want to tell
8 you a couple of things, two things, actually. I'm sure I
9 told you this, but I want to reiterate that anything said
10 by the State or the Defendant in their opening or closing
11 arguments are not evidence and shouldn't be considered as
12 evidence.

13 Also I want to address something that doesn't come
14 up often but has in this case. In any situation in which
15 the Defendant is questioning a witness and they use the
16 first person "I" instead of "the alleged perpetrator" or
17 "the person who did this" and refer to themselves, you
18 should disregard that, too. Obviously that's a difficult
19 syntactic question, but just disregard that.

20 I'll also tell you I'm gonna send gloves back. If
21 you want to touch any evidence, I'll have gloves for you.
22 If you don't want to, that's fine, you don't have to.

23 So that would be the only change I would make. So
24 in just about two minutes you'll have all the evidence
25 and you can finally begin your deliberations. I

1 appreciate your patience. Go back there one last time.

2 And if the two alternates would just wait in the
3 hall, I'll be right out.

4 (Whereupon, the jury left the courtroom to
5 the jury room and the two alternates left the
6 courtroom to wait in the hallway at
7 approximately 3:52 p.m.)

8 THE COURT: Mr. Temple and Mr. Tavernier, y'all come
9 up and make sure all this evidence has been marked and
10 we'll send it back with the indictments and we'll just
11 let them go.

12 MS. SIMMONS: Judge, I'm gonna separate the Court's
13 exhibits into a folder and put them somewhere else.

14 (Whereupon, the jury began their
15 deliberations at approximately 4:00 p.m., and
16 a verdict was reached at approximately 4:15
17 p.m.)

18 THE COURT: All right, ladies and gentlemen, they do
19 have a verdict.

20 Let me say this, and I sort of jokingly said earlier
21 that I'm glad somebody recognized I was in charge. I
22 want to say something that I mean, and I don't want to
23 have to prove to anybody that I mean it. But I won't
24 tolerate one word of outburst, no matter what the verdict
25 is, from either side, from the victim's or the

1 Defendant's side, anything. I just don't -- that's a pet
2 peeve of mine, I don't take it. And so I told the
3 officers if you make a sound or you make a disruption,
4 they are taking you into custody, okay? Fair warning.
5 All right.

6 You can bring them in.

7 (The jury entered the courtroom at
8 approximately 4:31 p.m.)

9 THE COURT: All right, Mr. Foreman, I understand you
10 have a verdict?

11 THE FOREMAN: Yes, Your Honor.

12 THE COURT: If you would hand it to Mr. Bibb.

13 THE FOREMAN: (Complies.)

14 THE COURT: Thanks.

15 All right. You can publish it.

16 VERDICT OF THE JURY:

17 THE CLERK: 2010-GS-37-889, the *State versus Dennis*
18 *Temple*, indictment for criminal sexual conduct, first
19 degree: Guilty.

20 2010-GS-37-886, *State versus Dennis Temple*, grand
21 larceny: Guilty.

22 2010-GS-37-888, the *State versus Dennis Temple*,
23 kidnapping: Guilty.

24 2010-GS-37-887, the *State versus Dennis Temple*:
25 Guilty.

1 Ladies and gentlemen of the jury, if this was your
2 verdict and is still your verdict, please signify by
3 raising your right hand.

4 The record will reflect that all 12 raised their
5 hands.

6 THE COURT: Ladies and gentlemen, I have to send you
7 out for the last time. I'll be back to speak with you
8 personally in just a few minutes. Thank you.

9 (Whereupon, the jury left the courtroom at
10 approximately 4:33 p.m.)

11 THE COURT: Any motions or other matters from the
12 State?

13 MS. ADAMS: No, sir, Your Honor.

14 THE COURT: Mr. Temple?

15 DEFENDANT'S MOTIONS:

16 THE DEFENDANT: Yes, sir. I would like to renew all
17 of my previous motions.

18 THE COURT: Okay. And I'll consider them renewed
19 and incorporate all of your arguments as if you made them
20 all today. And you are protected on all of those
21 motions.

22 THE DEFENDANT: And judgment not...

23 THE COURT: Notwithstanding the verdict?

24 THE DEFENDANT: Yes. Not guilty.

25

1 COURT'S RULING ON DEFENDANT'S MOTIONS:

2 THE COURT: All right. And that motion is denied,
3 but you are protected.

4 All right. What I'm gonna do is I'm gonna go back
5 and I'll give them the option of coming back in here.

6 Have you got all the paperwork?

7 MS. ADAMS: Yes, sir.

8 THE COURT: Give me about four to five minutes and
9 I'll be back in.

10 (Whereupon, the Court left the courtroom at
11 approximately 4:34 p.m., went in and spoke
12 with the jury, and the Court returned to the
13 courtroom at approximately 4:42 p.m.)

14 THE COURT: How long has Mr. Temple been in jail?

15 THE DEFENDANT: Um...

16 THE COURT: Do you know how many days, Mr. Temple?

17 MS. ADAMS: Your Honor, I believe it's been since
18 May the 11th.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. All right.

21 Come on up, Mr. Temple.

22 MS. ADAMS: Your Honor, the victim's family would
23 like to address the Court.

24 THE COURT: I would be happy to hear from anybody
25 before I pass sentence.

1 Yes, ma'am.

2 THE VICTIM: This, this is impossible for me to put
3 in words, to explain how this has affected me. And no
4 amount of time in prison is gonna make up for what
5 happened. But I will not be at peace knowing that at any
6 point he is free to walk the streets to hurt me or anyone
7 else again.

8 THE COURT: Let me just say to you that I've been a
9 judge for 10 years and I was a lawyer for 20. And I mean
10 this sincerely. I think you may be the bravest person
11 I've ever seen in the courtroom.

12 THE VICTIM: Thank you.

13 THE COURT: I mean, I've seen a lot of men that
14 were -- you know, I've got a brother who's been to Iraq
15 four times, and I think he would say the same thing. So
16 I wish you the best. All right.

17 VICTIM'S FATHER: Your Honor, I'm Catherine's dad.
18 I haven't prepared anything to say, but I have a lot to
19 say.

20 I'm not as strong as Catherine. What Dennis Temple
21 did is so appalling, it is so shocking, that it's
22 difficult to talk about it. He attacked her in broad
23 daylight at a public place and put her through nine hours
24 of the worst nightmare a person can imagine.

25 She could have died at any point that time. She

1 could have suffocated, she could have been strangled.
2 But she survived and it's a miracle she survived. It's a
3 testament to her strength and her wit and her
4 determination.

5 THE COURT: Yes, I agree.

6 VICTIM'S FATHER: But, Your Honor, it's important
7 for her healing process. It's been her dream to attend
8 Clemson University since the tenth grade. And she was
9 living that dream until Mother's Day. And from that
10 point on it's been a nightmare. She can't attend school.
11 She has posttraumatic stress disorder, she's had
12 flashbacks, panic attacks, can't sleep.

13 I mean, will she recover? We don't know. Will she
14 ever be able to get back on track? I mean, hopefully. I
15 know I would never bet against her, because the same
16 strength that got her here will get her through it.

17 But it's important to her that Dennis Temple get the
18 maximum sentence, whatever the law will allow, the
19 maximum. If he ever walks the street, and I don't think
20 anybody can be safe on the street with Dennis Temple,
21 especially no woman will be safe, okay? So, I mean, I'm
22 asking you, I'm pleading with you, give Dennis Temple the
23 maximum the law will allow.

24 The bottom line is if he doesn't deserve the
25 maximum, then, my gosh, what would somebody have to do to

1 get the maximum? I can't even imagine. Please, show him
2 no mercy, show him no compassion, because he showed
3 Catherine none. He deserves the maximum. So please give
4 him what he deserves. Thanks.

5 THE COURT: All right.

6 VICTIM'S SISTER: Your Honor, my name is Carmen, I'm
7 one of Catherine's sisters. (Crying.) What has been
8 taken from my sister and my family can't be measured and
9 can't be gotten back.

10 There are numerous times that she could have died,
11 but she survived thanks to her strength and her
12 perseverance, and by the grace of God that there was a
13 phone in there. She saved her own life.

14 But every part of my life and my family's life has
15 changed. My relationship with my husband of 10 years, my
16 ability to perform my job. Everything has changed. I
17 have trouble sleeping, I have headaches, nausea, muscle
18 pain. And now I have a heart condition. I was diagnosed
19 just a couple of weeks ago. I'm on medication for
20 depression, I'm on medication to slow my heart rate and
21 decrease my blood pressure. The weight on my heart is
22 very heavy, literally.

23 What happened was horrific and should never have
24 happened. Men are afraid that women will make fun of
25 them or reject them. Women are afraid that men are gonna

1 kill them. One in four women are victims of sexual
2 assault. There are four women in my family, and
3 Catherine was the one.

4 I'm asking you today to give Temple the maximum
5 sentence possible or more for what he's done to Catherine
6 and what he's done to my family so that he can never,
7 ever, ever again get his disgusting evil hands on another
8 woman. Thank you.

9 THE COURT: Thank you.

10 VICTIM'S MOTHER: Your Honor, this is my family, and
11 yes, it has affected us greatly. But I know through
12 Catherine's strength and ours that we will heal. We are
13 a small family and we will move on and we will heal.

14 But he has to be in jail off the street. We have to
15 feel safe for a very -- we have to go face the rest of
16 our lives. Face him with the maximum penalty so that we
17 can move forward.

18 THE COURT: Anything else from the State? What is
19 his record?

20 MS. ADAMS: Your Honor, he has a conviction for
21 possession of cocaine and possession with intent to
22 distribute cocaine from '93, proximity in '95, D.U.S.
23 second in '95, malicious injury to personal property in
24 '95, simple assault in '95. He received 10 years in 2001
25 for strong arm robbery, fraudulent check in 2007, petit

1 larceny in '09. And he's got a false information to law
2 enforcement out of Georgia, Rome, in 1992. And those are
3 his convictions. He does have pending charges in
4 Greenville.

5 THE COURT: Anything else from the State?

6 MS. ADAMS: No, Your Honor.

7 THE COURT: Ma'am, did you want to say anything?
8 Back there? Come on up. If you would give us your name
9 for the record.

10 DEFENDANT'S SISTER: Yes. My name is Andrianna
11 Temple.

12 THE COURT: Yes, ma'am.

13 DEFENDANT'S SISTER: And I'm Dennis Temple's sister.
14 Does this come out?

15 THE COURT: Probably not. I can hear you. You're
16 okay. You don't need to talk into that. I'm okay.

17 DEFENDANT'S SISTER: I just want to say that Dennis
18 and I basically raised ourselves and that we have no
19 family that we can really depend upon. And I also want
20 to say that no man can judge and say what's gonna become
21 of a life. I was raised in the ghetto streets. I now
22 possess a Bachelor's Degree in Business, a Master's
23 Degree in Management, and a Ph.D.

24 So no one can say what can become of a life. A
25 person can turn their lives around. As a matter of fact,

1 Dennis was on his way to enter into a paralegal program
2 and then looking into going to law school. He had goals
3 set for his life.

4 And I ask and pray for mercy. That we let God be
5 the judge. And that we give mercy in this court today
6 because he deserves an opportunity to have children and
7 have a family and to pursue a career and to do those
8 things that we enjoy every day in our lives. So I ask
9 for mercy.

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

11 Mr. Temple, anything you want to say before I do the
12 sentence?

13 THE DEFENDANT: Your Honor, I still declare my
14 innocence of these charges. I think that if I would
15 have -- since I've been locked up in the Oconee County
16 Detention Center, I have been put in an eight-by-six
17 cell. I have not really been able to defend myself
18 against these charges until recently. Six months in an
19 eight-by-six cell. I have not had the access to a
20 lawyer. I feel that -- I mean -- that's all I got to
21 say, Your Honor.

22 THE COURT: All right. You know, I'm a little bit
23 speechless. First I would say that this victim is
24 extraordinarily strong and I suspect that she will be
25 okay.

1 Mr. Temple, I've been with you in the courtroom
2 since May. And, as I said, I've been a judge for 10
3 years. I was sitting up here thinking yesterday what you
4 could have done with your life if you had done the right
5 thing. And I deal with lawyers who probably don't have
6 your I.Q. And it's just the saddest thing to me. I
7 mean, I just, you know, it's just -- apart from all that
8 this victim went through, it's just sad. I look at your
9 sister back there. I've been watching her this week.
10 She cares about you. And I don't know why you got to
11 this point.

12 But one of the things that I'm most affected by is
13 you have a right to a trial and you exercised that right
14 and everyone tried to make sure that it was fair. But
15 you put this victim through the trauma of having to come
16 back and testify and relive it. And that means something
17 to me. And you didn't have to do that. And I think the
18 jury's verdict was correct. And I'm sure, as you said
19 last week, you were a hundred percent certain that the
20 Court of Appeals will overturn the verdict. They'll get
21 their opportunity.

22 SENTENCE OF THE COURT:

23 THE COURT: What I'm gonna do on each one of these
24 things: The maximum on the C.S.C. first is 30 years, the
25 maximum on kidnapping is 30, and the maximum on grand

1 larceny is 10. What I'm gonna do is sentence you on the
2 criminal sexual conduct to 30 years; on the second
3 criminal sexual conduct, 30 years to run consecutive; on
4 the kidnapping charge, 30 years to run consecutive; and
5 on the grand larceny charge, 10 years to run consecutive.

6 Good luck to you.

7 MS. ADAMS: Thank you, Your honor.

8 THE DEFENDANT: Thank you, Your Honor.

9 THE COURT: Thank you.

10 Let me also put on the record something about
11 Mr. Tavernier, who has been sitting here at my order.
12 And I mean this sincerely. Do an Order for me. I
13 appreciate what you did, I appreciate you sitting there
14 and being available. I appreciate all the time you put
15 into it. The State appreciates it, too, I'm certain.
16 And make sure you do an Order and I'll make sure you're
17 gonna get -- it wasn't wasted time.

18 All right. Thank you very much. We're adjourned.

19 MS. ADAMS: Thank you, Your Honor.

20 (Whereupon, the trial in the *State of South*
21 *Carolina versus Dennis Temple* was concluded
22 at approximately 5:00 p.m.)

23 ** End of Requested Certified Transcript of Record **

24

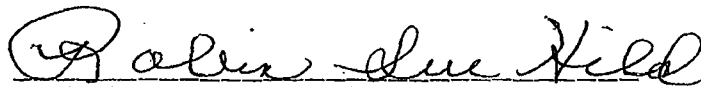
25

Certificate of Court Reporter

I, the undersigned, Robin Sue Hild, FCRR, RPR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Oconee County, South Carolina, on the 15th day of December, 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

September 9, 2011


Robin Sue Hild, FCRR, RPR
Circuit Court Reporter



South Carolina
Department of
Mental Health

Division of Inpatient Services
Forensic Evaluation and Treatment Services
Building #6
7901 Farrow Road
Columbia, South Carolina 29203
Information: (803) 935-5600
Fax: (803) 935-5544

November 1, 2010

11/1/10

Lindsey Simmons
Assistant Solicitor
415 S. Pine Street
Walhalla, SC 29691

Re: The State of South Carolina vs. Temple, Dennis
DMH Case #: 957-0351
Oconee County, Court of General Sessions

Dear Assistant Solicitor Simmons:

In accordance with the court order issued by the Honorable Alexander Macaulay, a competency to stand trial evaluation was conducted by the South Carolina Department of Mental Health, pursuant to S.C. Code Ann. § 44-23-410 (1976).

Please see the attached report for the results of this evaluation.

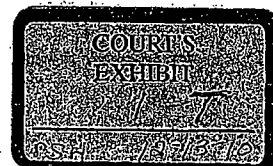
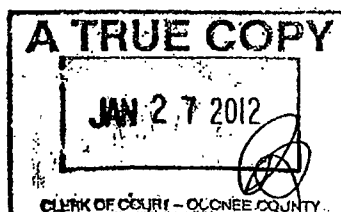
This 6 page document is certified to be the original court-ordered evaluation report issued pursuant to S.C. Code Ann. § 44-23-410 (1976).

11/1/10
Date

Jeffrey E. Musick, Ph.D., ABPP
Jeffrey Musick, Ph.D., ABPP
Chief Psychologist
Forensic Evaluation Services
Department of Mental Health

cc: Kurt Tavernier, Attorney at Law, 110 E. Benson Street, Anderson, SC 29624.

JM/tl



COMPETENCY TO STAND TRIAL EVALUATION
SCDMH FORENSIC EVALUATION SERVICE

DATE OF EVALUATION: October 18, 2010

PRESIDING: Richard L. Frierson, M.D., Professor of Clinical Psychiatry
University of South Carolina School of Medicine

SECOND EXAMINER: Scott Weyant, M.D., Resident in Psychiatry
University of South Carolina School of Medicine

DIAGNOSES: AXIS I: Cocaine Dependence, in a controlled environment.
 AXIS II: Antisocial Personality Disorder with Prominent Paranoid
 Personality Disorder Traits.
 AXIS III: No Diagnosis.

OPINION REGARDING COMPETENCY TO STAND TRIAL: Competent.

DISPOSITION: Mr. Temple has been returned to the Oconee County Detention Center.

IDENTIFYING INFORMATION: Dennis Temple is a 37-year-old African American male who was seen at the Forensic Evaluation Center pursuant to a court order from the Oconee County Court of General Sessions. This court order requests an evaluation of his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and S.C. Code Ann. §44-23-410 (1976). He is currently charged with Criminal Sexual Conduct First Degree (two counts), Kidnapping, and Grand Larceny.

LIMITATIONS OF CONFIDENTIALITY: Prior to participating in this evaluation, Mr. Temple was informed of the limitations of confidentiality. Specifically, he was informed that the examiners were employees of the Department of Mental Health and were not paid by his attorney or by the solicitor. He was also informed that the examiners could be called to court to testify at a competency hearing. He was told that a report would be submitted to the court and given to his attorney, the solicitor, and the judge in his case. He understood this information and voluntarily agreed to participate in the evaluation.

SOURCES OF INFORMATION:

1. Court order requesting the evaluation.

JSM

TEMPLE, DENNIS
957-0351

OUTPATIENT EVALUATION

2. Arrest warrant #N-136670 for Criminal Sexual Conduct First Degree.
3. Indictment for Criminal Sexual Conduct First Degree.
4. Additional indictment for Criminal Sexual Conduct First Degree.
5. Indictment for Kidnapping.
6. Arrest warrant #N-136669 for Kidnapping.
7. Arrest warrant #N-136668 for Grand Larceny.
8. Indictment for Grand Larceny.
9. Case report summary.
10. Detailed call for service report.
11. Statement of Catherine McGough.
12. Statement of Lori McAlister.
13. Statement of Tandria Moon.
14. Statement of Celina Victoria Nichols.
15. Statement given by an unknown jail inmate.
16. Second statement given by an unknown jail inmate.
17. Third statement given by an unknown jail inmate.
18. Fourth statement given by an unknown jail inmate.
19. Search warrant.
20. Bank account records of Catherine McGough.
21. Crime scene photos.
22. NADA data for trade of Honda Accord.
23. Medical records from the Oconee Medical Center related to the alleged victim.
24. Records from the South Carolina Law Enforcement Division laboratory.
25. Inmate request dated September 22, 2010.
26. Additional inmate request dated September 22, 2010.
27. Inmate request dated September 1, 2010.
28. Inmate request dated August 31, 2010.
29. Inmate request dated August 24, 2010.
30. Inmate request dated July 28, 2010.
31. Inmate request dated June 29, 2010.
32. Inmate request dated June 25, 2010.
33. Transcription of a court hearing in the Anderson County Circuit Court.
34. Motion for a change of venue.
35. Magistrate's Court bond information form.
36. National Crime Information Center (NCIC) record for the defendant.
37. Medical records from Anderson-Oconee-Pickens Mental Health Center.
38. Prior competency and criminal responsibility evaluation conducted at William S. Hall Psychiatric Institute on March 13, 2001.
39. Medical records from the South Carolina Department of Corrections.
40. A 2 hour and 15 minute clinical forensic interview on today's date.

JSM

TEMPLE, DENNIS

957-0351

OUTPATIENT EVALUATION

CLINICAL AND PSYCHIATRIC HISTORY: Mr. Temple has no history of prior psychiatric hospitalizations. He had brief contact with the Anderson-Oconee-Pickens Mental Health Center on March 22, 1995 where he was diagnosed with Cocaine Dependence. He was also evaluated at William S. Hall Psychiatric Institute for competency to stand trial and criminal responsibility on March 13, 2001. At that time, he was facing charges of Strong Armed Robbery, Assault and Battery with Intent to Kill, Possession of a Weapon during Commission of a Violent Crime, Grand Larceny, Failure to Stop for a Police Officer, and Resisting Arrest. The results of that evaluation indicated that he was diagnosed with Cocaine Dependence and was opined to be competent to stand trial, to have criminal responsibility, and to have been capable of conforming his behavior to the requirements of the law. Mr. Temple denies other psychiatric treatment or contacts.

Medical records from the S.C. Department of Corrections indicate that he has not received mental health services while incarcerated.

SUBSTANCE USE HISTORY: Mr. Temple was vague in reporting his substance use history. However, he reports that in 1997 he was addicted to cocaine. He reports that he had difficulties functioning without it. He often sold drugs to support his own habit. He had estimated that he could spend approximately \$1,000 a month on cocaine. More recently, he estimates he uses crack cocaine once a week. His history tolerance to the effects of this substance as well as an inability to stop using would meet the diagnostic criteria for Cocaine Dependence.

He also reports occasional cannabis use but denies any personal, social, or occupational difficulties related to his use of cannabis. He denies the use of other illicit substances but has taken opioids and analgesics for back pain at times.

MEDICAL HISTORY: His medical history is significant for a surgical repair of abdominal gunshot wounds that occurred in 1991. He was allegedly shot five times. He denies the history of head injury with loss of consciousness.

FAMILY HISTORY: Mr. Temple was born to Shirley and Dan Temple. His mother is 57 years of age and is on disability for "bipolar disorder." This has not been confirmed independently by Mr. Temple's report. His father is currently in prison for distribution of drugs. He is the fourth of five siblings. One of his brothers is in prison for murder. He reports that he has one sister who was also diagnosed with Bipolar Disorder. When asked to discuss the diagnosis of Bipolar Disorder in his mother and his sister, he was unable to do so and unable to describe the symptoms which led to that diagnosis.

SOCIAL HISTORY: He was born in Oconee County and lived in New York, Atlanta, and Alabama. He denied early developmental difficulties. He states he had a terrible childhood due to witnessing frequent violence and drug activity in his home. He denied a history of physical or sexual abuse as a child. He states that at age 14 or 15 he left South Carolina to go to New York to live with his father. He states that his father was hiding out in New York, avoiding pending legal charges in South

TEMPLE, DENNIS
957-0351

OUTPATIENT EVALUATION

Carolina. He states that his father taught him how to sell drugs. He states that he completed the 9th grade at Seneca High School but did receive a GED from United Ministries in Greenville. He reports behavioral difficulties including stealing at age 13. He also reported cruelty to animals and truancy. He has never married and his longest relationship was described as lasting three years. He denies having any children. He has worked at manufacturing, auto body, fencing, retail, and restaurant businesses. He reports that his longest job was 1 - 2 years for a fencing company in New York. He has been to prison several times. He did a few months on a possession with intent to distribute case back in 1993. He then received a YOA sentence in 1993. He states that he violated his YOA probation by being arrested for malicious injury to personal property in 1995. Finally, in 2000 he received a ten year sentence for strong armed robbery.

MENTAL STATUS EXAM: On today's date, he was alert and oriented to person, place, day of the week, month, and year. He estimated the date was the 17th rather than the 18th. He was neatly groomed and cooperative with the interview. He made good eye contact. He was occasionally vague in answering questions and his vagueness appeared to be purposeful. He was able to register three objects and he had no difficulty recalling all three objects after five minutes. He was able to recall significant past personal information and we found no evidence of clinically significant long or short-term memory impairment. His fund of knowledge was in the average range. He demonstrated the capacity for concentration and he was able to perform a calculation. His ability to think abstractly was fair. His judgment to a hypothetical situation was fair. He initially described his mood as "sleepy." However, he rated it as a 1 on a scale of 1 - 10 being 1 being the worst he has ever felt in his life. However, he was noted to be smiling while he gave this answer and the answer appeared to be disingenuous. He denied suicidal or homicidal ideation. He reports occasional auditory hallucinations of "a voice telling me to do things or don't do things." He states that when he filed a motion to have his charges dismissed, he heard a voice telling him "be cautious in your pursuit." His description of "voices" does not fit a pattern seen in major mental illness. He denied visual hallucinations. He made a fantastical report of a bug inside of him roaming around that is allowing him to be tracked by satellite. However, when asked specific about this potential delusion, he could not provide specific information.

DIAGNOSTIC FORMULATION: As mentioned previously, Mr. Temple reports symptoms of Cocaine Dependence. Additionally, he had early onset of antisocial behaviors and his antisocial behaviors have continued into adulthood. Therefore, we are assigning a diagnosis of Antisocial Personality Disorder. What is notable, however is how quickly Mr. Temple reads demeaning messages into benign remarks made by other people. He has suspected that his past three lawyers, without sufficient basis, are exploiting, harming or deceiving him. He tends to read demeaning or threatening meanings into benign remarks or events and appears to bear grudges. These symptoms are consistent with underlying paranoid personality pathology as well as his antisocial personality pathology.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Temple was aware of the charges against him and he appreciates their seriousness, including the potential sentence he

JEM

TEMPLE, DENNIS
957-0351

OUTPATIENT EVALUATION

could receive if he were to be convicted. He labeled that the persons who work in court are the attorney, the solicitor, the judge, the bailiff, and the court reporter. He states that the job of the judge is "adjudicate disputes between parties -- apply the law." He states that the judge should make sure that each lawyer is proceeding within the proper procedures. He also understood the role of the judge in deciding a sentence. He states that the job of the solicitor is to "prosecute cases with justice." He was able to define the role and function of an attorney. He was able to discuss the difficulties he has had working with attorneys so far. It appears from his discussions that he may have unreasonable expectations of unusually favorable treatment from his attorney. His difficulties in forming trusting relationships with his attorney are likely due to his underlying personality pathology, but not mental illness. He states that the jury is "people who decide the fate of the defendant." He states that there were "12 - 20" jurors on a jury. He understood that they all had to agree to find him guilty. However, he mistakenly thought that if several of them did not agree to find him guilty, it would result in an acquittal rather than a mistrial. He was able to define the pleas of *guilty* and *not guilty*. He understands what a plea bargain is and would be competent to accept or reject a plea offer in his case. He was able to solve a hypothetical problem involving the courtroom. He did not appear willing to discuss evidence in his case because he states that "everything they attempted to use was a violation of the fourth amendment." He realizes that there is the possibility that he could be convicted. He added, "They do it every day -- court systems make mistakes." He stated that his desired outcome was to "be vindicated and exonerated."

From reviewing his legal writings, Mr. Temple has a good understanding of several constitutional amendments. However, although he has a legal knowledge that is greater than the vast majority of defendants that undergo competency evaluation, he appears unwilling to accept the limitations of his knowledge base. For example, he believes that his charges should have been dropped because he was not indicted within 90 days of his arrest. However, he refuses to listen to reasoning that this might not be grounds for getting his charges dismissed. It appears that Mr. Temple does not wish to "face the music" rather than being unable, secondary to mental illness, to face the music. It is our opinion that he has significant factual understanding of the legal system and the present ability to rationally consult with his attorney *if he so chooses*.



Richard L. Frierson, M.D., DFAPA
Professor of Clinical Psychiatry
University of South Carolina School of Medicine

RLF/khr

D: 10/18/10

RT/EM: 10/19/10

F/EM: 10/29/10 (RLF)



TEMPLE, DENNIS

957-0351

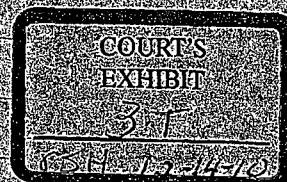
OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 40036

Restroom

break

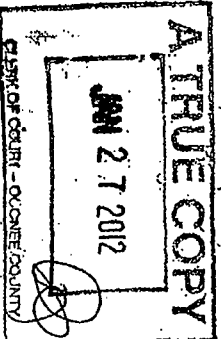
Danell Smith



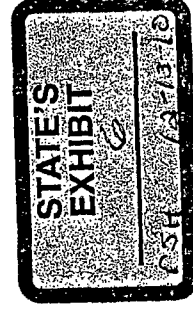
At the last Board before
 leaving Court yesterday, the
 books were furnished &
 started to make tapes
 under their bench.

No investigations were
 made there, however, further
 action may be necessary to
 do say anything at all.
 The jury room report the
 case.

Albino's are
 Federal Court
 ASD AL









All-Safe Storage Co.

864-885-1006
P.O. Box 1174
Seneca, SC 29679

Mail Payments
Post Office Box 11
Seneca, SC 29679

Gate Code: 8496#

RENTAL AGREEMENT

This RENTAL AGREEMENT ("Rental Agreement") is made this day of 3-22-10, by and between All-Safe Storage - Seneca ("Lessor"), "Tenant", whose name and address appear hereinafter, for the rental of a self-storage unit as defined by the laws of the state wherein the storage unit is located identification number 175. Said unit is rented with the express understanding and agreement that the relationship created hereby between the parties is of Landlord and Tenant, and no bailment or deposit of goods for safekeeping is intended or created hereunder.

Lessor and Tenant hereby agree that Lessor rents to Tenant and Tenant rents from Lessor that certain self-storage unit identified herein. Tenant has inspected storage unit and acknowledges that the container is satisfactory for the intended use by Tenant.

Tenant: Dennis Temple Phone: _____
Address: _____ Credit Card Info.: _____

Driver's License #: _____

a. Tenant shall have access to the storage unit at Lessor's storage property only during specified hours which are normally 6:00 am to 9:00 pm 7 days a week.

1. **TERM:** The term of this Rental Agreement shall be for thirty (30) consecutive days (herein referred to as "monthly") beginning as of the date first above written and shall continue on a month-to-month (30 day) tenancy until terminated. Rental charges for the initial rental period shall be due in advance on the date first written and subsequent rentals shall be due in advance on the first day of the month and subsequent anniversaries of that date. Tenant must pay to Lessor each month in advance without deduction, prior notice, demand or billing statement, in the amount set forth herein. The minimum rental period shall be thirty consecutive days. Tenant will not be entitled to a refund of any prepaid rent under any circumstances, whether or not the storage unit continues to be in use by Tenant.

~~Storage of hazardous materials in unit is prohibited by law, and Tenant shall not store, or permit to be stored, any hazardous materials of any kind in the container. "Hazardous Materials" are defined, for purposes of this Rental Agreement, as any hazardous or toxic chemical, gas, liquid, substance, explosive, or waste that is regulated under any local, state or federal law or regulation. Tenant shall comply with all laws, regulations, rules and ordinances of any governing authorities governing the use, location and address of placement of the container at any location other than the Lessor's designated storage area.~~

8. **PACKING AND PACKAGING/INSURANCE DISCLOSURE:** Tenant assumes full responsibility and liability for packing Tenant's property into unit removing property from unit. Tenant further acknowledges that Lessor shall not be responsible or liable for any damage to Tenant's property for any reason, with damage occurs while it is stored at Tenant or Lessor's designated location. Tenant acknowledges that he has read and understands the provisions of this paragraph agrees to comply with its requirements.

9. **ACCESS TO UNIT AT LESSOR'S FACILITY STORAGE:** Tenant will provide driver's license number to Lessor at the time of initial rental of unit. number will be used by Lessor to identify Tenant for Tenant to gain access to Lessor's designated storage location and to the rented unit. This identification be given by Tenant to Lessor when requesting access. Tenant agrees that Lessor shall have the right to refuse access to any person who does not provide correct access identification. Tenant may authorize his representative(s) to have access by notifying Lessor in advance and providing the driver's license number herein referenced. **DRIVER'S LICENSE NUMBER OR OTHER IDENTIFICATION ACCEPTABLE TO LESSOR (IF OTHER THAN DRIVER'S LICENSE STATE TYPE OF IDENTIFICATION)** _____

LESSOR AND TENANT ACKNOWLEDGE AND AGREE TO ADDITIONAL TERMS AND CONDITIONS PRINTED ON THE REVERSE SIDE OF THIS AGREEMENT. IN WITNESS WHEREOF, the parties hereto have executed this Rental Agreement on the date and year first above written, and agree to be bound all of the provisions herein contained.

LESSOR:

[Signature]

TENANT:

[Signature]

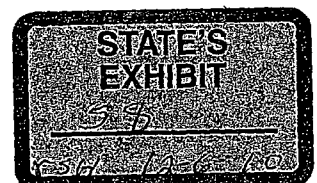
DATE:

3-22-10

DATE:

Dennis Temple

SIGN & RETURN
WHITE COPY



3-22-10

ALL - SAFE STORAGE - SENECA

P.O. BOX 1174 SENECA, SC 29679 864-885-1006

transfer 10x15
193 4-17-10
Due for:
7 days @ \$ 1.50 / day = 10.00
to April 45.00 + \$5.00
Next month

NAME: Dennis Temple

total 55.00

25.00

30.00
pd

ADDRESS: _____

CITY: Seneca STATE: SC ZIP CODE: 29678

EMAIL: _____

HOME PHONE: _____ WORK PHONE: _____

UNIT NUMBER: 175 UNIT SIZE: 10x152nd contactGATE ACCESS CODE: 8496 #

CREDIT CARD # _____

EXP. DATE: _____ / _____ (____)

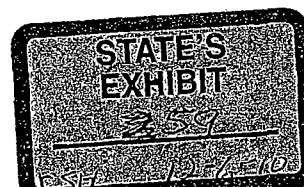
AUTOMATIC MONTHLY DRAFT: YES OR NO

Contract will arrive by mail within 3-4 business days and must be promptly
signed and returned.

Customer is responsible for notifying ALL-SAFE STORAGE of any change
of address.

CUSTOMER SIGNATURE: Dennis Temple

This signature certifies that I, the Lessee, have read the "sample" contract and agree to its terms and conditions. I also
certify that it is my responsibility to return signed contract, and that it is my responsibility to notify ALL-SAFE STORAGE
of any change of address.



RECEIPT

DATE	5-3-10	No.	071641
RECEIVED FROM	D. Temple		\$75.00
DOLLARS			
☐ FOR RENT # [REDACTED] ☐ FOR			
ACCOUNT	75	☒ CASH	FROM 5-10 TO 6-1-10
PAYMENT	75	☐ MONEY ORDER	
BAL. DUE		☐ CHECK	
		☐ CREDIT CARD	BY <i>Door</i>

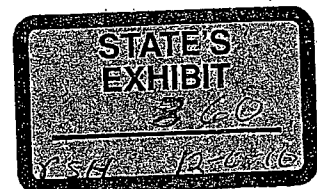
This is for Dennis Temple
Storage Fee \$75.00
193

\$75.00
5-3-10

Please call me once you
get this money!

RECEIPT

DATE	3-22-10	No.	204549
RECEIVED FROM	D. Jubble		\$30.00
DOLLARS			
☐ FOR RENT # 175 ☐ FOR			
ACCOUNT	30	☒ CASH	FROM 3-22-10 TO 5-1-10
PAYMENT	30	☐ MONEY ORDER	
BAL. DUE		☐ CHECK	
		☐ CREDIT CARD	BY <i>YCP</i>



Global Providers

Gucci, Coach, d&g, Fendi and d&b
handbags, Versace, Gucci, Ed
hardy, Fendi, Coach and Prada
Sunglasses, plus air jordan and air
force one shoes, Coogi pants

Call: dennis

107 Davis Mill Park Drive
Seneca SC 29678

864-276-8496

dennis.temple@yahoo.com

High quality products at a low price!

SC0370000, 2010-00012105

T/I: 4709/1

Type: EVIDENCE - GENERAL PROPERTY

Desc: ENV CONT 1 BUSINESS CARD FOR GLOBAL PROVIDERS.

196

G10



-EVIDENCE-

(TO BE OPENED BY AUTHORIZED PERSONNEL ONLY)

Submitting Agency: <u>Monroe County Sheriff's Office</u>	
Case No.: <u>1012105</u>	Item No.: _____
Date of Collection: <u>5-10-10</u>	Time of Collection: <u>8:45am</u>
Collected by: <u>S. Arndt</u>	Badge No.: <u>1265</u>
Description of Enclosed Evidence: <u>1</u> <u>Dennis Card, Global Provider</u>	
Location Where Collected: <u>600 Shiloh Rd</u> <u>Unit # [REDACTED]</u>	
Type of Offense: <u>CSC, Kidnapping</u>	
Victim's Full Name: <u>Catharine McQuay</u>	
Suspect's Full Name: <u>Dennis Temple</u>	
Bag Sealed by: <u>Arndt, S</u>	Badge No.: <u>1265</u>

-CHAIN OF CUSTODY-

From	To	Date



STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

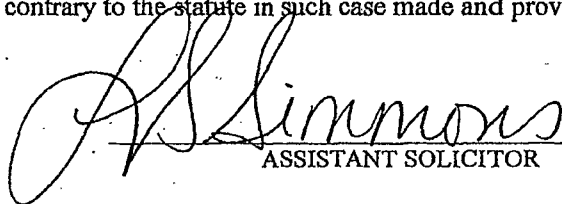
INDICTMENT

At a Court of General Sessions, convened on SEP 07 2010, the Grand Jurors of Oconee County present upon their oath:

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

That **Dennis Maurice Temple** did in Oconee, on or about **May 9, 2010**, engage in a sexual battery with C.M. (9/28/1990), accompanied by the following circumstance(s): the Defendant did vaginally penetrate the victim with his penis and he did use aggravated force to accomplish the sexual battery and/or the victim submitted to sexual battery under circumstances where she was also the victim of forcible confinement or kidnapping, or any other similar offense of act. This is in violation of 16-3-652 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

ARONLD, SCOTT, Oconee Co Sheriff's Dept.

Justin Ward

ARREST WARRANT NUMBER

N136670

ACTION OF GRAND JURY

Chas. Adkins

True Bill

Foreperson of Grand Jury

Date: 9-7-10

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS37 00889

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

SEP 07 2010

Term

THE STATE

vs.

Dennis Maurice Temple

LSS

Indictment for

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

SC Code: 16-03-0652

CDR Code: 0160

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2010 SEP -7 P 3:11

ENTERED
2010
COMPUTER

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

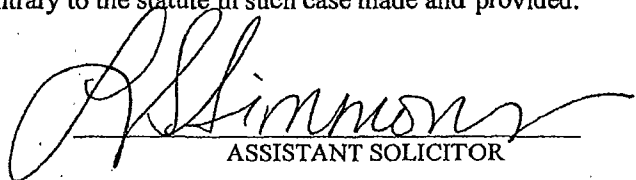
INDICTMENT

At a Court of General Sessions, convened on SEP 07 2010, the Grand Jurors of
Oconee County present upon their oath:

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

That **Dennis Maurice Temple** did in Oconee, on or about **May 9, 2010**, engage in sexual battery with C.M. (9/28/1990), accompanied by the following circumstance(s): the Defendant did penetrate the victim's vagina with an object (plastic bottle) and he did use aggravated force to accomplish the sexual battery and/or the victim submitted to sexual battery under circumstances where she was also the victim of forcible confinement or kidnapping, or any other similar offense or act. This is in violation of 16-3-652 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

ARONLD, SCOTT, Oconee Co Sheriff's Dept.

Justin Ward

ARREST WARRANT NUMBER

DIAN136670

ACTION OF GRAND JURY

*Chris Adell**True Bill*

Foreperson of Grand Jury

Date: *9-7-10*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS37 00887

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

SEP 07 2010

Term

THE STATE

vs.

Dennis Maurice Temple

LSS

Indictment for

Criminal Sexual Conduct - First Degree

SC Code: 16-03-0652

CDR Code: 0160

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2010 SEP -7 P 3:11

LIVELY
3/1/11

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

INDICTMENT

At a Court of General Sessions, convened on SEP 07 2010 the Grand Jurors of Oconee County present upon their oath:

KIDNAPPING

That **Dennis Maurice Temple** did in Oconee County, on or about **May 9, 2010**, unlawfully seize, abduct, confine, inveigle, decoy, kidnap, abduct, or carry away C.M., without the authority of law. This is in violation of §16-3-0910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

ARONLD, SCOTT, Oconee Co Sheriff's Dept.

Justin Ward

ARREST WARRANT NUMBER

N136669

ACTION OF GRAND JURY

*Chavis Webb**True Bill*

Foreperson of Grand Jury

Date: *9-7-10*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010C-37 **00888**

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

SEP 07 2010

Term

THE STATE

vs.

Dennis Maurice Temple

LSS

Indictment for

KIDNAPPING

SC Code: 16-03-0910

CDR Code: 0095

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2010 SEP -7 P 3:11

ENTERED
AB
COMPUTER

STATE OF SOUTH CAROLINA)
COUNTY OF Oconee)

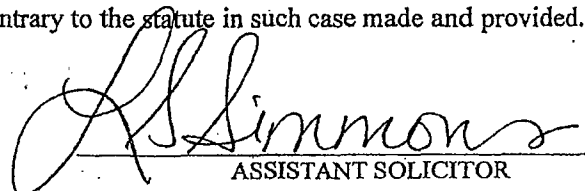
INDICTMENT

At a Court of General Sessions, convened on SEP 07 2010 the Grand Jurors of
Oconee County present upon their oath:

GRAND LARCENY, VALUE OF \$5,000 OR MORE

That **Dennis Maurice Temple** did in Oconee County, on or about **May 9, 2010**, feloniously take and carry away the personal property of C.M. (09/28/1990), valued at more than \$5000, described as follows: 2008 Honda Accord, with intent to deprive the owner permanently of such property. This is in violation of §16-13-30(B)(2) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

WITNESSES

ARONLD, SCOTT, Oconee Co Sheriff's Dept.

Justin Ward

ARREST WARRANT NUMBER

N136668

ACTION OF GRAND JURY

Chris O'Leary

Foreperson of Grand Jury

Date: *9-7-10*

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS37 00886

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

SEP 07 2010

Term

THE STATE

vs.

Dennis Maurice Temple

LSS

Indictment for

GRAND LARCENY, VALUE OF \$5,000 OR MORE

SC Code: 16-13-0030(B)(2)

CDR Code: 0479

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

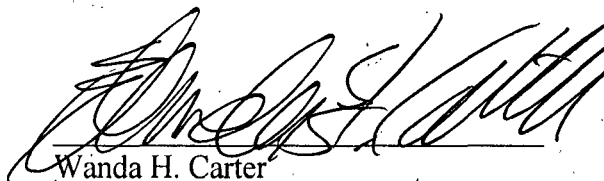
2010 SEP -7 P 3:11

ENTERED
SEP 7 2010
CLERK OF COURT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

28th, of September



Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
Dennis M. Temple,	)	C.A. No. 2013-CP-37-0729
S.C.D.C. No. 274802,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED OCONEE COUNTY, SC
 DEVERLY H. WHITEFIELD
 CLERK OF COURT
 2016 OCT 31 P 4:00

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 15, 2013. Respondent filed its responsive pleadings on July 8, 2014. An evidentiary hearing into the matter was convened on July 28, 2014, at the Oconee County Courthouse. Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

PROCEDURAL BACKGROUND

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. The Applicant was indicted at the September 2010 term of the Court of General Sessions for Oconee County for grand larceny, valued five-thousand dollars or more (2010-GS-37-886), kidnapping (2010-GS-37-888), and two counts of criminal sexual conduct (CSC), first-degree (2010-GS-37-887, -889). The Applicant was initially retained Robert Mills Ariel, Esq., to represent him at motion hearing regarding his bond. A hearing on the matter was convened on June 30, 2010 before the

Copies to:

Atty (P) Welborn (D) Schmeckper
 DSS other Temple
 Mailed ☒ Boxed ☐ handed ☐

C.A. No. 2013-CP-37-0729: Page 1 of 10

Honorable Alexander S. Macaulay. **R. pp.11-20.** Applicant insisted on self-representation for future matters. **R. p.18.** Out of an abundance of caution, Judge Macaulay appointed counsel. **R. p.18.**

Sarah Drawdy, Esq., and Keith Denny, Esq., were appointed represent him on his case. On July 29, 2010, a motion hearing was convened on Applicant's pro se motion to have his attorneys relieved from the case. **R. pp.21-31.** Applicant argued the motion was based on a breach of trust.¹ **R. p.24.** The Honorable J. Cordell Maddox, Jr., ultimately discharged Attorney Drawdy and Attorney Denny from the case and gave Applicant thirty (30) days to retain private counsel. **R. p.27.**

On September, 9, 2010, another motion hearing was reconvened before Judge Maddox to revisit lingering issues concerning Applicant's Sixth Amendment Right to counsel. **R. pp.20-50.** As a result of Applicant's wavering on the matter, Judge Maddox appointed Kurt Tavernier, Esq., as Applicant's fourth and final attorney on the case. **R. p. 48.** Judge Maddox issued several rulings concerning other pro se motions brought to the court by Applicant.

On September 22, 2010, a Schmerber² hearing was convened before Judge Macaulay. Applicant was present and was represented by Attorney Tavernier. **R. pp.52-77.** On October 21, 2010, another motion hearing was convened pursuant to Applicant's pro se motion to have Attorney Tavernier relieved before Judge Maddox. **R. p. 79-110.** Applicant apprised Judge Maddox that, "Mr. Tavernier has made threats against his people killing my people if I don't plead guilty." **R. p.82.** Judge Maddox warned Applicant on the perils of self-representation. **R. pp.82-83.** Applicant explained to Judge Maddox that "I have fifteen years experience in the law." **R. p.84.** Attorney Tavernier apprised Judge Maddox that the allegation was entirely false

¹ Applicant was unable to articulate the basis other than he was generally unhappy in the manner his attorneys were proceeding with his case.

² Schmerber v. California, 384 U.S. 757 (1966).

and based upon Applicant's ulterior disappointment in Attorney Tavernier's decision not to raise frivolous arguments and objections. **R. pp.85-86.** Judge Maddox ruled that he would not appoint a fifth attorney to Applicant's case. Judge Maddox commented, "you're welcome to hire a lawyer or you're welcome to represent yourself, or you could have Mr. Tavernier who I've appointed for you." **R. p.89.** On November 15, 2010, Judge Maddox issued an order titled "Amended Order Appointing Standby counsel" on November 8, 2010. **R. pp.111-18.**

On December 7, 2010 a final pre-trial motions hearing was convened before Judge Maddox to conclude all substantive preliminary matters. Applicant was present and proceeded pro se with Attorney Tavernier as "advisory counsel." **R. pp.119-210.** Judge Maddox continued to warn Applicant of the inherent risks of self-representation and apprised Applicant that he would be responsible for understanding to the Rules of Evidence, required court-room decorum, and error preservation. **R. p.131; p.134; p.145.** During the course of the hearing, Judge Maddox commented that "I've gone over exhaustively your right to counsel." **R. p.202.** Based on exhaustive inquiries regarding Applicant's Sixth Amendment rights, he made the final determination to proceed to trial pro se with the assistance of Attorney Tavernier as advisory counsel. **R. p.204.** Applicant apprised Judge Maddox that he had been representing himself from the beginning of his case that he was comfortable proceeding to trial pro se. **R. p.202.**

On December 13, 2010, the State called its case to trial. Applicant was present and proceeded pro se with Attorney Tavernier as advisory-counsel. **R. pp.211-657.** On December 15, 2010, after fifteen minutes of jury deliberations, Applicant was found guilty as indicted. **R. p.657.** Judge Maddox sentenced Applicant to a term of thirty (30) years imprisonment for CSC, first-degree (-887), a term of thirty (30) years imprisonment for CSC, first-degree (-889), a term of thirty (30) years imprisonment for kidnapping (-888), and a term of ten (10) years

imprisonment for grand larceny, greater than \$5,000. All sentences were to be served consecutively for an aggregate term of 100 (one-hundred) years imprisonment.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected by Wanda H. Carter, Esq., of the Office of Appellate Defense, pursuant to Anders v. California³ on September 29, 2012. Appellate counsel Carter raised the issue that the trial judge erred in denying Applicant's request for counsel in the middle of trial because the trial judge's prior waiver colloquy on the matter was insufficient pursuant to Faretta v. California⁴. **FBOA pp.1-10**. Applicant additionally filed a seventy-eight page pro se brief on October 29, 2012 to the South Carolina Court of appeals where he raised the two following issues:

1. "Did the judge err when he failed to suppress the evidence obtained from the arrest warrants that was issued upon a supporting affidavit that did not link Appellant to the criminal activity or storage unit #193, and failed to link the storage unit #193 to Appellant." **Pro Se FBOA pp.1-12**.
2. "Did the state commit perjury upon the court when it contended that this case was fast-tracked due to appellant's speedy trial motion." **Pro Se FBOA pp.13-16**.

The Court of Appeals dismissed the appeal. State v. Temple, No. 2013-UP-350 (filed September 11, 2013). The Remittitur was issued on September 27, 2013.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony and evidence presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the prior PCR proceedings, the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C.

³ Anders v. California, 386 U.S. 738 (1967)

⁴ Faretta v. California, 422 U.S. 806 (1975).

Code Ann. §17-27-80 (2016), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Ineffective Assistance of Appellate Counsel

Applicant alleged that his appellate counsel was ineffective for failing to submit the preliminary hearing transcript as part of the record on appeal; failing to argue that there was no probable cause to issue an arrest warrant; and failing to argue he did not freely and voluntarily waive the right to counsel. The State moved for summary dismissal on this allegation. This Court finds summary judgment is appropriate and grants the State's motion.

Under Rule 56, SCRCPP, a party is entitled to a judgment as a matter of law if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact. Law v. South Carolina Dept. of Corrections, 368 S.C. 424, 434, 629 S.E.2d 642, 648 (2006). In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Fleming v. Rose, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

This Court first notes that in spite of Applicant's belief concerning the strength of the omitted arguments, his appeal was submitted pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). Where appellate counsel submits an Anders brief, the role of the appellate court is to review the brief submitted by counsel, any *pro se* response submitted by the appellant, and the record on appeal to determine whether the appeal contains any issues of arguable merit. State v. Lyles, 381 S.C. 442, 444, 673 S.E.2d 811, 813 (2009) (*citing State v. Williams*, 305 S.C. 116, 406 S.E.2d 357 (1991)). If an issue is found which has arguable merit, the appellate court

will direct the parties to file merit briefs, and the case will proceed under the normal appellate process. Id. On the other hand, if no issues of arguable merit are found by the appellate court, the appeal is dismissed, and the appellant's counsel is relieved. Id. Applicant's appeal was dismissed after review pursuant to Anders, reflecting that "the appellate court was unable to ascertain a non-frivolous issue which would require counsel to file a merits brief." Id.

In this case, Applicant alleged his appellate counsel was ineffective for failing to argue that his arrest warrant was not supported by probable cause. This issue was raised in Applicant's *pro se* brief on direct appeal, and therefore considered and determined to be without merit by the appellate court pursuant to Anders. Applicant's allegation that appellate counsel was ineffective for failing to include the transcript from his preliminary hearing in the record is an extension of this argument. Applicant has failed to raise or argue any conceivable prejudice from the fact that this transcript was omitted, particularly in light of the lower court record.⁵

Applicant has also alleged that his appellate counsel was ineffective for failing to argue that he was forced to represent himself. There is no factual basis for this claim – the issue was raised by appellate counsel in its Anders brief. Had the issue been meritorious, then the appellate court would have ordered a brief on the merits. As discussed above, the record is replete with discussions concerning the dangers of self-representation. This Court is of the firm opinion that the Applicant waived his right to counsel with his eyes wide open and in compliance with Faretta. Because Applicant has failed to raise any meritorious arguments that his appellate counsel omitted, this allegation is summarily denied and dismissed.

⁵ The record clearly establishes that Applicant's arrest was supported by probable cause. Following a hearing on May 20, 2012, after hearing testimony that the victim identified the Applicant in a photo-lineup and that the assault took place in the Applicant's storage unit, the presiding judge determined that there was probable cause to believe he committed the assault. R. p. 5-7. In any event, the Applicant's subsequent indictment by the Grand Jury cures any deficiencies in the arrest warrant. R. p. 684-91; see Thompson v. State, 251 S.C. 593, 596, 164 S.E.2d 760, 761 (1968).

Res Judicata

Applicant has also raised the following allegations:

1. "Applicant, Dennis Maurice Temple was arrested and detained at the Oconee County Detention Center on arrest arrests that was issued upon a supporting affidavit or sworn written statement of the alleged victim that (1) was completely void of facts connecting Applicant to criminal activity, (2). There was no facts connecting applicant to the storage unit #193, (3). There was no facts connecting storage unit #193 to any criminal activity, (4). There was no facts under by the alleged victim stating the applicant was identified as the accused, (5). There was no mentioning of the applicant in the affidavit or sworn written statement of the alleged victim, (6) arrest warrants were issued upon facts never sworn too, (7). There was no probable cause to arrest." **APCR p.11**; further more redundantly repeated in allegations (b), (f), (g), (h), & (m) on **APCR p.12; pp.14-15; p.17.**
2. "Applicant was coerced to represent himself during trial." **APCR p.12**

This Court agrees with the state that these allegations are procedurally barred by *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. This application presents allegations that could have been and were in fact raised in those prior collateral proceedings. In Appellate counsel's Anders brief, she presented an issue concerning Applicant's self-representation to the Court of Appeals. The Court subsequently dismissed Applicant's appeal. Therefore, the issue has been raised and ruled upon. This Court will not revisit those rulings.

Subsequent to Appellate counsel perfecting Applicant's appeal pursuant to Anders on September 28, 2012 and motion to be relieved as Applicant's appellate attorney, he filed a pro se brief and presented an issue concerning the admissibility of evidence obtained from the search warrant to the Court of Appeals. The matter was properly raised by Applicant at that juncture

and was considered by the Court of Appeals. Similarly, *res judicata* bars further litigation on that matter. Therefore, summary dismissal is appropriate.

Direct Appeal Issues

The remainder of Applicant's allegations are direct appeal issues that are procedurally barred direct by S.C. Code Ann. § 17-27-20(b) (2003).

1. "indictments were not issued within 90 days." **APCR p.12.**
2. "The six man photo lineup of the applicant and five other black was assemble and shaded in a unduly and suggestive way, that gave way to irreparable misidentification and (2) the trial court judge failed to make specific findings of facts to mixed questions of law before its ruling in suppression hearing on the photo lineup. **APCR pp.13-14.**
3. "once the state presented its case against applicant during trial, the applicant was denied by judge to present witnesses for his defense." **Application for Post-Conviction Relief 'APCR' p.16.**
4. "The State failed to disclose photos of the alleged victim, her car, state witnesses names who testified during trial and a photo of the applicant which was used during trial to convict the applicant. In addition, the State further failed to disclose other materials in it's possession or control to the applicant which would have contradicted the state's claims or cleared the defendant of blame. **APCR pp.15-16.**
5. "one of the initial jurors started making comments about the case before the case was submitted to the jury for deliberation and was replaced by one of the two alternates, The record is void of these transactions and occurrences." **APCR p.16.**
6. "Trial Judge and solicitor leading the state witness on what to testify to or say on cross examination." **APCR p.17.**

Post-conviction relief is not a substitute for an appeal.⁶ Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Summary dismissal is therefore appropriate.

⁶ Regardless, as discussed above, the record in Applicant's case has been thoroughly reviewed by the Court of Appeals and no meritorious issues were discovered.

Applicant's Motion for Summary Judgment

The Applicant also moved for summary judgment on the ground that the Attorney General's Office did not file its Return in a timely manner, and failed to respond to his summary judgment motion. This motion is denied. Applicant has failed to show or allege any prejudice from Respondent's delay. See Kneece v. State, 269 S.C. 177, 178, 236 S.E.2d 746, 747 (1977).

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

[Signature follows]

CONCLUSION

Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRPC; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief ~~must~~ ^{*Do*, and hereby is,} be denied and dismissed with prejudice; and
2. Applicant ~~must~~ ^{*Do*, and hereby is,} be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 24th day of October, 2016.

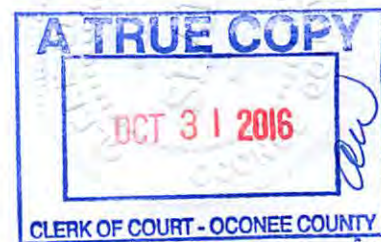


EDGAR W. DICKSON
Presiding Judge
Tenth Judicial Circuit

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 OCT 31 P 4:00

Orangabus

, South Carolina





STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
Dennis M. Temple,	)	C.A. No. 2013-CP-37-729
S.C.D.C. No. 274802,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL MOTION
	)	TO DISMISS AND MOTION FOR A
	)	MORE DEFINITE STATEMENT
	)	(counsel has been appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed October 15, 2013, would respectfully show this Court:

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. The Applicant was indicted at the September 2010 term of the Court of General Sessions for Oconee County for grand larceny, valued five-thousand dollars or more (2010-GS-37-886), kidnapping (2010-GS-37-888), and two counts of criminal sexual conduct, first-degree (2010-GS-37-887, -889). The Applicant was initially retained Robert Mills Ariel, Esq., to represent him at motion hearing regarding his bond. A hearing on the matter was convened on June 30, 2010 before the Honorable Alexander S. Macaulay. **R. pp.11-20.** Applicant insisted on self-representation for future matters. **R. p.18.** Out of an abundance of caution, Judge Macaulay appointed counsel. **R. p.18.**

Sarah Drawdy, Esq., and Keith Denny, Esq., were appointed represent him on his case. On July 29, 2010, a motion hearing was convened on Applicant's pro se motion to have his attorneys relieved from the case. **R. pp.21-31.** Applicant argued the motion was based on a breach of trust.¹ **R. p.24.** The Honorable J. Cordell Maddox, Jr., ultimately discharged Attorney Drawdy and Attorney Denny from the case and gave Applicant thirty (30) days to retain private counsel. **R. p.27.**

On September, 9, 2010, another motion hearing was reconvened before Judge Maddox to revisit lingering issues concerning Applicant's Sixth Amd. Right to counsel. **R. pp.20-50.** As a result of Applicant's wavering on the matter, Judge Maddox appointed Kurt Tavernier, Esq., as Applicant's fourth and final attorney on the case. **R. p. 48.** Judge Maddox issued several rulings concerning other pro se motions brought to the court by Applicant.

On September 22, 2010, a motion hearing pursuant to Shmerber was convened before Judge Macaulay. Applicant was present and was represented by Attorney Tavernier. **R. pp.52-77.** On October 21, 2010, another motion hearing was convened pursuant to Applicant's pro se motion to have Attorney Tavernier relieved before Judge Maddox. **R. p. 79-110.** Applicant apprised Judge Maddox that, "Mr. Tavernier has made threats against his people killing my people if I don't plead guilty." **R. p.82.** Judge Maddox warned Applicant on the perils of self-representation. **R. pp.82-83.** Applicant explained to Judge Maddox that "I have fifteen years experience in the law." **R. p.84.** Attorney Tavernier apprised Judge Maddox that the allegation was entirely false and based upon Applicant's ulterior disappointment in Attorney Tavernier's decision not to raise frivolous arguments and objections. **R. pp.85-86.** Judge Maddox ruled that he would not appoint a fifth attorney to Applicant's case. Judge Maddox commented, "you're

¹ Applicant was unable to articulate the basis other than he was generally unhappy in the manner his attorneys were proceeding with his case.

welcome to hire a lawyer or you're welcome to represent yourself, or you could have Mr. Tavernier who I've appointed for you." **R. p.89.** On November 15, 2010, Judge Maddox issued an order titled "Amended Order Appointing Standby counsel" on November 8, 2010. **R. pp.111-18.**

On December 7, 2010 a final pre-trial motions hearing was convened before Judge Maddox to conclude all substantive preliminary matters. Applicant was present and proceeded pro se with Attorney Tavernier as "advisory counsel." **R. pp.119-210.** Judge Maddox continued to warn Applicant of the inherent risks of self-representation and apprised Applicant that he would be responsible for understanding to the Rules of Evidence, required court-room decorum, and error preservation. **R. p.131; p.134; p.145.** During the course of the hearing, Judge Maddox commented that "I've gone over exhaustively your right to counsel." **R. p.202.** Based on exhaustive inquiries regarding Applicant's Sixth Amendment rights, he made the final determination to proceed to trial pro se with the assistance of Attorney Tavernier as advisory counsel. **R. p.204.** Applicant apprised Judge Maddox that he had been representing himself from the beginning of his case that he was comfortable proceeding to trial pro se. **R. p.202.**

On December 13, 2010, the State called its case to trial. Applicant was present and proceeded pro se with Attorney Tavernier as advisory-counsel. **R. pp.211-657.** On December 15, 2010, upon fifteen minutes of jury deliberations, Applicant was found guilty as indicted. **R. p.657.** Judge Maddox sentenced Applicant to a term of thirty (30) years imprisonment for csc, first-degree (-887), a term of thirty (30) years imprisonment for csc, first-degree (-889), a term of thirty (30) years imprisonment for kidnapping (-888), and a term of ten (10) years imprisonment for grand larceny, greater than \$5,000. All sentences were to be served consecutively for an aggregate term of 100 (one-hundred) years imprisonment.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected by Wanda H. Carter, Esq., of the Office of Appellate Defense, pursuant to Anders v. California² on September 29, 2012. Appellate counsel Carter raised the issue that the trial judge erred in denying Applicant's request for counsel in the middle of trial because the trial judge's prior waiver colloquy on the matter was insufficient pursuant to Faretta v. California³. **FBOA pp.1-10**. Applicant additionally filed a seventy-eight page pro se brief on October 29, 2012 to the South Carolina Court of appeals where he raised the two following issues:

1. "Did the judge err when he failed to suppress the evidence obtained from the arrest warrants that was issued upon a supporting affidavit that did not link Appellant to the criminal activity or storage unit #193, and failed to link the storage unit #193 to Appellant." **Pro Se FBOA pp.1-12**.
2. "Did the state commit perjury upon the court when it contended that this case was fast-tracked due to appellant's speedy trial motion." **Pro Se FBOA pp.13-16**.

The Court of Appeals dismissed the appeal. State v. Temple, No. 2013-UP-350 (filed September 11, 2013). The Remittitur was issued on September 27, 2013.

Attached herewith and incorporated herein by reference are the records of the Oconee County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial hearing, Applicant's records for the Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

A.

Applicant alleges "ineffective assistance of appellate counsel." **Application for PCR 'APCR' p.12**. Respondent now moves Applicant for a more definite statement pursuant to Rule 12(e) of the South Carolina Rules of Civil Procedure. "If a pleading to which a responsive

² Anders v. California, 386 U.S. 738 (1967)

³ Faretta v. California, 422 U.S. 806 (1975).

pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading.” SCRCP 12(e). Respondent intends to move for summary dismissal of this allegation absent a more definite statement with sufficient specificity regarding this allegation.

B.

Respondent’s submits this Court should summarily dismiss the following allegations pursuant to the doctrine of *res judicata*:

1. “Applicant, Dennis Maurice Temple was arrested and detained at the Oconee County Detention Center on arrest arrests that was issued upon a supporting affidavit or sworn written statement of the alleged victim that (1) was completely void of facts connecting Applicant to criminal activity, (2). There was no facts connecting applicant to the storage unit #193, (3). There was no facts connecting storage unit #193 to any criminal activity, (4). There was no facts under by the alleged victim stating the applicant was identified as the accused, (5). There was no mentioning of the applicant in the affidavit or sworn written statement of the alleged victim, (6) arrest warrants were issued upon facts never sworn too, (7). There was no probable cause to arrest.” **APCR p.11**; further more redundantly repeated in allegations (b), (f), (g), (h), & (m) on **APCR p.12; pp.14-15; p.17.**
2. “Applicant was coerced to represent himself during trial.” **APCR p.12**

Res judicata prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id. This application presents allegations that could have been and were in fact raised in those prior collateral proceedings. In Appellate counsel’s Anders brief, she presented an issue concerning Applicant’s self-representation to the Court of Appeals. The Court subsequently dismissed Applicant’s appeal. Therefore, the issue has been raised and ruled upon.

Subsequent to Appellate counsel perfecting Applicant's appeal pursuant to Anders on September 28, 2012 and motion to be relieved as Applicant's appellate attorney, he filed a pro se brief and presented an issue concerning the admissibility of evidence obtained from the search warrant to the Court of Appeals. The matter was properly raised by Applicant at that juncture and was considered by the Court of Appeals. Similarly, *res judicata* bars further litigation on that matter. Therefore, Respondent requests this Court summarily dismiss these allegations.

C.

The remainder of Applicant's allegations are direct appeal issues that are procedurally barred direct by S.C. Code Ann. § 17-27-20(b) (2003).

1. "indictments were not issued within 90 days." **APCR p.12.**
2. "The six man photo lineup of the applicant and five other black was assemble and shaded in a unduly and suggestive way, that gave way to irreparable misidentification and (2) the trial court judge failed to make specific findings of facts to mixed questions of law before its ruling in suppression hearing on the photo lineup. **APCR pp.13-14.**
3. "once the state presented its case against applicant during trial, the applicant was denied by judge to present witnesses for his defense." **Application for Post-Conviction Relief 'APCR' p.16.**
4. "The State failed to disclose photos of the alleged victim, her car, state witnesses names who testified during trial and a photo of the applicant which was used during trial to convict the applicant. In addition, the State further failed to disclose other materials in it's possession or control to the applicant which would have contradicted the state's claims or cleared the defendant of blame. **APCR pp.15-16.**
5. "one of the initial jurors started making comments about the case before the case was submitted to the jury for deliberation and was replaced by one of the two alternates, The record is void of these transactions and occurrences." **APCR p.16.**
6. "Trial Judge and solicitor leading the state witness on what to testify to or say on cross examination." **APCR p.17.**

Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517,

520 (1993). As a result Respondent urges this Court to summarily dismiss the following allegations raised by Applicant under the above mentioned authority.

CONCLUSION

The Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law. 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). If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered⁴.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held solely on Respondent's motion to dismiss Applicant's PCR action.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

⁴ PCR counsel was appointed to Applicant's case on October 21, 2013. Applicant has filed pro se amendments and motions that have failed to comply with SCRCP, Rule 11.

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

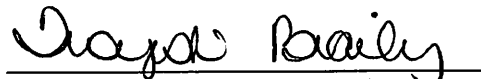
July 7th, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH CIRCUIT
COUNTY OF OCONEE	)	
	)	
	)	2013-CP-37-00729
	)	
DENNIS M. TEMPLE	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Hugh W. Welborn
P.O. Box 173
Anderson, SC 29622

DATED this 7th day of July, 2014


 Troyeshi Brailey, Legal Assistant
 For Respondent

FORM 5
FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA

County of Oconee

) IN THE COURT OF COMMON PLEAS
7/13/13 OCT 15 P 2:37

DENNIS Maurice Temple

Full name and prison number (if any) of Applicant

274802

v.

2013 - CP - 37 - 00729

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

COPY

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 SOUTH CAROLINA Department of Corrections
2. Name and location of Court which imposed sentence General Session Court
located in Oconee County, South Carolina
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-37-00886 (d). 2010-GS-37-00889
 - (b) 2010-GS-37-00887

- (c) 2010 - GS - 37 - 00888
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 12-15-10 / 10 years (d). 12-15-10 / 30 years
- (b) 12-15-10 / 30 years
- (c) 12-15-10 / 30 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. September 11, 2013 - Received on 9-24-13
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNpublished Opinion NO. 2013-UP-350. This
- ii. Opinion has NO Precedential Value. It should not be
- iii. cited or Relied on as Precedent in any proceeding
except as provided by Rule 268(d)(2), SCACR.
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) See. attachments Pages 8-11. a-m

(b) See. attachments pages 8-11. a-m

(c) See. attachments pages 8-11. a-m

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See. attachments Pages 12-17. a-m.

(b) See. attachments Pages 12-17. a-m.

(c) See. attachments Pages 12-17.

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? yes

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. Pro se Brief

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. S.C. Court of Appeals

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. Appeal dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. September 11, 2013
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. unpublished Opinion NO. 2013-UP-350. This opinion
- ii. has no precedential value. It should not be cited
- iii. or relied on as precedent in any proceeding
- iv. except as provided by Rule 268(d)(2), SCACR.

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. NO
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. NO
- 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) See. attachments pages 18-26. A-N
 (b) See. attachments pages 18-26. A-N
 (c) See. attachments pages 18-26. A-N

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes arraignment
 (b) your trial, if any? NO
 (c) your sentencing? NO
 (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. Sarah Ganss Drawdy, Esq.; The Regency Building; 2315
N. Main st. ste 117; Anderson, SC 29621
 ii. Keith G. Denny, Esq.; 30 Short Street; Walhalla
SC, 29691
 iii. Wanda M. Carter, S.C. commission on Indigent
Defense; P.O. Box 11589
 (b) the proceedings at which each such attorney represented you:
 i. arraignment
 ii. arraignment
 iii. S.C. Court of Appeals

19. State clearly the relief you seek in filing this application:

conviction and sentence to be vacate and
released from prison. at once.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

County of Oconee

) 2013 CP 37-00729
) VERIFICATION
)

I, Dennis Maurice Temple, 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.

Dennis Maurice Temple

SWORN to and subscribed before me this 11th
 day of October, 2013.

Ludhean Bryant (L.S.)
 Notary Public

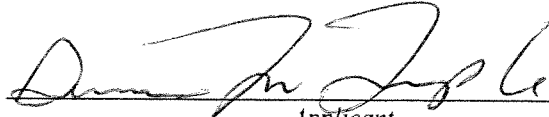
My Commission Expires: May 26, 2020

FILED OCONEE, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 OCT 15 P 2:37

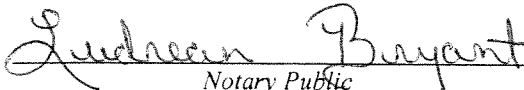
2013. CP. 37. 00729
**APPLICATION TO PROCEED WITHOUT PAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

I, DENNIS MAURICE TEMPLE, 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.


 Applicant

SWORN or affirmed to and subscribed before me this
11th day of October, 2013.


 Notary Public

My Commission Expires: May 26, 2020

FILED O'CONNOR, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 OCT 15 P 2:37

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

a. IN violation of S.C. code ANN. section 22-~~7~~-710, and 4th, 14th Amendments of the U.S. Constitution and S.C. Constitution, Article 1, section 10 & 3; abuse of discretion, or error of law and breach of duty.

b. IN violation of 14th Amendment of the U.S. Constitution, and S.C. Constitution, Article 1, section 3; abuse of discretion, or error of law and breach of duty.

c. IN violation of 6th and 14th Amendments of the U.S. Constitution; S.C. Constitution, Article 1, section 14 & 3; abuse of discretion, or error of law and breach of duty.

d. IN violation of 5th, 14th Amendments of the U.S. Constitution; and S.C. Constitution, Article 1, section 11 & 3; abuse of discretion, or error of law; and breach of duty.

E. IN violation of 14th Amendment of the U.S. Constitution, and S.C. Constitution, Article 1, Section 3.

F. IN violation of S.C. Code Ann. Section 16-3-740, and 14th, 5th, 6th, 4th Amendments of the U.S. Constitution, and S.C. Constitution, Article 1, section 3, 12, 14, & 10.

G. IN violation of S.C. Code ANN. section 17-13-140, and 14th, 5th, 6th, 4th amendments of the U.S. Constitution, and S.C. Constitution, Article 1, section 3, 12, 14 & 10.

H. IN violation of Schmerber v. Cali-
 fornia, 384 U.S. 757 (1966) and 14th, 5th, 6th,
 4th Amendments of the U.S. Constitution
 and S.C. Constitution, Article 1, section
 3, 12, 14. & 10.

I. IN violation of 14th Amendment
 of the U.S. Constitution; and S.C. Constitu-
 tion, Article 1, section 3.

J. IN violation of 5th, 6th, 14th Amend-
 ments of the U.S. Constitution, and S.C.
 constitution, Article 1, section 3, & 14;
 abuse of discretion, or error of law.

K. IN violation of 5th, 14th Amend-
 ments of the U.S. Constitution, and S.C.
 Constitution, Article 1, section 3 & 14.

L. IN violation of 5th, 6th Amend-
 ments of the U.S. Constitution, and S.C.
 Constitution, Article 1, section 3 & 14;
 abuse of discretion, or error of law.

M. IN violation of 4th, 5th, 6th and 14th amendments of the U.S. Constitutions and S.C. code Ann. § 22-3-710 (1976) and S.C. Constitutions, Article 1, section 3, 10 & 14; abuse of discretion, or error of law, and Breach of duty.

N. IN violation of 5th, 6th and 14th amendments of the U.S. Constitutions, and S.C. Constitution, Article 1, section 3 & 14; abuse of discretion, or error of law and breach of duty.

11. state concisely and in the same order the facts which support each of the grounds set out in (10):

a. Applicant, DENNIS MAURICE TEMPLE was arrested and detained at the Oconee County Detention Center on arrest warrants (see. Exhibits 2, 3 & 4), that was issued upon a supporting affidavit or Sworn written statement of the alleged victim, (see. Exhibit 1) that, (1). was completely void of facts connecting applicant to criminal activity, (2). there was no facts connecting applicant to the storage unit # 193, (3). there was no facts connecting storage unit # 193 to any criminal activity, (4). there was no facts under by the alleged victim stating the applicant was identified as the accused, (5). there was no mentioning of the applicant in the affidavit or Sworn written statement of the alleged victim, (6). arrest warrants were issued upon facts never sworn too, (7). There was no Probable cause to arrest.

b. Judge in suppression hearing on arrest warrants failed to correct the Record and failed to make specific findings of facts to mixed questions of law before its ruling in the suppression hearing on the arrest warrants. (see. Exhibit 18 or Record on Appeal).

c. (1). Applicant was coerced to represent himself during trial, and (2) ineffective assistance of appellate counsel. see. (Exhibit 18 & 19).

d. indictments were not issued within 90 days. see. (Exhibits 5, 6, 7 & 8). and Exhibit 18).

e. (1). The six man photo lineup of the applicant and five other black was assemble and shaded in a unduly and suggestive way, that gave way to irreparable misidentification and (2). trial Court Judge failed to make specific findings of facts to mixed questions of law before its -

ruling in suppression hearing on the photo lineup. see. (Exhibit 9).

F. Applicant was never accused in the affidavit or Sworn statement of the alleged victim of committing a crime and was never identified as the accused, there was no facts in the search warrants affidavit to support the search and seizure applicant. As a result, the state did not have all of the elements required in the statute to get authorization of the Court order to get the search warrant that obtained the evidence that was used against the applicant during trial. see. (Exhibit 10 or Court Order).

G. Applicant was never accused in the affidavit or Sworn statement of the alleged victim of committing a crime and was never identified as the accused, there was no facts in the search warrants affidavit to support the search

and seizure of applicant. As a result, the state did not have all of the elements required in the statute to get authorization of the court order to get the search warrant that obtained the evidence that was used against the applicant during trial. see. (search warrant or Exhibit 11).

H. Applicant was never accused in the affidavit or sworn statement of the alleged victim of committing a crime and was never identified as the accused, As a result, the state did not have all of the elements required in the statute or case law to get authorization of the court order to get the search warrant that obtained the evidence that was used against the applicant during trial. see. (Exhibit 12).

I. The state failed to disclose photos of the alleged victim, her car, state witnesses names who testified

during trial and a photo of the applicant which was used during trial to convict the applicant. In addition, the state further failed to disclose other material in its possession or control to the applicant which would have contradicted the state's claims or cleared defendant of blame. see. (Exhibits 13, 14, 15, 16 & 17).

J. Once the state presented its case against the applicant during trial, the applicant was denied by Judge to present witnesses for his defense. see. (Exhibit 18).

K. one of the initial Juror started making comments about the case before the case was submitted to the Jury for deliberation and was replaced by one of the two alternates, The record is void of these transactions and occurrences. see. (Juror's testimony).

L. threw out the trial the solicitors consistly claimed that the applicant used cleaning solution to clean out the alleged victim after he raped her. These allegation was unfounded by the evidence and cause inflamation, confusion and prejudice among the Juror's. see. (Exhibit 18).

M. arrest warrants affidavit briefly stated facts unfounded and not true at the time of the arrest. of applicant and not sworn too.

N. Trial Judge and solicitor leading the state witness on what to testify to or say on cross examination.

16. If any grounds 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 grounds has not previously been presented:

a. IN violation of S.C. Code Ann. section 22-3-710, and 4th, 14th. Amendments of the U.S. Constitution and S.C. Constitution, Article 1, section 10 & 3; abuse of discretion, or error of law and breach of duty.

REASON: Applicant, appellate defense counsel Wanda H. Carter filed a Anders brief on his behalf. Applicant was allowed to file a Pro, se brief. Applicant did not previously raised these grounds because he is not skilled, trained or educated in the field of law and is not a lawyer.

b. IN violation of 14th Amendment of the U.S. Constitution, and S.C. Constitution, Article 1, section 3; abuse of discretion, or error of law and breach of duty.

REASON: Applicant, appellate defense counsel Wanda H. Carter filed a Anders brief on his behalf. Applicant was allowed to file a Pro se brief. Applicant did not raise these grounds previously because he is not skilled, trained or educated in the field of law and is not a lawyer.

d. IN violation of 5th, 14th Amendments of the U.S. Constitution, and S.C. Constitution, Article 1, section 11 & 3; abuse of discretion and breach of duty and Rule 3, SCRCP.

REASON: Applicant, appellate defense -

counsel Wanda H. Carter filed a Anders brief on his behalf. Applicant was allowed to file a Pro se brief. Applicant did not previously raise these grounds because he is not skilled, trained or educated in the field of law and is not a lawyer.

E. IN violation of 14th amendment of the U.S. Constitution, and S.C. Constitution, Article 1, Section 3.

REASON: Applicant, appellate defense counsel Wanda H. Carter filed a Anders brief on his behalf. Applicant was allowed to file a Pro se brief. Applicant did not raise these grounds previously because he is not skilled, trained or educated in the field of law and is not a lawyer.

F. IN violation of S.C. code Ann. Section 16-3-740, and 14th, 5th, 6th, 4th amendments of the U.S. Constitution,

and S.C. Constitution, Article 1, Section 3, 12, 14 & 10.

REASON : Applicant, appellate defense counsel Wanda H. Carter filed a Anders brief on his behalf. Applicant was allowed to file a Pro Se brief. Applicant did not raise these grounds previously because he is not skilled, trained or educated in the field of law and is not a lawyer.

G. In violation of S.C. Code ANN. Section 17-13-140, and 14th, 5th, 6th, 4th, amendments of the U.S. Constitution, and S.C. Constitution, Article 1, Section 3, 12, 14 & 10.

REASON : Applicant, appellate defense counsel Wanda H. Carter filed a Anders Brief on his behalf. Applicant was allowed to file a Pro Se brief.

Applicant did not raise these grounds previously because he is not skilled, trained or educated in the field of law and is not a lawyer.

H. In violation of Schmerber v. California, 384 U.S. 757 (1966), and 14th, 5th, 6th, 4th Amendments of the U.S. Constitution, and S.C. Constitution, Article 1, section 3, 12, 14, & 10.

REASON: Applicant, Appellate defense counsel Wanda H. Carter filed a Anders Brief on his behalf. Applicant was allowed to file a Pro se brief. Applicant did not raise these grounds previously because he is not skilled, trained or educated in the field of law and is not a lawyer.

I. In violation of 14th Amendment of the U.S. Constitution, and S.C. Constitution, Article 1, Section 3.

REASON: Applicant, appellate defense counsel Wanda H. Carter filed a Anders Brief on his behalf. Applicant was allowed to file a Pro Se brief. Applicant did not previously raise these grounds he is not skilled, trained or educated in the field of law and is not a lawyer.

J. In violation of 5th, 6th, 14th Amendments of the U.S. Constitution, and S.C. Constitution, Article 1, Section 3 & 14; abuse of discretion, or error of law.

REASON: Applicant, appellate defense counsel Wanda H. Carter filed a Anders Brief on his behalf. Applicant was allowed to file a pro se brief. Applicant did not previously raise these grounds because he is not skilled, trained or

educated in the field of law and is not a lawyer.

K. IN violation of 5th, 14th Amendments of the U.S. Constitution, and S.C. Constitution, Article 1, section 3 & 14;

REASON: Applicant, appellate defense counsel Wanda H. Carter filed a Anders Brief on his behalf. Applicant was allowed to file a pro se brief. Applicant did not previously raise these grounds because he is not skilled, trained or educated in the field of law and is not a lawyer.

L. IN violation of 5th, 6th, Amendments of the U.S. Constitution, and S.C. Constitution, Article 1, Section 3 & 14; abuse of discretion, or error of law.

REASON: Applicant, appellate defense -

counsel Wanda H. Carter filed a Anders Brief on his behalf. Applicant was allowed to file a pro se brief. Applicant did not previously raise these grounds because he is not skilled, trained or educated in the field of law and is not a lawyer.

M. IN violation of 4th, 5th, 6th, and 14th amendments of the U.S. Constitutions and S.C. Code Ann. § 22-3-710 (1976) and S.C. Constitutions, Article 1, section 3, 10, & 14; abuse of discretion, or error of law, and Breach of duty.

REASON: Applicant, appellate defense counsel Wanda H. Carter filed a Anders Brief on his behalf. Applicant was allowed to file a pro se brief. Applicant did not previously raise these grounds because he is not skilled, trained or educated in the field of law and is not a lawyer.

N. IN violation of 5th, 6th and 14th amendments of the U.S. Constitutions, and and S.C. constitution, Article 1, section 3 & 14; abuse of discretion, or error of law and Breach of duty.

REASON: Applicant, appellate defense counsel Wanda M. Carter filed a Anders Brief on his behalf. Applicant was allowed to file a pro se brief. Applicant did NOT previously raised these grounds because he is not skilled, trained or educated in the field of law and is not a lawyer.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 11 DAY OF October,

Ludrean Bryant
NOTARY PUBLIC

STATE OF SOUTH CAROLINA

MY COMMISSION EXPIRES May 26, 2020
26.

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON Pleas
COUNTY OF OCONEE 2013 OCT 15 P 2:31 TENTH JUDICIAL CIRCUIT

DENNIS MAURICE TEMPLE
274802

Applicant,

v.

STATE OF SOUTH CAROLINA
RESPONDENT,

COPY

AFFIDAVIT

OF

DENNIS TEMPLE

2013. CP. 31. 00729

I, DENNIS TEMPLE M., being duly sworn
depose and state as follows:

1. On May 11, 2010 I was arrested by several Oconee County Sheriff's Department officers for allegedly committing the crimes of kidnapping, criminal sexual conduct, 1st degree and Grand Larceny. see. (arrest warrants or Exhibits 2, 3, & 4).

2. On May 12, 2010 I was taken before a Magistrate Judge and received a \$ 200,000. dollar bond for charges. see. (Bond Papers or Exhibit 21).

3. I was unable to bail out of jail on the \$ 200,000 dollar bond, and remained detained at the Oconee County Detention Center.

4. I decided to proceed pro se, in June 2010, I filed a motion for Discovery with the Oconee County clerk's office under Rule 5 and to including Brady material on the state in there case against me.

5. The following documents or Exhibits 1 - 23, I personally received from the Oconee County Sheriff's Department, clerk office and the state via informal and formal discovery.

6. I present these documents or Exhibits 1 - 23 to support my claims in my Application For Post-Conviction relief. I believe these documents to be true and accurate copies of the originals.

FURTHER THE DEPONENT SAYETH NOT.

October 11, 2013
Dated:

Dennis Temple
DENNIS TEMPLE, # 274802
Lieber Corr. Inst EB-35
P.O. Box 205
Ridgeville, SC 29472

sworn to and subscribed before me
this 11 day of October 2013.

Ludleen Bryant
Notary Public for South Carolina

my commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

FILED IN THE COURT OF COMMON PLEAS
BEVERLY H. WHITFIELD,
CLERK OF COURT

2013 OCT 15 P 2:37

DENNIS MAURICE TEMPLE
274802

APPLICANT,

V.

STATE OF SOUTH CAROLINA
RESPONDENT,

COPY

CERTIFICATE

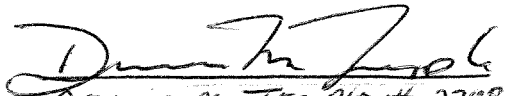
OF

SERVICE

2013.CP.37.00729

I, DENNIS M. TEMPLE, applicant hereby certify that I served a copy of the Application for Post Conviction Relief along with attachments pages B-26 and Exhibits 1-12 and Exhibits 17-23 including Record on appeal Vol. I and Vol. II or Exhibit 18 and affidavit of Dennis Temple on the Attorney General, Alan Wilson at P.O. Box 11549, Columbia, SC 29211 by placing all the above in the U.S. mail at Lieber Correctional Institution on this 11th day of October 2013.

Subscribed and sworn to before me
this 11th day of October 2013.
Lurdrean Bryant
Notary Public for South Carolina
my commission Expires: May 26, 2020


DENNIS M. TEMPLE #274802
Lieber Corr. Inst EB-35
P.O. Box 205
Ridgeville, SC 29472

October 11, 2013
 Dennis M. Temple # 224802
 Lieber Court, Inst 88-35
 P.O. Box 245
 Ridgelyville, SC 29472

Yours truly,

Enclosed please find Dennis M. Temple's
 Application for Post Conviction Relief along
 with attachments 8-26; Exhibits 1-12
 and Exhibits 17-23 including Record on
 appeal Vol. I and Vol. II or Exhibit 18
 and affidavit of Dennis Temple. Please
 file these documents with the Court:

Dear Beverly H. Whitfield:
 2013 CP 37-00729

RE: Application for Post-Conviction Relief,
Dennis M. Temple v. STATE of South Carolina

COPY

Filed O'CONNOR, SC
 BEVERLY H. WHITFIELD
 CLERK OF COURT
 2013 OCT 15 P 2:37
 Beverly H. Whitfield
 Clerk of Court
 Post office Box 678
 Walhalla, SC 29691



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 09, 2018

The Honorable Beverly H. Whitfield
PO Box 678
Walhalla SC 29691-0678

REMITTITUR

Re: Dennis Temple v. State
Lower Court Case No. 2013CP3700729
Appellate Case No. 2016-002254

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Taylor Davis Gilliam, Esquire
Lindsey Ann McCallister, Esquire
Dennis Temple, 274802

The South Carolina Court of Appeals

Dennis Temple, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2016-002254

ORDER

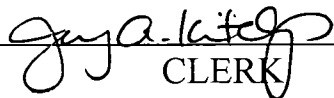
This matter is before the Court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner has filed a pro se petition.

Based on the vote of the panel after careful consideration of the entire appendix as required by *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988), the petition for a writ of certiorari is denied and counsel's request to withdraw is granted.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc: Taylor Davis Gilliam, Esquire
Lindsey Ann McCallister, Esquire
Dennis Temple, 274802
The Honorable Edgar W. Dickson

FILED

10/16/18

27