

Theodore N. Lupton of the Lupton law firm

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fax No. 803-358-7233

I write to you today to speak with you on a few things. I'm under the impression that you will be doing a motion to suppress. I wish to ask that you move forward with this motion before anything with the courts take place. I do understand that a suppression hearing is Constitutionality of confessions or statement by a criminal defendant, evidence seized in a criminal case and identification of a criminal defendant. Jackson v. Denno, 378 U.S. 368 (1964) IF the suppression hearing is not in qualification with what's needed to be done. I wish that you please file a motion in limine. I know that this is exclude evidence the party believes to be improper or unduly prejudicial or to determine if particular evidence is admissible. State v. Floyd 295 S.C. 518, 369 S.E. 2d 842 (1988) I also know the primary purpose of a motion in limine is to prevent disclosure of potentially inadmissible and prejudicial matter to the jury. You have told me that the state did an improper investigating and you also know that there are witnesses to the fact of this Criminal case within Richland Cty. I would like to say that even though you have your opinion and you stated that you have your disbelief in the matter. I wish for you to take my words in consideration. For I have spoke the truth unto you. I can not make up a lie for something I have no answer for. you also told me you have nothing to do with my case this pass two years that I have been incarcerated. But IF you do not take an initiative to do the things need for me to have a fair trial, as well as to prevent the state from a violation of my Right's. How can you properly represent me. I feel we may have a potential problem with some of the ways I wish to proceed with my case. Can I please get in writing any decisions you reach about how (you/we) will handle any disagreement. I do understand that you are hear to help. But I

(2)

also know the highest responsibilities a lawyer has is (his/her) obligation to a client. I also understand that you said that you do not have the time to fully go through my case, but I wish to ask why can I not have the investigation done to provide my innocent, as well as someone talking to my witnesses. you have also told me that some witnesses may get on the stand and lie against me. This meaning the state and who ever the state can teach what to say. This include statements (and/or) testimony by a government authority. These are just some of the things that you and I have to address and come to full understanding. I wish also to ask that I have a chance to review the videotape and recording of the conversation between my alleged victim and the police department. Before I can make a motion on what I need or wish to do, you have given the solicitor what ever time she need to put her case together but I've been refuse of a few things that I have requested. I also wish to see the indictment that was put in on my case. I only have the indictment for my DNA. This is my life that you do not have much time for discussion and I ask that you please offer all the help needed or required to prove my innocent of the charge that's has been put before you. with this said: I wish that you make known in writing, how can we come to a better understanding to solve these issue before trial (and/or) plea. If the solicitor wishes to workout one, please contact me in a timely manner.

sworn to before me this 1st day February 2013

Respectfully Submitted

Janessa C. Pinckney
 notary Public for South Carolina
 my commission expires: 11-21-2016

Eric Marsh

Eric Marsh

This 1st day of February 2013



LUPTON LAW FIRM

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Lexington, SC 29072

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803-358-7233 fax
LuptonLawFirm.com

Theodore N. Lupton
Michelle Q. Lupton

February 2, 2013

Eric Marsh
Alvin S. Glenn Detention Center
201 John Mark Dial Drive
Columbia, SC 29209

Re: Response to February 1, 2013 Letter

Dear Mr. Marsh:

I received your letter dated February 1, 2013 and sent via fax and hand delivery on that date. In this letter, you requested written response to a number of questions. You also made a number of other requests and expressed a number of misunderstands. Therefore, I am writing both in response to your request, and to clear up these misunderstandings. For clarity sake, I will attempt to address these issues in the order they were raised in your letter (a copy of which I am enclosing for your reference).

You first asked about a motion to suppress, or in the alternative, a motion in limine, and request that this motion be heard before anything else takes place. A motion in limine is simply a motion heard outside the presence of a jury prior to whatever the motion is about being heard by the jury. In other words, it is not a separate motion, it just means the motion is done before the issue comes up in front of the jury. So the motion to suppress would be done before the testimony came up before the jury. However, it would not be done until the case is called for trial. The reason these motions are not done before the case is called is that typically you do not know who the trial judge will be until then. Therefore, unless the Judge is assigned in advance, we have to wait until the case is called to have the motion to suppress heard. So if this case goes to trial, I will make a number of motions to exclude various evidence and testimony, but that will be done at trial, not "before anything with the court takes place" (by which I assume you mean before you have to decide whether or not to accept a plea offer).

Next you say I told you that the State did an improper investigation and that there is a witness to this within Richland County. I am not sure if this refers just to the failure of the Investigator to seal the DNA swabs in our presence, or to more general statements on my part that I believe the investigation in this case had a number of problems and mistakes. I will address both.

The failure to seal the DNA swabs was a mistake on the Investigator's part. If this case goes to trial, I will use that to show sloppy police work in the case, and to impeach him. However, it will not keep the evidence out. Sure, I will move to keep it out on that ground, but under the rules, defects like that only go to the weight of the evidence, not whether or not it can come in. That evidence will come in.

1 it's sent to S.L.E.D. for analysis, and this forensic report
2 is what we receive in return.

3 Q Did they identify any semen as a result of analyzing
4 that rape kit?

5 A Yes, ma'am. After looking at the lab report, there are
6 a couple of areas where semen was identified. They notated
7 in their report that at 1.2 which is an item number that is
8 submitted, referring to a vaginal swab that was collected,
9 there is semen identified. In item 1.4 - it's a rectal swab
10 - there was also semen identified in that. Two other areas
11 or two other items that were submitted: 1.7, body fluid --
12 suspected body fluid. There was semen identified in that,
13 and 2.1, cutting from the underwear, there was semen
14 identified from that.

15 Q Okay. And the findings that they've been able to make
16 so far, that first sentence, if you can say, is there one --
17 has somebody absolutely been identified? Has a person been
18 identified?

19 A No.

20 Q Okay. Is there more than one unidentified person or
21 just one unidentified person?

22 A The results conclude that the D.N.A. profile that was
23 developed from these four items that were submitted is from
24 an unidentified individual. That is correct.

25 XQ? Okay. One unidentified individual.

1 (A) Yes.

2 Q. Okay. And so today we are asking for what? What do we
3 need to collect?

4 A. In order to compare, we're asking for a buccal swab.
5 It's a swab of the mouth to submit for comparison.

6 Q. Okay. From whom?

7 A. The defendant, Mr. Marsh.

8 Q. And would this harm him or hurt him in any way?

9 A. Not at all. It's a Q-tip.

10 **Ms. Bodman:** I have no further questions at this time.

11 Cross-Examination

12 By Mr. Lupton:

13 Q. You are an investigator with the Irmo Police Department?

14 A. That's correct.

15 Q. Are you involved or were you involved in any way with
16 the investigation of the October 25th, 2010, incident?

17 A. At that time, no.

18 Q. All right. So you didn't interview anybody related to
19 that?

20 A. No, sir.

21 (Q) Didn't collect any rape kits?

22 (A) No, sir.

23 (Q) Did anybody with Irmo do any of that?

24 (A) No, sir.

25 (Q) So do you have any idea -- do you have any knowledge

1 yourself of who or how that evidence was collected?

2 (A) The report from S.L.E.D.---

3 (Q) All right. I understand you've got a report showing the
4 results of an evaluation, but the collection itself, do you
5 have any kind of information about the chain of custody on
6 it?

7 A. Through my knowledge as an investigator in submitting
8 numerous evidence to S.L.E.D. for comparison, they will only
9 accept evidence that's packaged and submitted in a certain
10 fashion---

11 Q. All right. So---

12 A. ---in order to---

13 Q. So is that a no, that you don't know? You're just
14 assuming because you know S.L.E.D. policy.

15 A. That's correct.

16 (Q) All right. So you don't know who collected it; correct?

17 (A) No.

18 (Q) You don't know how it was collected.

19 (A) Again, the procedures for them to collect certain
20 evidence has to meet their policies and procedures. In order
21 for it to be submitted, it would have to meet those protocols
22 before they would accept it to compare it.

23 (Q) But you don't know how it was collected.

24 (A) No.

25 (Q) You don't know if whoever did collect it did it

1 correctly.

2 (A) I was not there when the collection took place, no.

3 (Q) You don't know how it was stored or where it was stored
4 or when it was transported or any of that stuff.

5 (A) Just what the report tells us.

6* (Q) All right. Are you aware of whether or not my client is
7 in what's called CODIS? Well, first of all, do you know what
8 CODIS is?

9* (A) Yes, I do.

10 (Q) All right. And obviously it's a D.N.A. database.

11 (A) That's correct.

12* (Q) That people with prior felony convictions of a certain
13 type have to be entered into; correct?

14* (A) That's correct.

15* (Q) The D.N.A. sample in this case was checked against CODIS
16 to see if it was -- if they were able to make any
17 identifications; correct?

18* (A) That's correct.

19* (Q) Are you aware of whether or not my client's in CODIS?

20* (A) Your client is not in that system.

21* (Q) Do you know that?

22* (A) Looking at his record, his criminal record, he would not
23 be in there.

24* (Q) For any South Carolina offense but what about --- out of state

25* (A) For South Carolina, that's correct.

1* Q All right. But CODIS is a national database, is it not?

2* A Yes, sir.

3 Q What about outside of South Carolina?

4 A I'm not sure what the requirements would be for them to
5 enter it into the system, so, no.

6* Q So you don't know whether or not he's in CODIS.

7 A By South Carolina standards, he is not.

8* Q But you don't know if he is or isn't.

9 A From an outside agent or other states, I'm not aware.

10* Q All right. So you haven't checked to see if you've got
11 evidence of whether or not he's in CODIS and, thus, whether
12 or not he has already been tested against this evidence of
13 whatever the chain of custody is; correct?

14 A No. Our procedure is to utilize the South Carolina Law
15 Enforcement Division which they submit that into the CODIS
16 system for comparison.

17* Q All right. And going back to -- you aren't
18 investigating the October 25th incident; correct?

19 A Yeah. We believe that the 25th incident is definitely
20 correlated with the arrest warrant.

21* Q But not -- not anything out of Irmo.

22* A Yeah. The arrest warrant was issued out of Irmo, and we
23 believe that this incident is a continuing (verbatim)
24 incident or part of our investigation.

25 Q. The October arrest warrant or the arrest warrant related

Summary of Abuse (Continuation):

RECOMMENDATIONS TO TEAM AND / OR FAMILY:

1. Based on her disclosure and presentation, Reba was evaluated and recommended for therapy to address a diagnosis of post-traumatic stress disorder. Reba believed that her assailant was going to kill her, and the assault against her was quite violent. It is important that she continue to attend sessions regularly.
2. Reba provided much information that can be corroborated (she never made it to school that day, she vomited in the car used by the perpetrator, he bound her hands with blue duct tape, he made numerous phone calls and made her make some, they stopped at an employer's workplace and two gas stations before he returned her home).
3. According to ARC physician Susan Luberoff, MD, Reba's ER exam revealed significant vaginal trauma consistent with her description of a forcible assault.
4. Reba feels less anxious for her safety and that of her family now that she knows her assailant is in custody. Any further concerns regarding safety should be brought to the attention of LE and/or Reba's therapist at the ARC, Elizabeth Dukes.
5. Reba's sister is not supportive at this time. The sisters should have no contact with each other until this investigation is complete and until Reba's therapist believes such contact to be in her best interests.

Evaluator Name : Alicia Benedetto, Ph.D.

Evaluator Signature:

Alicia Benedetto Ph.D.

Date:

11 / 18 / 10

SOUTH CAROLINA LAW ENFORCEMENT DIVISION



Chain Of Custody

L12-07683

10/16/12	13:19	A	DNA Department	DNA Return
10/22/12	12:48	A	Forensic Technician	Sheree J. Brown
10/23/12	9:30	A	Forensic Technician	Patricia H. Crooks
10/23/12	9:39	A	Evidence Room (150)	Bin 9 Shelf E
11/29/12	9:31	A	Forensic Technician	Amy Stephens
11/29/12	9:36	A	Evidence Disposition	Returned to Agency in person

Donna Martin - Columbia PD

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Lexington, SC 29072
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Or visit us on the web at: LuptonLawFirm.com

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From: Margaret Bodman [mailto:bodmanm@rcgov.us]
Sent: Tuesday, February 12, 2013 2:40 PM
To: ted@luptonlawfirm.com
Subject: Eric Marsh

Ted –

I will do a cap of 15 and he pleads to both charges (Richland and Lexington). We both have CSC with a minor 2nd.

If he rejects our offer he risks that Suzanne Mayes will DP CSC first and Kidnapping charges for what occurred in Lexington. Each of those carry 0 – 30 and are MS.

My offer expires March 15th.

Margaret Fent Bodman
Assistant Solicitor
Fifth Judicial Circuit Solicitor's Office
1701 Main Street
Columbia, South Carolina 29201
803-576-1814
bodmanm@rcgov.us

Ted Lupton

From: Ted Lupton [ted@luptonlawfirm.com]
Sent: Thursday, July 05, 2012 1:15 PM
To: 'Mayes, Suzanne'; 'Margaret Bodman'
Subject: Eric Marsh ^{Lexington} ^{Richland}

I have been appointed to represent this guy on his Richland charges. He has been in ASGDC since November 2010 on a CSC w/ Minor 2nd. He is showing a hold for a Lexington CSC w/ Minor related to the same victim. Margaret tells me that this case also has a kidnapping & assault attached. She informs me that there is DNA evidence related to the Lexington case.

I have seen some discovery on these two cases, I have asked for additional discovery on both. However, it is clear that the most compelling case in terms of allegation and evidence is going to be the Lexington charge. Therefore, getting that case served & a lawyer appointed in Lexington will be a huge step forward on resolving the global case.

In fact, because of the circumstances of the Lexington complaint (that it was done as an effort to get the victim to recant the Richland charges) the cases are too inextricably linked to go forward on the Richland case until the evidence in the Lexington case is fully developed.

Therefore, can you please look at getting the Lexington charges served and get that case jump started?

Thanks,
Ted
Attorney for Mr. Marsh

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7/5/2012

Ted Lupton

From: Ted Lupton [ted@luptonlawfirm.com]
Sent: Saturday, June 30, 2012 1:10 PM
To: 'Margaret Bodman'
Subject: Eric Marsh

I have reviewed the discovery you provided this week. Thank you for sending it so quickly.

I know that some of this is stuff you already are working to get, but I just wanted to specifically request some of the items I believe should exist, but that I do not have.

Can you please provide the following:

1) Recording of victim's 10-25-10 phone call recanting her prior allegations (incident reports indicate that this call was recorded),

2) ARC videos from both victim's 10-20-10 & 11-16-10 interviews,

3) All statements taken in both cases (there are no statements included in the discovery, other than the narrative given in the SANE interview) – there should be police statements (multiple in some cases) from the victim, her mother, Marquetta & Tienna Hawkins, Kenny (victim says they were with him for a period during the 10-25-10 incident), defendant, as well as any other statements. I especially need the recorded or written statement of defendant admitting to having had sex with the victim on 10-25-10,

4) Any follow up investigation on both cases – especially any investigation that would establish the location where victim reports the 10-25-10 assault took place (I know you said there was considerable confusion over which county this was in, and that it was eventually determined to have been in Lexington County),

5) list of any evidence taken or obtained in both cases – especially anything showing that semen was found during the 10-25-10 examination (the defendant makes the valid point that there is no indication in the discovery so far that any semen was found, having that would be very helpful in explaining why his sample is important),

6) In the SANE report taken 10-25-10, the victim says under recent injuries, that she was "assaulted about 1 month ago;" in other locations, she reports the last assault by defendant as having occurred on 8-15-10. can you please advise if a) she has reported an assault by any other person, b) is reporting that defendant assaulted her again around the end of September, c) misstatement, or d) some other reason for the discrepancy,

7) If the State intends to introduce evidence concerning the events surrounding the escape charge/arrest in Florida, please provide details/reports and disposition on the charges.

8) please provide the location of the bus stop victim was at on 10-25-10.

9) Any other reports, evidence, etc. (the ARC report of 11-16-10 interview gives a good list of elements of the victim's report that were verifiable), there should be a good deal more material out there.

I recognize that this is a lot of material & some of it is already in the works. The various recordings and statements, as well as the report showing semen was found are the most important.

Additionally, thank you for getting with Lexington about jump-starting their end of this case. This case is coming up on two years old & needs to get moved. I am happy to work with you in getting that done as rapidly as we can without compromising fairness to either side.

Thanks,
Ted

Lupton Law Firm
140 Gibson Road
Lexington, SC 29072

6/30/2012

ARREST WARRANT

M-302915

STATE OF SOUTH CAROLINA
 County/ Municipality of

Lexington

THE STATE OF SOUTH CAROLINA
against **ORIGINAL**

Eric Marsh

Address: Lely Court

Irmo, SC 29063.

Phone:

Sex: M Race: B Height: 5 Weight: 160

DL State: DL #: SSN: DOB: 1/11/1975 Agency ORI #: SC0320000

Prosecuting Agency: Lexington County Sheriff

Prosecuting Officer: S. M. Collins - 1704

Offense: Sex / Criminal sexual conduct with minor, or

Attempt - victim under 16 years of age - Second

Offense Code: 0397

Code/Ordinance Sec: 16-03-0655(B)(2)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

is to be arrested and brought before me to be dealt with according to the law. The accused

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Eric Marsh on 10-25-10

Signature of Detention Officer RECEIVED
RETURN WARRANT TO:
General Sessions
Lexington County Judicial Center
205 East Main Street
Lexington, SC 29072
06 2011

ORIGINAL ORIGINAL ORIGINAL

STATE OF SOUTH CAROLINA

County/ Municipality of

Lexington

Personally appeared before me the affiant S. M. Collins

being duly sworn deposes and says that defendant Eric Marsh

did within this county and state on or about 10/25/2010

State of South Carolina (or ordinance of Lexington)

in the following particulars:

DESCRIPTION OF OFFENSE Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 years of age - Second degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On October 25, 2010 the victim in this case, a fifteen year old black female, was on her way to the bus stop, and was confronted by the subject. The victim knows the subject on sight due to the fact he dated her sister. On the date of this incident the defendant used force and coercion to get the victim into his vehicle. The defendant then took the victim to an address in the area of Garden Valley Lane which is in the Columbia area of Lexington County, and had sexual intercourse with the victim. The defendant did admit to having sexual intercourse with the victim.

Signature of Affiant

STATE OF SOUTH CAROLINA
 County/ Municipality of

Lexington

Affiant's Address P O Box 639

Affiant's Telephone Lexington, SC 29071

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 10/25/2010

did violate the criminal laws of the State of South Carolina (or ordinance of Lexington)

County/ Municipality of

DESCRIPTION OF OFFENSE: Sex / Criminal sexual conduct with minor, or Attempt - victim under 16 years of age - Second degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me on 10/26/2011

Signature of Issuing Judge
Brian W. Jeffcoat
Judge Code: 5038

Judge's Address Lexington County Judicial Center
Lexington, SC 29072
Judge's Telephone (803)951-2595

ORIGINAL

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BAIL set by

WITNESSES

Judge Dooler
on 9-6-12
Type and Amount: \$50,000.00
Name of Surety: 883

Name: _____
Address: _____
Telephone: _____
Name: _____
Address: _____
Telephone: _____

PRELIMINARY HEARING held by

Telephone: _____

Judge _____
on _____

Name: _____
Address: _____
Telephone: _____

Defendant Attorney: _____

Name: _____
Address: _____
Telephone: _____

Decision: _____

Name: _____
Address: _____
Telephone: _____

DISPOSITION before

Telephone: _____

Judge _____

Name: _____
Address: _____
Telephone: _____

on _____

Telephone: _____

by _____
(indicate jury trial, bench trial, plea, nol. procs., etc.)

Name: _____

Disposition: _____

Address: _____

Sentence: _____

Telephone: _____

JURORS

Name: _____
Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS



BETH A. CARRIG
CLERK OF COURT
EXMINGTON SC

2012 SEP -7 PM 4: 24

FILED