

STATE OF SOUTH CAROLINA )  
 )  
County of Richland )

GENERAL SESSIONS  
2011-GS-40-01996

STATE OF SOUTH CAROLINA, )  
 )  
 )

vs. )

TRANSCRIPT OF RECORD

ERIC D. MARSH, )  
 )

DEFENDANT, )

August 30, 2012  
Columbia, South Carolina

BEFORE:

THE HONORABLE ROGER COUCH, JUDGE.

APPEARANCES:

MARGARET FENT, ASSISTANT SOLICITOR  
Attorney for the State

THEODORE LUPTON, ESQ.  
Attorney for the Defendant

KAREN AMBROZIAK  
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

He said, warrant was issued in both places but is fighting to get the Lexington warrant done. something wrong with this statement.

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THE COURT: It looks like a motion to reduce bond. You must be Mr. Lupton; is that right?

MR. LUPTON: Yes, Your Honor.

THE COURT: Did I get that right?

MR. LUPTON: Yes, Your Honor.

THE COURT: I'll be happy to hear from you, sir.

MR. LUPTON: Your Honor, Mr. Marsh is charged with a CSC with a minor. He has a similar charge. The same victim accusing him of a separate incident in Lexington. Prior to the arrest on this, the allegations are that there was conduct. That conduct is under investigation, and then she alleges new conduct. Warrants were issued in both Richland and Lexington. He was arrested, served with the Richland County warrants back on November 20th, 2010.

He has had other lawyers prior to me. I was appointed on this case about, I guess, two months ago. When I got the case, he had already had a bond reduction hearing.

My understanding from talking to my client is that at that hearings, which was held approximately four months ago, he was -- went before the Court and was given -- told that in 90 days if nothing happened towards resolving the issue -- and I'm going to discuss it in a second -- that he could come back and reapply for a bond reduction. Your Honor, he is currently in jail on a \$60,000 bond is my

He said there was no physical evidence. But I was convicted on DNA from Lexington case

1 understanding from the paperwork. The situation is  
2 that --

3 THE COURT: Well, it's coming up on about two years.

4 MR. LUPTON: It's almost two years old. The  
5 situation is that the Richland County charges, there is  
6 no -- no physical evidence. Basically, it's the victim's  
7 word against the defendant's word.

8 The Lexington charges, the -- there is discussion of  
9 evidence. There is potential DNA evidence. Other things  
10 like that. I have not seen any of that. That is not --

11 THE COURT: What is the bond on the Lexington charge?

12 MR. LUPTON: That's the problem, Your Honor.

13 Lexington isn't moving forward on their case. They're  
14 waiting for them to be disposed of in Richland County.  
15 They have a hold on him. They're not doing anything.

16 Ms. Fent, to her credit, has tried to talk to the  
17 Lexington Solicitor's Office and asked for them to help,  
18 to basically move that ball forward. ← This is a lie that's not what he told me, my lawyer

19 I have spoken with the Lexington Solicitor's Office.  
20 Ms. Suzanne May over there, I believe, is a good  
21 prosecutor. She is contentious. She has tried to move  
22 the ball forward to try and get that warrant served, get  
23 that case moving forward so that we can develop that ~~Address~~  
24 evidence, and we'll have a clear picture of what the  
25 State's case is, but until that happens, we're dealing

1 with a situation where we have a clear picture of what the  
2 evidence is in the Richland case, but part of what the  
3 Richland solicitor wants to use is --

4 THE COURT: What is his bond, though? Has a bond  
5 been set on the charges?

6 MR. LUPTON: It has never been served.

7 THE COURT: So he's never been served with a warrant.

8 MR. LUPTON: Right. We've asked that to be done.

9 THE COURT: So there is no hold on him from  
10 Lexington?

11 MR. LUPTON: No. They have a hold on him. They  
12 placed a hold on him to serve the warrant so that's --

13 THE COURT: Wait a second. So let me ask this part.  
14 What do they have a hold on him for? If they don't have a  
15 warrant, they don't have a charge. Why are they holding  
16 him?  
*Relate's to page 12 - 22-25 and page 13 - 3-6*

17 MS. FENT: I guess -- they must have gotten warrants  
18 that they're sitting on that they just haven't served on  
19 the defendant. I mean, I'll continue to let him flesh out  
20 what he wants to say, but there's an entirely other set of  
21 issues for the reason being that this case is sitting here  
22 for two years.

23 THE COURT: I have never seen a situation where  
24 somebody hasn't served the warrant.

25 MR. LUPTON: But they have the warrants, but they're

1 not serving. Until they serve them, until officially a  
2 prosecutor signs, officially a defense lawyer signs, that  
3 case isn't going to be fleshed out.

4 There is evidence that the solicitor here in Richland  
5 wants to use from that Lexington case. She wants to bring  
6 it in under 404(b), but it isn't fully developed. We  
7 don't have a DNA report, for example, things of that  
8 nature. They're not fully developed, won't be fully  
9 developed until it goes over to Lexington.

10 What I'm asking for is a PR bond. He has been in on  
11 a \$60,000 bond. He can't make it. He is never going to  
12 make it. Lexington County is going to -- has a hold on  
13 him for their warrants for a CSC with a minor and  
14 kidnapping, is my understanding, for the warrants.

15 They're going to serve those. They will take him  
16 before a judge in Lexington County. The allegations over  
17 there are much more significant. It's alleged to be a  
18 kidnapping and a CSC with a minor over there.

19 He isn't going to get a bond that's a PR bond. He is  
20 going to be going from a Richland County jail where he sat  
21 for two years to a Lexington County jail, so -- and I'm  
22 not blaming the solicitor for the problems, for those  
23 problems. She can't control Lexington County.

24 THE COURT: Oh, I understand that.

25 MR. LUPTON: But we need to get him over to Lexington

1 County so that we can move his case forward as a whole.  
2 So I'm not asking for him to get put out on the street.  
3 I'm just asking for him to be moved from our jail to their  
4 jail.

5 THE COURT: All right.

6 MR. LUPTON: The only way to do that that I've been  
7 able to do is a PR bond.

8 THE COURT: Let me hear from the solicitor.

9 MS. FENT: What we need, Your Honor, in this case is  
10 for the defendant to stop firing his lawyer so that we can  
11 actually proceed with the lawyer that has all of the  
12 discovery and is prepared to go to trial.

13 The defendant -- this was originally disclosed in  
14 September of 2010 by this young lady. The defendant was  
15 her sister's boyfriend, and she reported numerous sexual  
16 assaults by him over a six-month period of time.

17 In October -- on October 20th, 2010, she was  
18 interviewed at our Child Advocacy Center, and there is a  
19 compelling disclosure of sexual abuse. Five days later,  
20 she was waiting at her bus stop to go to school. The  
21 defendant drove up, threatened her with a gun, grabbed  
22 her, put her into the car, drove her to an abandoned  
23 house, sexually assaulted her, physically assaulted her,  
24 tied her up with rope and tape and forced her to call the  
25 investigator and say that she wanted to drop the charges.

1 and that it didn't happen.

2 We've got that phone call on tape. After driving her  
3 around and a bunch of other things, basically, he ends up  
4 taking her home. She goes into her house. Her parents  
5 realize she wasn't at school all day, asked her about it,  
6 and she discloses what had happened. She is taken to the  
7 hospital that day for an exam where she has swelling to  
8 her face and several vaginal abrasions. So there's  
9 physical evidence corroborating this assault.

10 The investigator that's been investigating this  
11 separate, this second sexual assault that happened in --  
12 the second -- the first one happens in Richland. The  
13 second one happens in Irmo. That investigator speaks with  
14 the defendant, and he says that he will come in and turn  
15 himself in. He did not. He fled to Florida. He was  
16 located at a hospital in Daytona Beach. The discovery  
17 that I got, although I don't have a report from Florida,  
18 says he attempted to escape custody while she was in  
19 Florida. He was eventually extradited back to South  
20 Carolina. Two investigators went to go talk to them, the  
21 CPD investigator and the Irmo investigator, where he then  
22 admitted to having sex with this underage victim once but  
23 denied, basically, the physical assault aspect of it.

24 So in December of 2010, after he is -- this is  
25 November that he's -- of 2010, he is extradited back. In

1 December, I got letter and a motion -- a letter of  
2 representation and a motion for discovery from a private  
3 attorney.

4 From that point on, I was working with him. He was  
5 getting the discovery. He was trying to work out this  
6 Lexington charge to see what they were going to do and go  
7 forward.

8 He was working hard to get that, you know, either  
9 served or resolved, because obviously, their benefit is to  
10 have both cases somehow resolved together. So I was  
11 working with him.

12 February of 2012, so just slightly over a year -- or  
13 at some point during that year, the defendant grieved his  
14 private attorney. The private attorney tried to work  
15 through the grievance without getting off the case but  
16 couldn't, so he had to file a motion to be relieved of  
17 counsel. That was granted and a public defender was  
18 appointed: Jay Cooper.

19 Jay Cooper started working with me getting discovery.  
20 May 7th of '12, he filed a motion to reduce bond. We came  
21 in front of Judge Manning, and the words that actually  
22 Judge Manning said was, "Bond is now denied for 90 days.  
23 The defendant can reapply at that time and request a  
24 reduction."

25 So that's May 7th, 2012. Mr. Cooper and I were, you

1 know, working to -- "Let's exchange discovery." He was  
2 also trying to get Lexington to go ahead and serve these  
3 warrants or figure out what the problem was, but just  
4 slightly over a month later, June 20th, there is motion to  
5 relieve Mr. Cooper. I think that was done in camera. I  
6 don't think I was in the courtroom when those complaints  
7 were brought.

8 THE COURT: Heard.

9 MS. FENT: Right, but the resolution of it was that  
10 Judge Manning relieved, then, the public defender, and  
11 Mr. Lupton was then appointed to the case.

12 So, you know, the -- the problems, while I understand  
13 they want to figure out what's happening on the Lexington  
14 charge, and I do, too, that isn't going to keep me from  
15 going to trial.

16 I can go to trial and attempt to 404(b) this second  
17 CSC without them charging it, but I was helping as a  
18 courtesy, yeah, let's see if we can get it all resolved  
19 together, get the warrants served.

20 I have had that rape kit taken to SLED, and I can  
21 tell that they are working on it to find out what, if any,  
22 evidence is, you know, involved in that, but the delays  
23 have been because I can't get an attorney to remain on the  
24 case to get up to speed to be competent in order to go to  
25 trial. I -- I am ready as soon as we can get an attorney

1 up to speed so --

2 MR. LUPTON: Your Honor, if I may.

3 THE COURT: Yeah, please.

4 MR. LUPTON: What I hear out of that is for almost a  
5 year-and-a-half, there was an attorney, one single  
6 consistent attorney on the case, the original attorney.

7 From talking to my client, the problem he has had  
8 from the beginning of this is that he is being told that  
9 there is evidence but no one can produce that evidence,  
10 and it's evidence regarding this Lexington case that the  
11 State wants to 404(b).

12 She talks about proving this case through 404(b). It  
13 doesn't have to be charged in Lexington, but if she wants  
14 to stipulate that every bit of evidence that has not been  
15 turned over as of today does not exist, then we can go  
16 forward. But the problem I have is that there is  
17 evidence, for example, the rape kit that has not -- I  
18 think that she eventually has gotten the police who held  
19 on to it because it went from one jurisdiction to another  
20 to another, and ultimately Lexington ended up being -- it  
21 ultimately ended up being a Lexington charge.

22 Well, nobody over in Richland did anything with this  
23 rape kit is my understanding is just an example. There's  
24 other evidence that is alleged to exist that hasn't been  
25 produced from this second incident. That stuff isn't

1 going to get produced and fleshed out until the Lexington  
2 charge starts moving forward.

3 THE COURT: Yes, sir. Let me explain something. I'm  
4 not going to reduce his bond in order to get another  
5 county to serve a warrant. I've never done that, don't  
6 intend to do that. That's no reason to reduce the bond.  
7 Now, if you want to make a motion for a speedy trial, I'll  
8 hear that all day long.

9 MR. LUPTON: And, Your Honor, I was under the  
10 impression that had already been done, but I would at this  
11 point ask for a speedy trial.

12 THE COURT: Well, you have to make the motion and  
13 serve it. That's the way it works. If you'll do that,  
14 then I will hear that motion and work towards a speedy  
15 trial for your client. I'd love to see the case disposed  
16 of. Two years old, it ought to be.

17 MR. LUPTON: I agree, Your Honor.

18 THE COURT: So I don't have a problem that. For you  
19 to come in here, and you certainly have the right to argue  
20 this, but I don't intend to reduce his bond for the reason  
21 that another county has not served the warrant.

22 If you want to file a writ of habeas corpus in  
23 Lexington against their holding him, I think you probably  
24 have got a right to do that because they can't hold him  
25 without a charge. *Re Relates to 5<sup>th</sup> 13-16 and Page 13-3-6*

1 MR. LUPTON: Would the court consider ordering the  
2 Lexington warrants be served?

3 THE COURT: No, sir. I'm not sitting in Lexington.  
4 I'm not there, but you certainly have a right. If they  
5 have got a hold on him, I think you have the right to file  
6 for a writ of habeas corpus in Lexington County.

7 Now, I'm not offering an opinion on this case.  
8 You're the lawyer. Decide what you want to do about that.  
9 Again, I'm not going to reduce a bond to force somebody to  
10 file a charge. That's not going to happen. So I am going  
11 to deny that motion.

12 What I will consider, would consider, is a motion for  
13 a speedy trial. If I were sitting in Lexington and some  
14 of you were to file a motion, a writ, a motion for a writ  
15 of habeas corpus, I certainly would consider that writ if  
16 they don't have a charge, didn't have a filed charge.  
17 I've never seen -- you know, I know you can put a hold on  
18 somebody for a day or two to get the paperwork ready, but  
19 you're telling me it's gone on three years.

20 MR. LUPTON: No, they have the warrant, Your Honor.  
21 They have the warrant. They just won't serve it.

22 THE COURT: I mean, they may have a warrant, but he  
23 has no knowledge or notice of it. He hasn't been  
24 arrested.

25 MR. LUPTON: And that's the problem, Your Honor,

*I've ask mr Lupton to file this Habeas Corpus and He told me I couldn't do that.*

*Refer to Page 5-15-16 and 19-12-22-25*

1 is --

2 THE COURT: I don't disagree with you that it's a  
3 problem, but again I'm not sitting in Lexington County.  
4 I'm assigned to Richland. I'm not going to issue an order  
5 for some other county in the state that I'm not sitting  
6 in. I can't do that either.

7 I certainly sympathize with your position. The case  
8 needs to be moved along, but I'm not going to change the  
9 bond for the idea that they're going to serve the warrant,  
10 and they haven't served it. They may never serve it. I  
11 don't know what they're doing. Do you follow me?

12 MR. LUPTON: Your Honor --

13 THE COURT: This bond will be the only bond in  
14 effect.

15 MR. LUPTON: They're waiting on this case to be  
16 disposed of over here, so they're going to have to --

17 THE COURT: I'm going to deny the motion today.

18 MR. LUPTON: Yes, Your Honor.

19 THE COURT: Thank you, sir.

20 (Whereupon, the proceedings were concluded.)  
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23  
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