

Volume I of II

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

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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

STATE OF SOUTH CAROLINA	)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	THE COURT OF GENERAL SESSIONS
	)	2010-GS-37-00886-889
STATE OF SOUTH CAROLINA,	)	
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
	)	
DENNIS MAURICE TEMPLE,	)	
	)	
DEFENDANT.	)	DATE: May 20, 2012
		ANDERSON, SOUTH CAROLINA
		(FOR OCONEE COUNTY)

MOTION TO TEST FOR SEXUALLY TRANSMITTED DISEASES

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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

LINDSEY SIMMONS, ATTORNEY AT LAW
ATTORNEY FOR THE STATE

DENNIS TEMPLE
PRO SE DEFENDANT

PROVIDED FOR: SCCID

FOR COPIES CONTACT: JO RICE
JRICE@SCCOURTS.ORG
OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

1 THE COURT: Okay, ma'am.

2 MS. SIMMONS: Good morning, Judge. This is Dennis
3 Maurice Temple. He is currently in the Oconee County
4 Detention Center on M-136668 through M-136670 for criminal
5 sexual conduct in the first degree, kidnapping and grand
6 larceny.

7 We filed notice on May 14, 2010, and served Mr. Temple
8 that we would be seeking to test him for sexually
9 transmitted diseases, including HIV and AIDS, in accordance
10 with S.C. Code §16-3-740. He was personally served with
11 notice on May 14th. That notice, which I will be glad to
12 pass up to Your Honor included the notice that he had a
13 right to counsel for this hearing and instructed him on how
14 he could apply for a public defender. He chose to ---

15 THE COURT: When was he served that notice?

16 MS. SIMMONS: May 14th, Your Honor.

17 THE COURT: May 14th. Mr. Temple, why haven't you
18 availed yourself of the right to obtain an attorney?

19 MR. TEMPLE: Prior experience with attorneys from
20 Oconee County.

21 THE COURT: So, you are appearing by yourself, pro se,
22 freely and voluntarily?

23 MR. TEMPLE: Yes, sir.

24 THE COURT: Okay. You chose to voluntarily not seek
25 the services of an attorney for the purposes of this

1 motion?

2 MR. TEMPLE: Particularly, I ---

3 THE COURT: Answer the question, please, sir. Have
4 you voluntarily chosen not to seek an attorney for the
5 purposes of this motion?

6 MR. TEMPLE: Yes, sir.

7 THE COURT: Okay. Is it your intention and desire to
8 represent yourself in this matter, as far as this motion
9 goes?

10 MR. TEMPLE: Yes.

11 THE COURT: It is?

12 MR. TEMPLE: Yes.

13 THE COURT: Okay. Thank you. I find that Mr. Temple
14 freely, voluntarily, knowingly waived his right to an
15 attorney as far as just this hearing and for no other
16 purposes in this case. I would encourage you, Mr. Temple,
17 to avail yourself of the opportunity to have
18 representation. Apparently, you have some very serious
19 charges pending.

20 MS. SIMMONS: Judge, may I approach?

21 THE COURT: Yes, ma'am.

22 MS. SIMMONS: Under that statute I mentioned
23 previously, it requires the victim to request or a parent
24 of the victim to request this hearing. There is a letter
25 addressed to you from the victim in this case requesting

1 that the defendant be tested for sexually transmitted
2 diseases. I've included that, as well as the motion and
3 the affidavit of service on Mr. Temple.

4 THE COURT: And the request has been provided to Mr.
5 Temple, as well?

6 MS. TEMPLE: I have not provided the actual written
7 request to Mr. Temple.

8 THE COURT: I don't think you have to, actually, under
9 the statute. Looking at S.C. Code §16-3-740, you have to
10 have a request from the victim or victim's legal guardian,
11 probable cause that the offender committed the offense,
12 there was a risk of body fluids exchanged, and he received
13 notice of the petition and notice of the right to counsel
14 at the hearing. Okay?

15 MS. SIMMONS: Yes, Your Honor.

16 THE COURT: And so far, I've heard the victim's
17 request and I want to hear about the probable cause,
18 please.

19 MS. SIMMONS: Sergeant Scott Arnold is here from
20 Oconee County Sheriff's Office to offer sworn testimony.

21 THE COURT: Thank you very much.

22 (After being duly sworn by the Clerk of Court, Deputy
23 Scott Arnold testified as follows:)

24 DIRECT EXAMINATION OF DEPUTY SCOTT ARNOLD BY MS. SIMMONS

25 Q Sergeant Arnold, where are you employed?

 THE STATE OF SOUTH CAROLINA VERSUS DENNIS M. TEMPLE

1 A The Oconee County Sheriff's Office.

2 Q And what division are you assigned to?

3 A The Investigation division.

4 Q Did you have an occasion to investigate a criminal
5 sexual conduct, kidnapping, and grand larceny that
6 occurred in Oconee County on May 9, 2010?

7 A Yes, I did.

8 Q After your thorough investigation of the facts, could
9 you tell us the events giving rise to your probable
10 cause to believe that this defendant did indeed commit
11 the crimes that he is charged with and that body
12 fluids were exchanged during the commission of these
13 crimes.

14 A Your Honor, on May 10, 2010, of this year, we received
15 a 911 call from a female stating that she had been
16 tied up and raped. Deputies were dispatched to the
17 All-Safe Storage Units in Seneca, South Carolina.
18 They broke down the door, which was Unit 193, they
19 broke down the door and spoke with a female and she
20 stated that she had been tied up and raped. EMS
21 transported her to the Oconee County Hospital where a
22 rape kit was done on her and body fluids were
23 detected.

24 THE COURT: Okay, sir. All right.

25 Q Sergeant Arnold, did the victim make any

1 identification of this defendant?

2 A Yes. She picked him out of a six-picture photo
3 line-up.

4 Q And who's storage unit, or the unit number that you
5 identified, who was that unit registered to?

6 A Unit [REDACTED] was leased to the defendant, Dennis Temple.

7 MS. SIMMONS: I have nothing further.

8 THE COURT: Mr. Temple, do you have any questions of
9 this officer?

10 MR. TEMPLE: Yes.

11 CROSS EXAMINATION OF DEPUTY SCOTT ARNOLD BY MR. TEMPLE

12 Q You say body fluids were extracted from the victim.
13 Was it her body fluids or someone else's?

14 A Body fluids were detected and they are still under
15 investigation.

16 Q But there's no ---

17 A They are going to be sent off for analysis.

18 Q So. All right.

19 THE COURT: Any further questions?

20 MR. TEMPLE: No, sir.

21 THE COURT: Okay. Thank you. You may step down.

22 Anything further, Ms. Simmons?

23 MS. SIMMONS: Judge, we'd just ask that you accept the
24 proposed order that has been passed up to the Court and
25 order this defendant to be tested for the sexually

1 transmitted diseases, HIV and AIDS.

2 THE COURT: All right. First, I'm going to find that
3 the victim did make a request for these tests under
4 statute, there's probable cause to believe that Mr. Temple
5 committed this offense, and further, there's probable cause
6 to find that there were body fluids transmitted and that
7 Mr. Temple received proper notice of this petition as well
8 as waived his right to have an attorney represent him in
9 this matter. I am going to grant the motion and sign the
10 order as we speak.

11 MS. SIMMONS: Thank you very much, Your Honor.

12 THE COURT: Mr. Temple, I strongly urge to you obtain
13 counsel to represent you in this matter.

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, SO GIVEN ON MAY 20, 2010 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 17TH DAY OF AUGUST, 2012.


JO RICE
OFFICIAL COURT REPORTER

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF OCONEE)

STATE OF SOUTH CAROLINA) N136668 - N136670
VS.) ORDER FOR TESTING
DENNIS MAURICE TEMPLE,)
DEFENDANT.)

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 MAY 20 P 2:03

This matter comes before me on motion of Lindsey S. Simmons, Assistant Solicitor for the Tenth Judicial Circuit, for an Order requiring that the above-mentioned Defendant be tested for Hepatitis B and all sexually transmitted diseases, including Human Immunodeficiency Virus (HIV), the virus that causes Acquired Immunodeficiency Syndrome (AIDS), in accordance with S.C. Code Section 16-3-740 (Supp. 1995).

It appears that the Defendant has been charged with the crime of criminal sexual conduct first degree, kidnapping, and grand larceny and that his alleged conduct resulted in the possible exposure of the victim, C.M., to blood or vaginal, seminal or other bodily fluids of the Defendant.

It further appears that the State has demonstrated the following requirements of S.C. Code Section 16-3-740:

1. that the victim or the victim's legal guardian requested the tests;
2. that there is probable cause that the offender committed the offense;
3. that there is probable cause that during the commission of the offense there was a risk that body fluids were transmitted from one person to another; and
4. that the Defendant has received notice of the petition and notice of his right to have counsel represent him at a hearing.

I find that the tests requested by the State are reasonable, in that they are promulgated by the above-mentioned statute; that they will not threaten the Defendant's safety or health; and that they pose only a minor intrusion upon the Defendant's dignitary interests in personal privacy and bodily integrity and, therefore, will not constitute a violation of his Fourth Amendment rights.

I find that, pursuant to statutory requirements, the tests shall be paid for by the State, although the Defendant, unless indigent, shall reimburse the State if he is convicted. The tests shall be administered by the Department of Health and Environmental Control (DHEC) through the local county health department or the medical professional at the detention facility where the Defendant is imprisoned or detained.

I find that the results of the tests shall be kept confidential and disclosed only to the Solicitor who requested the tests, who will notify the following persons and/or agencies of the tests results:

*Cert Copies handed
to Sol. Simmons
5/20/10*

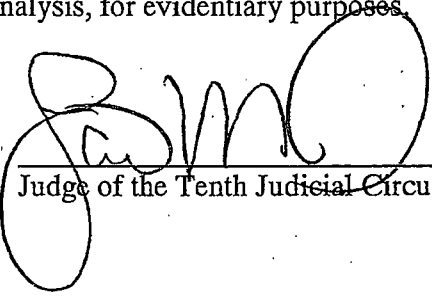
1. the victim or the legal guardian of a victim who is a minor or is mentally retarded or mentally incapacitated;
2. the victim's attorney;
3. the offender and a juvenile offender's parent or guardian; and
4. the offender's attorney.

I find that if the results of tests indicate that the Defendant is infected with HIV, other sexually transmitted disease, and/or Hepatitis B, the solicitor shall also notify the correctional facility where the Defendant is incarcerated or detained and the Department of Health and Environmental Control (DHEC).

This court reserves the right, at the request of the victim or the victim's legal guardian, to order a follow-up HIV test and counseling for the offender six weeks, three months, and six months following the initial HIV test if it is negative.

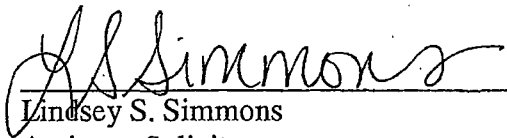
I further find that, as the State has shown probable cause that the Defendant committed a crime, the Defendant shall submit to the collection of additional samples, including blood, saliva, head or pubic hair so that the State may conduct scientific testing, including DNA analysis. The results of the scientific testing, including DNA analysis, may be used for evidentiary purposes in any court proceeding.

THEREFORE, IT IS ORDERED under the authority of S.C. Code Section 16-3-740 (Supp. 1995), that the Defendant be tested for Hepatitis B and all sexually transmitted diseases, including Human Immunodeficiency Virus (HIV), and that he submit to the contemporaneous collection of additional samples, including blood, saliva, head or pubic hair so that the State may conduct scientific testing, including DNA analysis, for evidentiary purposes.

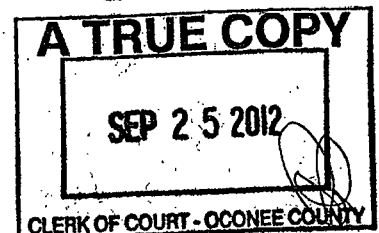

Judge of the Tenth Judicial Circuit

Anderson, South Carolina
May 20, 2010

I SO MOVE:


Lindsey S. Simmons
Assistant Solicitor
SC Bar Number 70224
Tenth Judicial Circuit

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2010 MAY 20 P 2:03



State of South	)	In the Court of General
Carolina	)	Sessions
	)	
	)	Warrants Nos: N 136668,
	)	N 136669, and N 136670
	)	Indictments Nos:
County of Oconee	)	2010-GS-37-886, '887, '888,
	)	and '889

State of South	)	
Carolina	)	
	)	
Plaintiff,	)	Transcript of Record
	)	Hearing
-vs-	)	
	)	
Dennis Temple,	)	
	)	
Defendant.	)	

June 30, 2010
Walhalla, South Carolina

B E F O R E:

The Honorable Alexander S. Macaulay, Judge.

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

Lindsey S. Simmons, Esq.
10th Circuit Assistant Solicitor
Attorney for the State

Robert Mills Ariail, Esq.
Attorney for the Defendant

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

1

Index of Witnesses

2

3

Witnesses

Page

4

5

No Witnesses were called.

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Certificate of Court Reporter.....10

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Index of Exhibits

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No Exhibits were introduced.

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

2 (Whereupon, the hearing commenced, with all parties
3 being present, on the 30th day of June, 2010, in
4 the Court of General Sessions for Oconee County,
5 before the Honorable Alexander S. Macaulay, at
6 approximately 10:18 a.m.)

7 MS. SIMMONS: Thank you, Your Honor, may it please
8 the Court. This is Dennis M. Temple. He is currently
9 incarcerated at the Oconee County Detention Center on
10 N 136668 for grand larceny and N 136669 for kidnapping,
11 and N 136670 for criminal sexual conduct in the first
12 degree.

13 He appeared before the Magistrate after his arrest.
14 A \$200,000 total bond was set, that would be cash or
15 surety, with special conditions of no contact with the
16 victim if he posted the \$200,000 bond and GPS electronic
17 monitoring.

18 THE COURT: You say he posted his bond?

19 MS. SIMMONS: If he had posted the bond, those
20 conditions would be in place.

21 He is here with his attorney who has been retained
22 for the purposes of bond, Mills Ariail.

23 THE COURT: All right. Mr. Ariail?

24 MR. ARIAIL: I have spoken to the Defendant with
25 regard to the bond reconsideration and we have discussed

State v. Dennis Temple -- June 30, 2010

1 in detail some of the evidence that is against him at
2 this time. He wishes to withdraw that motion for bond
3 reconsideration and not proceed at this time.

4 THE COURT: All right. Mr. Temple, if you would
5 please raise your right hand.

6 THE DEFENDANT: (Complies.)

7 THE COURT: Do you solemnly swear or affirm the
8 testimony you are about to give is the truth, the whole
9 truth, and nothing but the truth?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Very good. You have heard your
12 attorney -- and I do understand Mr. Ariail has only been
13 retained for this bond hearing?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. But he advised the Court
16 that you wish to withdraw your reconsideration, or
17 motion for reconsideration or reduction of the bond; is
18 that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. So the bond will stay in
21 effect with the same provisions.

22 Now let me ask you, does the bond also have a
23 provision about obtaining counsel?

24 MS. SIMMONS: No, Your Honor. That is an issue I
25 would like for you to address today. He had filed a

1 motion with my office that he wished to proceed *pro se*
2 in this matter, and I would like for the Court to inform
3 Mr. Temple of the dangers of self-representation as he
4 has a preliminary hearing coming.

5 THE COURT: Well, I am going to advise Mr. Temple
6 that he's not going to represent himself; he will have
7 an appointed attorney or retain his own attorney.

8 Do you understand that, Mr. Temple?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have the ability to hire an
11 attorney, retain an attorney?

12 THE DEFENDANT: Not at this time.

13 THE COURT: All right. Then that's what I mean. I
14 want somebody representing him now. I'm gonna waive the
15 application for the Public Defender, waive the fee and
16 have the Public Defender contact you.

17 Is Mr. Burr here?

18 MR. BURR: Yes, Your Honor.

19 THE COURT: I want you to see Mr. Temple at your
20 earliest convenience to start your representation. Now,
21 I understand the Solicitor has provided Mr. Temple with
22 some discovery, as you say?

23 MS. SIMMONS: Yes, Your Honor.

24 THE COURT: All right. So, but be sure you have
25 everything that Mr. Temple has but also anything the

1 Solicitor might have.

2 All right. Is there any question? The thing is
3 that you are entitled to representation, but also,
4 inasmuch as the charges are as serious as they are, from
5 what the Solicitor says, the Court also needs to be
6 assured that you are properly represented. And because
7 of that I'm gonna see that you do have representation.

8 Now, I might note that once he does -- and I'm
9 appointing Mr. Wilson Burr as his attorney -- that once
10 he has retained or at least has counsel representing
11 him, then he's no longer entitled to *pro se* filings.

12 In other words, you don't have two filings. The
13 thing is you and Mr. Burr consult on what you think is
14 appropriate. All right?

15 THE DEFENDANT: Yes, sir.

16 MR. ARIAIL: Your Honor, one item I addressed with
17 him back there and he asked me to make sure we do. He's
18 got some legal research and books that he has currently
19 that he is utilizing I think while he's being detained.
20 He wanted to be able to keep those to be able to
21 research and do what he needs to do. And I don't know
22 the information he's got, but he understands ---

23 THE COURT: Is this done at the Detention Center?

24 THE DEFENDANT: No, sir. It's rare. It's not,
25 it's not -- it's against policy to have legal books in

1 Oconee County Detention Center.

2 THE COURT: Well, let's do this. You and your
3 attorney, Mr. Burr, consult about things that you think
4 are important and you want researched.

5 THE DEFENDANT: I have, Your Honor, civil matters
6 that are in effect now.

7 THE COURT: Civil matters?

8 THE DEFENDANT: Yes.

9 MR. ARIAIL: And, Your Honor, I didn't discuss with
10 him the civil matters, I was talking about the criminal
11 matters.

12 THE COURT: The civil matters have to be done with
13 Mr. Wilson [sic] and of course he has access to all that
14 is necessary. But you do, I want to encourage you and
15 in fact I'm going to require you and Mr. Burr to
16 cooperate so that you do have not only full
17 representation but the type of representation that is
18 warranted in this particular case.

19 All right. Now, as far as the civil matter,
20 there's not anything I can do about that. Do you have
21 an attorney?

22 THE DEFENDANT: No, sir. I'm *pro se*. That's what
23 my legal books -- that's why I need my legal books in
24 the Detention Center.

25 THE COURT: Well, I can assure you the civil matter

1 is going to be continued until this matter is taken care
2 of. Have you filed any -- is there an action filed?

3 THE DEFENDANT: Oh, yes, sir. It's been an ongoing
4 situation in prison before I was incarcerated.

5 THE COURT: Was it here in Oconee County?

6 THE DEFENDANT: Uh, it's in the Federal District
7 Court.

8 THE COURT: All right. You will have to take that
9 up with the Federal District Court. I can't speak for
10 them.

11 THE DEFENDANT: Well, what I'm saying, Your Honor,
12 I can't file motions if I can't look up cases and, you
13 know, use the *Black's Law Dictionary* and --

14 THE COURT: Well, I don't think you want me to try
15 to tell a United States District Court judge what he
16 needs to do. I can't help you.

17 THE DEFENDANT: I understand.

18 THE COURT: All right. Anything else?

19 MR. ARIAIL: No, Your Honor.

20 THE COURT: All right. Are there any questions
21 that you have, Mr. Temple?

22 THE DEFENDANT: Um, no, sir, not at this time.

23 THE COURT: All right, very good. All right.

24 Thank you, sir.

25 MR. ARIAIL: Thank you, Your Honor.

1 MS. SIMMONS: Thank you, Judge.

2 THE COURT: All right. The matter is withdrawn and
3 he will be returned to detention.

4 MS. SIMMONS: Thank you.

5 (Whereupon, the hearing was concluded at
6 approximately 10:25 a.m.)

7 ** End of Requested Certified Transcript of Record **

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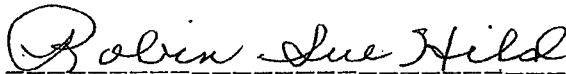
State v. Dennis Temple -- June 30, 2010

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 hearing of the captioned case, relative to appeal, in the Court of General Sessions for Oconee County, South Carolina, on the 30th day of June, 2010.

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

August 6, 2012

A handwritten signature in cursive script, reading "Robin Sue Hild", is written over a horizontal line.

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

State of South Carolina) In the Court of General
 Sessions
)
) Warrants Nos: N 136668,
) N 136669, and N 136670
) Indictments Nos:
 County of Oconee) 2010-GS-37-886, '887, '888,
) and '889

State of South Carolina)
 Carolina)
)
 Plaintiff,) Transcript of Record
) Motions Hearing
 -vs-)
)
 Dennis Temple,)
)
 Defendant.)

July 29, 2010
 Walhalla, South Carolina

B E F O R E:

The Honorable J. Cordell Maddox, Jr., Judge.

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

Lindsey S. Simmons, Esq.
 10th Circuit Assistant Solicitor
 Attorney for the State

Sarah G. Drawdy, Esq.
 Attorney for the Defendant

Robin Sue Hild, FCRR, RPR
 Circuit Court Reporter

1 Index of Witnesses

2

3 Witnesses

Page

4

5 No Witnesses were called.

6

7

8

9

10

11 Certificate of Court Reporter.....11

12

13

14

15 Index of Exhibits

16

17 No Exhibits were introduced.

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

2 (Whereupon, the Defendant's motion to relieve
3 counsel and the State's motion for the Defendant to
4 obtain counsel within 30 days commenced on July 29,
5 2010, in the Court of General Sessions for Oconee
6 County, before the Honorable J. Cordell Maddox,
7 Jr., with all parties being present, at
8 approximately 5:10 p.m.)

9 THE COURT: What do we have?

10 MS. DRAWDY: Your Honor, may it please the Court,
11 I'll pass up, it's a copy of Mr. Temple, my client's
12 motion to have both myself and co-counsel, Keith Denny,
13 relieved as his attorneys.

14 MS. SIMMONS: And, Judge, I also have a different
15 motion if you would like me to pass it up.

16 THE COURT: Yeah. Yeah. You have a separate one?

17 MS. SIMMONS: Yes, sir. And I can give you a
18 history of this.

19 THE COURT: Yeah, if you would, that would be
20 great.

21 MS. SIMMONS: Mr. Temple has been in custody since
22 May of 2010 for criminal sexual conduct in the first
23 degree and kidnapping and grand larceny. He initially
24 indicated he wanted to represent himself. His family or
25 a friend subsequently hired Mills Ariail for purposes of

1 bond only. Mr. Ariail is obviously no longer on the
2 case.

3 Mr. Temple indicated to Judge Macaulay at some
4 point that he wanted to represent himself. He appointed
5 the Public Defender, Wilson Burr, and Mr. Burr just sent
6 the case out of his office to Ms. Drawdy and Mr. Denny.
7 So, in effect, they are the first attorneys he has had
8 who have actually looked through his case in depth.

9 THE COURT: Okay.

10 And, Mr. Temple, what's your motion here?

11 THE DEFENDANT: Well, actually, Your Honor, I did
12 not, I did not authorize the Court or request for an
13 attorney. The Court, the Court gave me an attorney.

14 THE COURT: Right.

15 THE DEFENDANT: And I do request a dismissal of
16 both of my present counsels because of conflicting,
17 things like breach of trust --

18 THE COURT: Like what do you mean? I'm trying to
19 understand what you mean. What have they done?

20 THE DEFENDANT: Sir?

21 THE COURT: What have they done that makes you want
22 to get rid of them?

23 THE DEFENDANT: Well, I, I, I, I believe that
24 things that are being said between us are being said
25 outside of the conference, you know? Also, misleading

1 me information that I know I asked a question that I
2 know the answer to and I get a different answer from
3 them. So, I mean, it's just how can I have a fair trial
4 if I got counsel that's not gonna, you know, be
5 productive, be misleading?

6 THE COURT: Do you think you can represent
7 yourself?

8 THE DEFENDANT: Uh --

9 THE COURT: That's why the Court appointed them.
10 They appointed them because they are good lawyers and
11 because --

12 THE DEFENDANT: I have no doubt, Your Honor, that
13 they're good lawyers. I mean, I see that they got their
14 skills. But the point is, are they gonna use their
15 skills in my case to defend me? That's the point. I
16 mean, if I can't get them to be productive to defend me,
17 then that's denying me access to the Court.

18 THE COURT: Well, the question is whether I appoint
19 someone else for you or whether you're gonna hire
20 somebody else or whether you're gonna be by yourself.
21 And I'm advising you not to be by yourself on these
22 charges. I know you might think you can represent
23 yourself, but that's a different matter.

24 THE DEFENDANT: Right.

25 THE COURT: So you tell me. What do you want? Do

1 you want another lawyer?

2 THE DEFENDANT: Well, Your Honor, I would like the
3 opportunity to purchase me a lawyer myself.

4 THE COURT: Okay.

5 Yes, ma'am.

6 MS. SIMMONS: Judge, I hate to interrupt. But if
7 he is going to retain counsel, I would ask that you
8 order him to do so within the next 30 days; and if he's
9 not -- obviously I'm sure you will relieve Ms. Drawdy
10 and Mr. Denny.

11 THE COURT: Yeah. I mean, I have to.

12 MS. SIMMONS: But if you give him 30 days to do
13 that, and if he does not, would you let me bring him
14 back in front of Your Honor?

15 THE COURT: Yeah.

16 Do you understand what she's asking me to do?

17 THE DEFENDANT: Yes. Your Honor, for this hearing
18 purpose, if the Court would give me three hours in a law
19 library, I will proceed with this hearing within two
20 weeks.

21 THE COURT: Well, I'm gonna proceed today. I mean,
22 I'm gonna let them go. You are telling me that you want
23 them off your case. They're good lawyers. I don't have
24 any reason to think -- but, I mean, you have a right to
25 that. I'm gonna let them, I'm gonna allow them to be

1 discharged from representing you. And what I'll do
2 is --

3 This isn't on the roster, is it? I mean, it's not
4 ready to be tried?

5 MS. SIMMONS: No, Judge. We have an outstanding
6 *Schmerber* order and that hearing is going to
7 significantly impact my trial date, which I was shooting
8 for December.

9 THE COURT: What I'll do is I'll give you 30 days
10 to hire a lawyer.

11 THE DEFENDANT: Okay.

12 THE COURT: And then if you don't --

13 Bring him back up in front of me and we'll figure
14 out where we're going from there.

15 Do you understand what I'm doing? I mean, I'm
16 granting your wish and I'm gonna give you 30 days to
17 make a decision about whether you want to get, to hire a
18 lawyer or have your family hire a lawyer. If you don't,
19 they're gonna bring you back here and I'm going to
20 decide whether to let you go ahead in representing
21 yourself, which I'm telling you would be a mistake.

22 THE DEFENDANT: Okay. But you said today we're
23 gonna proceed with the hearing?

24 THE COURT: Yeah, I'm dismissing them. Well, as to
25 the hearing, now, the *Schmerber* hearing, I'm not gonna

1 do that. No. No, no. No, I'm not going to do that.

2 THE DEFENDANT: Okay. Well, I thank you, Your
3 Honor.

4 THE COURT: Okay. Good luck to you.

5 MS. SIMMONS: Judge, my primary concern is I feel
6 like we're going down a path with regard to attorney
7 shopping.

8 THE COURT: No. This is it.

9 Do you understand, Mr. Temple, what I'm telling
10 you? You can't keep doing this. This is sort of your
11 last time.

12 THE DEFENDANT: Your Honor, I never requested an
13 attorney from the Court --

14 THE COURT: Okay.

15 THE DEFENDANT: -- so why provide me with something
16 that I never asked for?

17 THE COURT: Well, we're ---

18 THE DEFENDANT: It's a way of providing, receiving
19 counsel at the Detention Center, which they simply
20 provide you with a form to fill out, and one will be
21 appointed to you. I never did this. So --

22 THE COURT: Okay. All right. What I would do is
23 go do that. Okay. 30 days.

24 I mean, I know that delays you about 30 days, but
25 that's about all I can do.

1 MS. SIMMONS: And, Judge, for the record, he never
2 filled out the form at the Detention Center. Judge
3 Macaulay brought him up and deemed him indigent and
4 appointed a Public Defender. So he in essence didn't
5 fill out a paper, but he went through the Public
6 Defender system.

7 THE COURT: You understand that you basically got
8 what you would have gotten if you had filled out the
9 paperwork and turned it in? You went through the Public
10 Defender which is what you're gonna do when you fill out
11 the paperwork.

12 THE DEFENDANT: Right.

13 THE COURT: So what you got was Judge Macaulay just
14 skipped you filing the paperwork basically.

15 THE DEFENDANT: And I'm grateful. But, however --
16 Your Honor, I'm grateful, but I never, I never requested
17 one. I filed the motion, like she say, even for a bond
18 reduction? I never really -- if I paid a lawyer for a
19 bond reduction and if I can get a lawyer for free to
20 proceed in another proceeding, I mean, the same form, I
21 could apply the same steps, you know, to --

22 THE COURT: I guess what I'm saying is -- and
23 again, I'm gonna let these two go because you accused
24 them of doing something that, you know, they -- I'm not
25 gonna make them stay on the case and I'm not gonna make

1 you continue to be represented by them. What I'm
2 telling you is if you go back to the jail and now fill
3 out that form and say "I want the lawyer" --

4 THE DEFENDANT: Yes, sir.

5 THE COURT: -- you're going right back through what
6 you just went through. And what I'm telling you is it
7 can't be delayed forever. You got 30 days. All right?

8 MS. DRAWDY: Thank you, Your Honor.

9 THE COURT: Thank you.

10 (Whereupon, the hearing was concluded at
11 approximately 5:15 p.m.)

12 ** End of Requested Certified Transcript of Record **
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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 hearing of the captioned case, relative to appeal, in the Court of General Sessions for Oconee County, South Carolina, on the 29th day of June, 2010.

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

August 6, 2012


Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF OCONEE) TENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,) TRANSCRIPT OF RECORD
V.) 2010-GS-37-886, 887, 888 & 889
DENNIS TEMPLE,)
DEFENDANT.)

SEPTEMBER 14, 2010

ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

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

LINDSEY SIMMONS, ASSISTANT SOLICITOR

ATTORNEY FOR THE STATE

DENNIS TEMPLE, PRO SE DEFENDANT

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

I N D E X

Attorney Appointment Hearing.....	3
Certificate of Reporter.....	20

NO EXHIBITS WERE MARKED

1 Tuesday, September 14, 2010

2 THE COURT: All right. Yes, ma'am?

3 MS. SIMMONS: Thank you, Your Honor. We are here
4 today in State of South Carolina vs. Dennis Temple. It's
5 an Oconee County case. He has four indictments on
6 2010-GS-37-886 through 889. It's two counts of criminal
7 sexual conduct in the first degree, kidnapping and grand
8 larceny.

9 On May the 14th of 2010 we filed a motion pursuant
10 to 16-3-740 and served notice on Mr. Temple. That is
11 under the S-T-D testing statute. Judge McIntosh
12 subsequently granted that order and ordered testing on
13 May the 20th of 2010. Mr. Temple has appealed that order
14 and asked that Judge McIntosh reconsider that.

15 Subsequent to that, Mr. Temple was appointed
16 counsel and had a preliminary hearing. He was
17 represented by Ms. Drawdy in that matter, and that was on
18 July 16th of 2010.

19 We filed a Schmerber motion out of an abundance of
20 caution on July 19th, 2010 and served that on his
21 attorneys at the time. The defendant appeared before
22 Your Honor on July 29th of 2010 for the scheduled
23 Schmerber hearing and to address the issue of
24 representation.

25 At this time Your Honor relieved Ms. Drawdy and

1 Mr. Denny as his counsel and gave the defendant 30 days
2 to appear before Your Honor with an attorney. And the
3 Schmerber issue is still outstanding.

4 THE COURT: All right. What's happening, just
5 hadn't been ruled on?

6 MS. SIMMONS: We would like to conduct a Schmerber
7 hearing today, Your Honor, and also like for you to
8 address the issue of Mr. Temple's representation. I
9 received a fax from him on August 20th of 2010 requesting
10 a speedy trial, and indicating that he was proceeding
11 pro se.

12 THE COURT: All right. Let me deal with the
13 attorney matter first because that's what you and I
14 talked about over in Oconee.

15 DEFENDANT TEMPLE: Yes, sir. I have other issues I
16 would like to address, too.

17 THE COURT: Okay. Well, I'll let you address that
18 but I want to address the pro se portion first because
19 that makes a difference in how we proceed.

20 When we were up in Oconee I told you that you had a
21 right to represent yourself but that I wouldn't advise
22 it; you remember that?

23 DEFENDANT TEMPLE: No, sir.

24 THE COURT: Well, let me tell you again. You got a
25 right to represent yourself.

1 DEFENDANT TEMPLE: Right.

2 THE COURT: I mean, you have the right to do that
3 but I wouldn't advise it given the situation. And what
4 we talked about up in Oconee was that I was going to give
5 you 30 days. You talked about wanting to hire somebody
6 else. Have you decided now you don't want to hire
7 another lawyer?

8 DEFENDANT TEMPLE: Well, the thing is, Your Honor,
9 at this time I'm still waiting on some funds to come in
10 so I'm not in receipt of those funds; therefore, I have
11 no attorney, a paid attorney.

12 THE COURT: Okay.

13 DEFENDANT TEMPLE: That was my intention.

14 THE COURT: You think those funds are going to come
15 in?

16 DEFENDANT TEMPLE: Oh, yes, sir.

17 THE COURT: Do you have any idea when?

18 DEFENDANT TEMPLE: What happened is a theft
19 occurred and some money was taken, so we had to go
20 through the proper channels to get the money back.

21 THE COURT: Are you waiting on insurance money?

22 DEFENDANT TEMPLE: No, just a court order to order
23 the accused to pay the money up.

24 THE COURT: Oh, okay. So it's not in -- in other
25 words, the money is not on its way? If you are waiting

1 on the court order to order somebody to pay you back
2 money for a theft I'll be surprised if there's any money
3 coming your way, but that may happen.

4 When are you looking to try this case?

5 MS. SIMMONS: Judge, Your Honor, the defendant
6 himself filed a speedy trial motion and we would ask that
7 pending witness availability and the evidentiary
8 completion from SLED, we'd ask for a date certain of
9 December 13th.

10 The defendant, I believe, is stalling for purposes
11 of delaying this action. Despite the fact that he files
12 a speedy trial motion he then delays getting
13 representation.

14 DEFENDANT TEMPLE: Your Honor?

15 THE COURT: Yes, sir.

16 DEFENDANT TEMPLE: These indictments was issued on
17 September the 7th of 2000. They are new indictments.
18 There was not even an extension of time for -- within the
19 90 day period. There was -- that was in affect by the
20 South Carolina Rules of Criminal Procedures in the first
21 place. Within that 90 days period, according to South
22 Carolina Rules of Criminal Procedure, within that 90 day
23 period the indictments was supposed to be issued, which
24 they never was. Okay.

25 So all of a sudden when I wrote the solicitor and

1 told her that I was going to file a motion to dismiss the
2 charges and file a prosecution misconduct claim against
3 her in the State Bar what happened is I received -- I
4 received a response back from her and she said that -- I
5 wrote a staff request and I told her, I said, Please be
6 advised that the defendant will move for a motion to
7 dismiss the charge at this time. In addition, we will
8 move for a complaint filed against the solicitor for
9 prosecution misconduct.

10 I received a response back that said -- she said,
11 The deadline set by Judge Maddox was for you to retain
12 counsel has passed. Please advise to the status of your
13 representation.

14 I then wrote a fax letter, two more staff requests,
15 and I stated that to her, I said -- I said, We are aware
16 that the deadline has passed for the defendant to retain
17 counsel. It was noted by Judge Maddox on the record that
18 I was supposed to have been brought back to court in 30
19 days if I did not retain counsel.

20 It says, You were notified by the defendant by way
21 of speedy trial action, motion filed before the Court
22 starting in August, which was within 30 days. So it was
23 also set as reminder not to forget me.

24 The next one, Your Honor, I told -- keeping in mind
25 about the indictments within 90 days, I said -- I told

1 the solicitor, I say -- listen, I say, The United States
2 Supreme Court Fifth Amendment provides in relevant part
3 no person shall be held to answer for a capital or
4 otherwise infamous crime unless presented with the
5 indictment by the grand jury, which at that time no
6 indictment had been issued.

7 And I said -- I told her -- I said, There was no
8 indictment issued against this charge. The charges I was
9 in for, State vs. Temple, I say, You were aware of this
10 however you continue to hold me incarcerated.

11 I say, You are liable to be sued under 42 Section
12 1983 for monetary damages. You are not acting within the
13 scope of your official duties. No absolute immunity for
14 you.

15 I said, P-S. I said, You are holding me to answer
16 for a crime that has no indictments but require an
17 indictment for you to hold me.

18 So, Your Honor, this was on August the 31st, so no
19 indictments. So on September the 7th all of a sudden
20 there's indictments. But I checked with the clerk of
21 court and there have been no extension for time on these
22 indictments.

23 THE COURT: Okay. Yes, ma'am?

24 MS. SIMMONS: Judge, the indictments were issued
25 but the grand jury last Tuesday. As you are aware, they

1 meet once a month. The indictments were issued slightly
2 more than a hundred days after Mr. Temple's arrest. In
3 State vs. Culvery, 282 S.C. 38, the South Carolina
4 Supreme Court interpreted the rule requiring solicitors
5 to act on indictments within 90 days as an administrative
6 rule. It is not jurisdictional.

7 The courts further stated a solicitor's delay does
8 not invalidate a warrant or prevent prosecution. These
9 indictments were issued in a timely fashion. They have
10 been served on Mr. Temple.

11 THE COURT: Okay. I understand what you are saying
12 but I believe she's right. That's an administrative
13 rule.

14 DEFENDANT TEMPLE: Oh.

15 THE COURT: To keep them moving. But, you know, at
16 this point I don't think it's a good idea for you to be
17 arguing substantive law. You are arguing -- you're
18 asking me, I think, to quash these indictments because of
19 an administrative rule and I can understand if you read
20 the rules and don't -- and aren't a practicing lawyer how
21 that would be confusing to you.

22 The problem is here you're going to have to either
23 get a lawyer or they are going to go to trial in December
24 and you're going to be representing yourself.

25 DEFENDANT TEMPLE: Okay.

1 THE COURT: Now, at one point -- was a public
2 defender up there? There was some reason why they
3 couldn't handle it?

4 DEFENDANT TEMPLE: Your Honor, I got a conflict of
5 interest with every public -- I have -- basically every
6 time I get a public defender, I mean, they want you to
7 plead guilty. I mean, I'm not guilty of these crimes so
8 why -- you know, I mean, it's a conflict of interest in
9 the past.

10 THE COURT: Well, see, the option I got is I can
11 let you go forward and sit at the table and represent
12 yourself or I can appoint what's basically in my mind a
13 shadow counsel. In other words, I'll appoint a lawyer to
14 sit there with you. He doesn't represent you.

15 If you are dead set on going and representing
16 yourself then I'm going to appoint somebody to sit with
17 you so that you can answer questions -- you can ask
18 questions, they can answer questions. That's only --
19 that's what I'm comfortable with.

20 DEFENDANT TEMPLE: I don't think that it will be
21 wise that I represent myself; however, I would like an
22 attorney who's going to represent me to the best of my
23 interest and not their own interest.

24 MS. SIMMONS: Judge, what concerns me is we've
25 already gone through the public defender process, then he

1 had attorneys which he relieved and made various
2 complaints against. I feel like we are setting this up
3 for every 30 days he's going to have a complaint against
4 some lawyer.

5 THE COURT: No, Well, we're not.

6 DEFENDANT TEMPLE: Well, I mean, if the issue is
7 there then why not address the issue. If my lawyer is
8 breaching a confidentiality in my case to other lawyers
9 and misleading then every time that I find a lawyer or my
10 lawyer to do this I'm going to ask them to be relieved.

11 THE COURT: How many lawyers have you had?

12 DEFENDANT TEMPLE: I had two lawyers.

13 MS. SIMMONS: Three, Your Honor.

14 THE COURT: You had three, I think.

15 DEFENDANT TEMPLE: Two, Your Honor. When I was
16 arrested on May the 11th, 2010 I didn't get an attorney
17 until July 29th, or something like that, Your Honor, but
18 I was like -- I was in the county for like two months,
19 basically, without representation, but I have been filing
20 the motions on my own.

21 THE COURT: So are you telling me now you want a
22 lawyer?

23 DEFENDANT TEMPLE: What I'm saying, I don't think
24 it would be wise to represent myself.

25 THE COURT: I don't either.

1 DEFENDANT TEMPLE: However, if an attorney -- if
2 you appoint me an attorney today I hope and pray that
3 that attorney is here or appointed to me to represent me
4 in my best interest and not his own, or the solicitor's
5 interest.

6 THE COURT: Well, let me just tell you generic,
7 generic. I'm not talking about your case. If I
8 appointed you Johnny Cochran and he was still alive and
9 he sat down with you and told you that, take this road,
10 and you think you were going to talk the other road,
11 it's something you got to work out with your attorney.
12 So every time you have a dispute with an attorney you
13 can't come back and ask for another one.

14 In fact, what I'm going to do is I'm going to
15 appoint you a lawyer. There's a list of lawyers who have
16 agreed to be appointed. They are outside the public
17 defender's office. I don't know who is next on that list
18 but I'm going to appoint them, but I'm going to appoint
19 them with the caveat that this case is going to be tried
20 December 13th.

21 MS. SIMMONS: Yes, Your Honor.

22 THE COURT: Because you filed the speedy trial
23 motion and so I don't see any point in pushing it back.

24 Now, that assumes that a lawyer can represent you
25 and feel comfortable doing that, and I'm not going to

1 appoint some lawyer that's sitting in his office right
2 know and doesn't have any idea this is coming and tell
3 him you got to go on the 13th and there's no excuse that
4 you are moving forward. If he comes up with something
5 legitimate then we might delay it.

6 DEFENDANT TEMPLE: Okay.

7 THE COURT: But I don't want to prejudge that. I'm
8 just telling you.

9 So I'm going -- if you'll do an order I'll appoint
10 a lawyer, whoever is next on the list.

11 And I'm not saying I'll handpick them but I'll find
12 somebody with experience, okay.

13 DEFENDANT TEMPLE: Well, okay. Thank you, Your
14 Honor.

15 THE COURT: Now, what about the Schmerber motion?

16 MS. SIMMONS: Judge, it is still outstanding and we
17 are prepared to go forward today; however, with this
18 representation issue I'll leave it within the Court's
19 discretion.

20 DEFENDANT TEMPLE: Your Honor, the State through
21 Ms. Lindsey, the solicitor, has not even abided by the
22 first rules. We never received a copy of the first DNA.
23 Why should she be issued another order to proceed with
24 the DNA? She never complied with the first order.

25 THE COURT: All right. Well, since I've appointed

1 you a lawyer, and I had really been prepared for you to
2 tell me you wanted to go pro se, and then I was going to
3 go ahead and proceed with Schmerber but I'm not going to
4 do that today. I don't want to delay it too much so --

5 MS. SIMMONS: We have Judge Macintosh next week in
6 Oconee.

7 THE COURT: Okay. I'll find out who the lawyer is.
8 and I'm going to talk to them and tell them why I've
9 appointed them and that they need to get real busy
10 because you've got a motion next week in Oconee.

11 My understanding is that you -- you got to roll
12 with the flow a little bit. Quit fighting people, quit
13 fighting with deputies. Just -- I know what you're going
14 to say.

15 DEFENDANT TEMPLE: I just feel, Your Honor, that
16 I'm being taken advantage of and I'm just defending
17 myself.

18 THE COURT: Well --

19 DEFENDANT TEMPLE: I'm not doing nothing out of the
20 ordinary legal wise, you know, I'm just --

21 THE COURT: Well, it's one thing to defend yourself
22 verbally but physically you can't do that.

23 DEFENDANT TEMPLE: No, there's been no physical
24 altercation between nobody. Have you heard that there
25 was something? Is there something in the record that I

1 need to be aware of?

2 THE COURT: I'm just telling you last time we were
3 up there in Oconee I got the feeling you weren't too
4 happy with it, with the conversation we had, and I'm
5 telling you you just need to behave yourself until we get
6 some of this stuff situated, like get you a lawyer, get
7 this Schmerber motion, because this thing is going to
8 move pretty quick from now until December.

9 DEFENDANT TEMPLE: I've been complying since I've
10 been arrested. As a matter of fact, Your Honor, I turned
11 myself in with -- on these charges. I don't have any --

12 THE COURT: Have you had any problems up there be
13 him?

14 MS. SIMMONS: In the jail, Your Honor?

15 THE COURT: Uh-huh.

16 MS. SIMMONS: He's currently being held in
17 isolation.

18 THE COURT: Why are you being held in isolation?

19 DEFENDANT TEMPLE: For having legal books.

20 MS. SIMMONS: Judge, I have been told that he's
21 been a behavioral problem.

22 THE COURT: They are not going to put you in
23 isolation because you have legal books.

24 DEFENDANT TEMPLE: Your Honor, I can prove to you
25 that I'm in isolation for having legal books.

1 Your Honor, there's another thing --

2 (PAUSE)

3 THE COURT: No, go ahead. I was just trying to
4 find out who's next on the list.

5 DEFENDANT TEMPLE: If I could get some kind of
6 injunction against the Oconee County Detention Center,
7 Your Honor, to relief. Like the solicitor said, I'm in
8 isolation. Even if I was in for legal books or for
9 misbehaving, or unable to get along with inmates or --
10 Your Honor, I should have -- well, the law requires that
11 I be afforded a hearing, some type of hearing on
12 administrative segregation or any kind of segregation.

13 THE COURT: Well, that would have been
14 administrative within the jail system.

15 DEFENDANT TEMPLE: Well, Your Honor, what is being
16 done to me, Your Honor, that the Court is not aware of,
17 restraints have been placed upon me.

18 THE COURT: You mean physical restraints?

19 DEFENDANT TEMPLE: Yeah, my movement. I'm unable,
20 they won't let me send out no checks so I can order books
21 to read to -- you know, to know different things of the
22 law. I'm not allowed to have no newspapers, exercise.

23 I haven't had exercise in about -- I had exercise
24 for once the other day in two months. But it's like
25 every -- these restraints, Your Honor, are hindering my

1 mental capacity.

2 THE COURT: Okay. All right. Well, once I get you
3 somebody appointed you need to talk to them and they can
4 deal with it. Let's go off the record just a minute.

5 (PAUSE)

6 THE COURT: All right. Mr. Temple, let me tell you
7 what I've just done. I've just probably lost a friend
8 but Mr. Kurt Tavernier, who's standing right there, I've
9 appointed him on -- there are a couple lawyers that I
10 know that I appoint on cases that are difficult, that are
11 going to be high profile and who I am certain will do a
12 good job.

13 DEFENDANT TEMPLE: Okay.

14 THE COURT: He doesn't have a whole lot of choice
15 but I just called him up here and asked him if he would
16 be willing to represent you. Do you know anything about
17 Kurt Tavernier that would prevent you from being
18 comfortable with him?

19 DEFENDANT TEMPLE: No, sir, I do not. I do not
20 know. I don't know --

21 THE COURT: Look, if I was in your spot I would be
22 comfortable with him representing me. I'm telling you
23 that man to man, honestly, okay?

24 DEFENDANT TEMPLE: Well, I trust you, Judge.

25 THE COURT: All right. Well, you might be the only

1 one that trusts me up here but I'm telling you, you got
2 to have somebody good. These are serious charges.

3 DEFENDANT TEMPLE: Right.

4 THE COURT: And I could go down this list. This
5 list is somewhat random. I don't know who is next on the
6 list but you need somebody that has trial experience.
7 Mr. Tavernier used to be a prosecutor, he was a
8 policeman, he's played football in college. He's
9 basically done it all, and I trust him. So if you are
10 all right with him I'm good with it, but you need to tell
11 me now.

12 DEFENDANT TEMPLE: Yes, sir. Your Honor, I'm
13 willing to give it a try.

14 THE COURT: Okay. All right. I'm going to appoint
15 Kurt Tavernier to represent you.

16 You got a bunch of pleas up here today?

17 MR. TAVERNIER: As far as I know I think I've got
18 about 18 signed up so far, Your Honor.

19 THE COURT: Okay. All right. Why don't we take a
20 break and I'll let you all go back there and introduce
21 yourselves to each other and then we'll figure it out,
22 okay?

23 See, what I'm doing here, Mr. Temple, I'm trying to
24 get you somebody good that would probably cost you about
25 \$25,000 if you were paying for him, okay?

1 DEFENDANT TEMPLE: Okay. Thank you, sir.

2 THE COURT: And then you all set the Schmerber
3 motion for next week.

4 MS. SIMMONS: I'll consult with Mr. Tavernier about
5 his schedule.

6 THE COURT: All right.

7 MS. LINDSEY: Thank you.

8 (WHEREUPON, the hearing was concluded.)

9

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1 C E R T I F I C A T E

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3 I, Sharon L. Vizer-Hanks, Official Court Reporter for
4 the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a true,
6 accurate and complete transcript of record of all the
7 proceedings had and the evidence introduced in the
8 hearing of the captioned case in Circuit Court on the
9 14th day of September 2010.

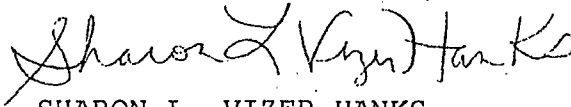
10 I do further certify that I am neither of kin, counsel
11 nor have an interest to any party hereto.

12

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August 20, 2012

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SHARON L. VIZER-HANKS

16

CIRCUIT COURT REPORTER

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2 State of South) In the Court of General
3 Carolina) Sessions
4 County of Oconee) Indictments Nos:
5) 2010-GS-37-00886-00889

6 State of South)
7 Carolina)
8 Plaintiff,) Transcript of Record
9 -vs-) Schmerber Hearing
10 Dennis Temple,)
11 Defendant.)

12 September 22, 2010
13 Walhalla, South Carolina

14
15 B E F O R E:

16 The Honorable Alexander S. Macaulay, Judge.
17

18
19 A P P E A R A N C E S:

20 Chrissy Adams,
21 10th Circuit Solicitor, and
22 Lindsey S. Simmons,
23 Assistant 10th Circuit Solicitor
24 Attorneys for the State

25 Kurt Tavernier, Esq.
Attorney for the Defendant

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

1

INDEX

2

3

WITNESSES

PAGE

4

5

No witnesses were called.

6

7

8

9

10

Schmerber Motion by State

3

11

Defense Motion to Dismiss pursuant to Rule 3

14

12

Certificate of Court Reporter

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EXHIBITS

21

NO.

DESCRIPTION

ID.

EV.

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24

No exhibits were introduced.

25

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

2 (Whereupon, the motions hearing commenced on
3 Tuesday, September 22, 2010, with all parties being
4 present, at approximately 9:33 a.m.)

5 THE COURT: Mr. Tavernier.

6 Madam Solicitor, nice to see you.

7 MS. ADAMS: Good morning, Judge. How are you?

8 MR. TAVERNIER: How would you prefer to handle
9 this, Your Honor?

10 THE COURT: Well, let's see. I don't know. We're
11 not going to be taking any real testimony or anything.

12 You can have a seat there, please.

13 THE DEFENDANT: (Complies.)

14 *Schmerber* Motion by the State:

15 THE COURT: Yes, ma'am, Madam Solicitor?

16 MS. ADAMS: Thank you, Your Honor, may it please
17 the Court. Your Honor, we are actually here today on a
18 *Schmerber* motion out of an abundance of caution. For
19 the record and just to kind of refresh you, there's been
20 a long history of why we're here, and I would just like
21 to give you a little background of how this started.

22 This is actually State v. Dennis Temple, and he is
23 charged on Indictments 2010-GS-37-886, '887, '888 and
24 '889, which are two counts of criminal sexual conduct,
25 one count of kidnapping and one count of grand larceny.

1 Basically, Your Honor, on May 14th of this year, we
2 filed a motion pursuant to South Carolina Code 16-3-740,
3 which is for sexually transmitted diseases for the
4 Defendant to be tested. He was served notice of that
5 motion, and during the intervening time frame the Public
6 Defender contacted him and he told them that he was not
7 interested in their representation.

8 On May 20th of this year, Judge McIntosh had a
9 hearing on our motion under 16-3-740, and the Defendant
10 represented himself, he waived his right to counsel
11 several times on the record, and indicated, like I said,
12 Your Honor, that he wanted to represent himself several
13 times.

14 Sergeant Scott Arnold with the Oconee County
15 Sheriff's Department provided testimony basically
16 establishing probable cause that the offense had been
17 committed by the Defendant, and he even exercised his
18 right to cross-examine the officer at that time.

19 Judge McIntosh ordered that the Defendant be tested
20 for sexually transmitted diseases pursuant to the
21 statute and that was done, Your Honor. According to
22 that Statute, under 16-3-740 (F), additional samples can
23 be taken for DNA testing for the criminal prosecution,
24 and that was done as well.

25 Subsequently the Defendant basically stated in a

1 motion dated June 7th that he wanted those results to be
2 dismissed and not admissible into court, saying that his
3 right ---

4 THE COURT: When you say "dismissed," you are
5 talking about suppressed?

6 MS. ADAMS: Suppressed. He stated "dismissed."
7 Yes, Your Honor.

8 -- and his right to counsel had been violated
9 during the hearing, even though he had waived it several
10 times.

11 So then, Your Honor, he appeared before you on June
12 30th of this year. You appointed the Public Defender to
13 represent him. He subsequently fired the Public
14 Defender on July 16th.

15 We filed a *Schmerber* motion on July 19th. It was
16 served on the Defendant and his attorney at that time.
17 The Defendant appeared again then before Judge Maddox on
18 July 29th for that scheduled *Schmerber* hearing. At that
19 time he made a motion to dismiss and to fire again his
20 Public Defenders. He stated he never wanted their
21 representation in the first place.

22 The outstanding *Schmerber* motion was continued and
23 the Defendant was given until August 30th to retain
24 counsel or appear back before the court.

25 On September 14th of this year he appeared before

1 Judge Maddox, so we could clarify the issue of
2 representation. Mr. Tavernier was appointed at that
3 time by Judge McIntosh and ---

4 THE COURT: You say he appeared before Judge Maddox
5 or Judge McIntosh?

6 MS. ADAMS: Judge Maddox -- I'm sorry, Your
7 Honor -- on September 14th, and the *Schmerber* was
8 continued again in order to give Mr. Tavernier an
9 opportunity to get up to date on the case. And we are
10 here today, Your Honor, out of an abundance of caution
11 and ask that the *Schmerber* motion be granted.

12 THE COURT: All right. Mr. Tavernier?

13 MR. TAVERNIER: Thank you, Your Honor, may it
14 please the Court. I had discussed the pending *Schmerber*
15 Order or Motion pertaining to drawing of blood and hair
16 samples from Mr. Temple. I spoke with him yesterday ---

17 THE COURT: Are they hair samples or swabs, buccal
18 swabs? They want buccal swabs.

19 MR. TAVERNIER: Blood, buccal swabs, and hair
20 samples.

21 THE COURT: Right.

22 MR. TAVERNIER: And I have spoken with him.
23 Pursuant -- it's kind of form over substance in the fact
24 that pursuant to the statute, they are entitled to get
25 those samples and have them tested and use them for

1 evidentiary purposes anyway. So, as a practical matter,
2 there is no, quite frankly, legal objection or argument
3 that could be made regarding or fighting *Schmerber* since
4 what they already have is available to them pursuant to
5 the Statute under Subsection (F).

6 However, based on all of that, Mr. Temple still
7 refuses to consent and will not consent to the issuance
8 of the *Schmerber* Order.

9 But, having gone through all of that, I am not
10 aware at this time of any legal objection that I can
11 place on the record in order to prevent that from
12 happening.

13 THE COURT: Well, I don't think there is any.

14 MR. TAVERNIER: All right. But in regard to that
15 also, Your Honor, there is a kind of collateral matter
16 that needs to be addressed regarding that.

17 On May 13th a search warrant was issued requesting
18 hair samples and blood samples be taken from the
19 Defendant. That, in fact, was issued and those samples
20 were then taken. It is my understanding, Your Honor,
21 that they have not been utilized for any testing in this
22 investigation.

23 THE COURT: All right. Pursuant to the search
24 warrant of May the 13th?

25 MR. TAVERNIER: That's correct. And I believe ---

1 THE COURT: Samples and hair?

2 MR. TAVERNIER: Yes, Your Honor. It's my
3 understanding those samples were taken. I believe that
4 was an illegal procedure.

5 THE COURT: An illegal?

6 MR. TAVERNIER: Correct, Your Honor, because --

7 THE COURT: Not legal, in other words?

8 MR. TAVERNIER: Not legal, Your Honor. Illegal.
9 Because I think it was issued in error. Because there
10 is no provision, number one, he didn't have a right to
11 counsel at that particular hearing. Number two, I think
12 that goes in through the back door what *Schmerber* wants
13 to address through the front door. So it is my
14 understanding that based on that search warrant those
15 samples were taken. However, it is my understanding
16 from Ms. Simmons that no tests were conducted from those
17 samples and no comparisons were taken from those
18 samples. They have been held in evidence.

19 MS. ADAMS: And, Your Honor, that is correct.
20 Nothing was used ---

21 THE COURT: All right. So you've got them
22 sequestered somewhere?

23 MS. ADAMS: Yes. They were not sent to SLED and
24 they were not used.

25 THE COURT: Not subject to any sort of examination

1 or -- well, disqualification?

2 MR. TAVERNIER: Yes.

3 MS. ADAMS: Your Honor, if I may, just for the
4 record, just so you know, obviously there was a criminal
5 sexual conduct kit collected from the victim, semen was
6 indicated, and she identified the Defendant as the
7 assailant, which is the basis for the *Schmerber*.

8 THE COURT: Go ahead.

9 MR. TAVERNIER: So, in effect, Your Honor, I ask
10 that, number one, just as a practical matter that search
11 warrant be quashed and those samples be destroyed. And
12 then any additional testing that is going to be
13 conducted from the new samples be the test that, if
14 valid, be utilized for evidentiary purposes.

15 THE COURT: All right. Madam Solicitor, what do
16 you say about destruction of the samples?

17 MS. ADAMS: Your Honor, those samples that were
18 collected from the search warrant we have no problem at
19 all. We are gonna use the samples, if you grant our
20 *Schmerber* motion today, for court purposes. We have not
21 used those and aren't going to use them.

22 THE COURT: My problem is, of course, we're not at
23 trial. Motions to quash potential evidence is something
24 like we have a motion *in limine* where I think the trial
25 judge should be able to visit that. I don't think

1 anyone prior to trial can actually destroy any potential
2 evidence, even though it's not going to be used, the
3 fact is it has been collected.

4 But as far as quashing the search warrant, I find
5 no problem tentatively, because again it's a motion *in*
6 *limine*, to quash prior to trial, that I'll grant that
7 motion, that the search warrant of May the 13th --

8 Is that right?

9 MR. TAVERNIER: That's correct, Your Honor.

10 THE COURT: -- May the 13th, 2010, will be quashed
11 and anything obtained as a result thereof will be
12 suppressed. In other words, I'm not going to order the
13 destruction of anything that could be potentially used
14 at trial because we don't know what might be developed
15 for trial.

16 MS. ADAMS: And, Your Honor, I believe that we
17 actually, or SLED is not allowed to actually destroy the
18 evidence pursuant to a statute. We're not gonna use
19 that collected ---

20 THE COURT: You say SLED can destroy evidence?

21 MS. ADAMS: Cannot.

22 THE COURT: Cannot. I wouldn't think so.

23 MS. ADAMS: Right. But we are not going to use
24 the ---

25 THE COURT: I'm just making a ruling on the record

1 for this in response to the motion to quash the search
2 warrant, I'm going to grant the motion and suppress the
3 use of anything that might have been obtained from it.
4 Of course, the matter can be revisited at trial based on
5 what is developed at trial. But I'm definitely not
6 going to order any potential evidence to be destroyed.

7 MR. TAVERNIER: Okay. Thank you, Your Honor.

8 THE COURT: All right.

9 MR. TAVERNIER: And I have three other issues to
10 discuss once you have addressed the *Schmerber*.

11 THE COURT: All right. Anything else from the
12 State?

13 MS. SIMMONS: Judge, we have established probable
14 cause in front of Judge McIntosh at the sexually
15 transmitted disease hearing, so we will be happy to call
16 the officer for his testimony if the Court deems it
17 necessary.

18 THE COURT: Was an Order issued by Judge McIntosh?

19 MS. SIMMONS: Yes, Your Honor.

20 THE COURT: Is it a part of the record? I mean,
21 could I see it, in other words?

22 MS. SIMMONS: Yes, sir. Beg the Court's indulgence
23 for one moment.

24 May I approach, Your Honor?

25 THE COURT: Yes, ma'am.

1 MS. SIMMONS: (Hanging).

2 (There was a pause in the proceedings.)

3 THE COURT: All right. I find that Judge McIntosh
4 did, by Order dated May the 20th, 2010, provide for
5 tests of blood, saliva, hair and pubic hair be taken
6 pursuant, as I say, to Section 16-3-740; that would
7 include also Subsection (F), which would be for the
8 purposes of any court proceeding.

9 The findings having been made of probable cause by
10 Judge Maddox, I also find there is a clear indication
11 that relevant material will, material evidence will be
12 found -- and I might note, obviously, that can also be
13 exculpatory as well as inculpatory, so it is to the,
14 it's something that can be used in defense as well as
15 for prosecution...

16 But provided that the method used is going to be
17 safe and secure. I understand that you have trained
18 individuals who do the receiving of the material?

19 MS. SIMMONS: Yes, Your Honor. The personnel from
20 the Law Enforcement Center and the Detention Center are
21 here today, and it is the State's intention to draw the
22 blood in the presence of Mr. Tavernier immediately after
23 this hearing.

24 THE COURT: All right. Any questions,
25 Mr. Tavernier, about the personnel and the procedure

1 being used?

2 MR. TAVERNIER: None, Your Honor.

3 THE COURT: All right. Very well.

4 All right. So I'll grant the motion and approve
5 that -- let's see. Is it Sergeant Merck and Sergeant
6 Philpott --

7 MS. SIMMONS: Yes, Your Honor. And the ---

8 THE COURT: -- who are to take the samples?

9 MS. SIMMONS: And the licensed nurse from the Law
10 Enforcement Center is here and she will actually be
11 drawing the samples.

12 THE COURT: All right. Now, and what is her name?

13 MS. SIMMONS: I don't know her last name.

14 MS. SHIFLETT: Shiflett.

15 MS. SIMMONS: Christie Shiflett.

16 THE COURT: S-h-i-f-t-l-e-y?

17 MS. SHIFLETT: -l-e-t-t. S-h-i-f- ---

18 THE COURT: All right. If you would please stand
19 so the Court Reporter can see you because I need to have
20 your name, please.

21 MS. SHIFLETT: Okay. Christie Shiflett,
22 S-h-i-f-l-e-t-t.

23 THE COURT: Thank you very much.

24 (There was a pause in the proceedings.)

25 THE COURT: RN?

1 MS. SHIFLETT: LPN.

2 THE COURT: LPN. Very good. Thank you, ma'am.

3 And Sergeant Patrick Merck or Sergeant David
4 Philpott and Christie Shiflett, LPN, with Oconee County
5 Sheriff's Office, will extract buccal and/or blood
6 samples using minimal intrusion and all samples are to
7 be transported to the South Carolina Law Enforcement
8 Division or other licensed laboratory or facility for
9 testing. All right.

10 And I think you said you had some other matters?
11 Defense Motion to Dismiss pursuant to Rule 3:

12 MR. TAVERNIER: I do, Your Honor. Having just been
13 appointed, I'm still trying to catch up regarding this
14 case.. But three things that I have found, one of which
15 I believe has already been addressed, but there was
16 nothing in the file that was provided to me to reflect
17 that it had been addressed.

18 And when I spoke with Mr. Temple yesterday, he
19 asked that I address it again today, and since there is
20 nothing in writing I felt it required mentioning,
21 although I've been informed by Ms. Simmons that it has
22 been addressed by Judge Maddox.

23 And that is there is a pending, or was a pending
24 motion to dismiss the indictments pursuant to Rule 3
25 since the Solicitor had not indicted the charges pending

1 against Mr. Temple within the statutory or the Rule
2 requirement of 90 days. And since the wording in the
3 Rule states that the Solicitor "shall" indict within 90
4 days and there was no extension filed that we can
5 determine from the Clerk of Court, they are in violation
6 of the Rule and, therefore, pursuant to Mr. Temple's
7 motion, those, all of the indictments should be
8 dismissed.

9 It is my understanding Judge Maddox may have
10 addressed that, but there's nothing in writing, and I'll
11 let Ms. Simmons address it and inform the Court as to
12 the status.

13 THE COURT: Very well. So this is a motion to
14 dismiss for failure to indict pursuant to Rule 3 (C)
15 within 90 days after receipt of an arrest warrant from
16 the Clerk of Court?

17 MS. SIMMONS: Yes, Your Honor. And that issue was
18 addressed with Judge Maddox last week. To be quite
19 honest with you, Judge, it was slightly over a hundred
20 days total, including weekends ---

21 THE COURT: Well, did Judge Maddox rule on it?

22 MS. SIMMONS: Yes, Your Honor, but ---

23 THE COURT: Well, then, I can't rule on it. But
24 now, is he going to issue a written order?

25 MS. SIMMONS: Judge, he did not clarify that.

1 Mr. Temple, who was unrepresented at that time, brought
2 this issue up, and I responded with *State v. Culbreath*,
3 under 282 S.C. 38, in which the South Carolina Supreme
4 Court interpreted ---

5 THE COURT: In other words, it's administrative,
6 it's not jurisdictional?

7 MS. SIMMONS: Right. And Judge Maddox indicated he
8 agreed with me.

9 THE COURT: Draw an order for Judge Maddox's
10 signature.

11 MS. SIMMONS: I will take care of that, Judge.

12 THE COURT: Yes, sir.

13 MR. TAVERNIER: You know, I raise it out of
14 caution, Your Honor, because we are addressing
15 matters ---

16 THE COURT: All right. Let me do this. I see what
17 you are doing now, Mr. Tavernier. You are saying that
18 at the time Mr. Temple was not represented on that
19 motion --

20 MR. TAVERNIER: That's correct, Your Honor.

21 THE COURT: -- and did not have representation on
22 the motion.

23 All right. Is there anything other than the 120
24 days or so after the warrant was received that the
25 indictment was not received? In other words, is there

1 any other complaint about the indictment for the basis
2 of your motion?

3 MR. TAVERNIER: As it stands right now, Your Honor,
4 I would have to say that based on my knowledge at this
5 point I have to strictly address it to that because --
6 but before we proceed a whole lot further with the rest
7 of the issues in this case, I felt it needed to be
8 addressed, and in my review of the file I didn't see any
9 written order one way or the other.

10 My client, Mr. Temple, stated to me that it was
11 raised as an issue, but I'm not sure that the motion was
12 addressed.

13 THE COURT: All right. Well, but obviously the
14 Court's reluctance is to rule on a matter that had been
15 heard and ruled on by another judge. But it doesn't
16 appear that, one, that the Defendant was represented at
17 that hearing, and, two, that no order has been issued.
18 So I will treat the motion as being renewed here with
19 representation. And again, I do want to find out if
20 there's anything else other than the requirement within
21 90 days after receipt of an arrest warrant from the
22 Clerk of Court, the Solicitor shall take action on the
23 warrant by preparing an indictment for presentment to
24 the grand jury.

25 As I understand, it was not 90 days but more in

1 excess of it 120 days.

2 MS. SIMMONS: In excess of a hundred, Judge.

3 THE COURT: A hundred days. All right.

4 MS. SIMMONS: Yes, sir.

5 THE COURT: Now, is there anything else other than
6 that as being the basis of the motion?

7 MR. TAVERNIER: Not regarding the indictments, Your
8 Honor.

9 THE COURT: No. I'm just saying under the Rule.

10 MR. TAVERNIER: No, sir.

11 THE COURT: All right. I do find, as the Solicitor
12 has pointed out, that in *State v. Culbreath*, 282 S.C.
13 38, 316 S.E.2d 681, that the Supreme Court interpreted
14 the Rule requiring solicitors to act on a warrant within
15 90 days of its issue. It was the Supreme Court's
16 affirming of the trial court's decision holding that the
17 Rule was administrative and not jurisdictional.

18 I might note that even without a warrant you can
19 have a direct indictment to quash the warrant, that the
20 State would still be entitled to go back and take a
21 direct indictment from the grand jury without -- if the
22 grounds were there to provide for such indictment.

23 So, if you would please draw an order to that
24 effect.

25 MS. SIMMONS: Yes, Your Honor.

1 THE COURT: Next?

2 MR. TAVERNIER: Your Honor, the next issue is,
3 since we are on a quick time line for trial, and I'm
4 still doing a little bit of catch-up, but one of the
5 main things that I wanted to address is it is apparent
6 that Mr. Temple has appeared before I think three
7 judges, and based on that he has been able to converse
8 with them, he has conversed with prior counsel. Nobody
9 has raised an issue of competency.

10 And I have met with him on two occasions now. I
11 don't believe there is any issue of competency as being
12 a problem. He does not believe he needs an evaluation.
13 For the record I wanted to put that, raise that as an
14 issue because of the quick time line we are on. I
15 understand we have a date certain for December 13th.

16 And I believe, based on my conversations with him,
17 he is capable of aiding himself in defense of his case.
18 And having appeared in front of three different judges
19 who have not raised any issue regarding his competence,
20 I think the issue has been more or less taken care of,
21 but I wanted to raise it just so that there is no
22 further delay.

23 THE COURT: All right. Anything from the State?

24 MS. SIMMONS: Judge, having seen Mr. Temple appear...
25 on a number of occasions in court, I have not seen

1 anything as an officer of the court that would make me
2 believe he is not competent to stand trial.

3 THE COURT: I think I've heard his bond hearing; is
4 that correct?

5 MS. SIMMONS: Yes, Your Honor. You addressed the
6 issue of a bond hearing and the issue of representation
7 when you relieved Mr. Ariail and appointed Ms. Drawdy
8 and Mr. Denny.

9 THE COURT: The reason I say that, my impression at
10 those proceedings was that the Defendant was
11 knowledgeable, appeared well in control of his
12 faculties. In fact, he has sought to represent himself.
13 And obviously, although that is not something I would
14 permit, it does demonstrate his understanding of what is
15 the seriousness of the charges and what is happening.

16 So, based on the representation of counsel and my
17 own personal observations of the Defendant, I find that
18 the Defendant is knowledgeable, perceptive, and well in
19 control of his faculties and, therefore, competent to
20 stand trial and to assist in the preparation of his
21 defense.

22 All right. Anything else?

23 MR. TAVERNIER: One final issue, Your Honor. And I
24 have -- just a second -- I have become aware this
25 morning that Mr. Temple -- and the reason I raised

1 competency was it has been expressed to me that he
2 wishes or desires to speak to the press. I have advised
3 against that. I don't believe that that is in his best
4 interests. A dear friend and long-time judge informed
5 me that the mouth is the enemy of the neck most of the
6 time, and I have advised that he not do it. However, if
7 he desires to do so, it is at his own peril. And I
8 wanted to put that on the record if he does have any
9 discussions with the, with the press regarding this
10 case.

11 THE COURT: All right. Does the State have
12 anything to say about the Defendant's request to talk to
13 the press or other media?

14 MS. ADAMS: No, sir, Your Honor.

15 THE COURT: I would think not.

16 Mr. Temple, judges are not supposed to have
17 opinions. I've forgotten what the cite is, but it was a
18 learned trial judge who has since been elevated to the
19 Supreme Court that was reversed because he gave a
20 Defendant his opinion as to whether or not his
21 particular course at trial that he was opposed to --
22 excuse me. It's *State v. Owens*. I do remember it
23 because I tried the case the first time. This was on a
24 remand. And so, and as I say, even a much more learned
25 judge than this one was admonished or corrected that

1 we're not supposed to have opinions.

2 However, I do think that under the circumstances --
3 by the way, it's 362 S.C. 175, 607 SE.2d 78, a 2004
4 case -- I do feel that I have a duty and a
5 responsibility under our Constitution to advise you that
6 you have the right to remain silent and the right to say
7 nothing at all. In fact, our Constitution provides that
8 an individual cannot be a witness against himself. And
9 for that reason I would strongly advise that your Fifth
10 Amendment right should be exercised.

11 I'm trying to think of an example where someone has
12 gotten in trouble by saying nothing, but I can think of
13 a multitude of examples where people have gotten in
14 trouble saying anything or something. So I would
15 strongly recommend against not following and exercising
16 your right not to testify, and when I say testify I'm
17 not talking about under oath, I'm talking about anything
18 that you might say.

19 Because, as our Constitution warnings provide, that
20 anything can and will be used -- that you might say, can
21 and will be used against you in a court of law. And
22 once said, it's impossible, it is impossible to unsay
23 it. The bell has been rung. So, therefore, I'm going
24 to admonish you not to -- I'm going to admonish you
25 not -- well, I won't say "not" -- I'm going to admonish

1 you to exercise your right under the Fifth Amendment.

2 All right. Anything else, Mr. Tavernier?

3 And when I say "you," I'm talking about you, Mr.

4 Temple. Do you understand, sir?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Thank you, sir.

7 MR. TAVERNIER: Nothing further.

8 THE COURT: All right. Anything else?

9 All right. One other thing has come to the Court's
10 attention. As of this morning I've received a letter
11 from Mr. Temple addressed to me personally. I'll
12 deliver that letter to Mr. Tavernier because as far as
13 from now on any filings with this court, not just this
14 judge but this court, or any communications with the
15 Clerk of Court's office will have to be made through
16 your attorney.

17 And I will have -- I'm instructing now the Clerk of
18 Court to return any, or to forward any filings, not to
19 file them, not to enter them into the file or anything
20 else, because again, like I say, once noted on the
21 record of having been filed in the Clerk's Office, then
22 of course they become subject to review by anyone. And
23 if there's something in there that's not to your
24 benefit, it could be damaging.

25 So therefore I'm going to suggest -- not suggest

1 but order, anything received from Dennis M. Temple, the
2 Defendant in this case, addressed to the Court or the
3 Clerk of Court or in any fashion be forwarded to his
4 attorney for his consideration, and if he sees fit and
5 then sees that it's appropriate, then your attorney can
6 file it.

7 THE DEFENDANT: Your Honor?

8 THE COURT: Yes, sir.

9 THE DEFENDANT: Could I say one more thing? My
10 lawyer has a copy of the indictments, Your Honor, so if
11 I could ---

12 THE COURT: I'll give him another copy. I haven't
13 opened it. So I'll give him the copy.

14 THE DEFENDANT: Okay.

15 THE COURT: So he'll have two.

16 I didn't mean to cut you off, but that's what I was
17 going to do. I'm not going to keep it, I'm not going to
18 destroy it, I'm not going to do anything other than to
19 give it to your attorney for his consideration.

20 THE DEFENDANT: I understand.

21 THE COURT: Thank you, sir.

22 All right. Anything else from the State?

23 MS. SIMMONS: No, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. TAVERNIER: Nothing, Your Honor.

1 THE COURT: All right. Very good. We'll stand in
2 recess.

3 MS. SIMMONS: Thank you, Your Honor.

4 MS. ADAMS: Thank you, Your Honor.

5 (Whereupon, the hearing was concluded at
6 approximately 10:37 a.m.)

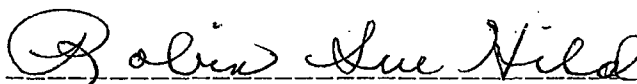
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Certificate of Court Reporter

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 hearing of the captioned
case, relative to appeal, in the Court of General
Sessions for Oconee County, South Carolina, on the 22nd
day of September, 2010.

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

July 16, 2012

A handwritten signature in cursive script, reading "Robin Sue Hild", written over a horizontal line.

Robin Sue Hild, FCRR, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA) FILED IN THE COURT OF GENERAL SESSIONS
COUNTY OF OCONEE) BENEVOLENT JUDGE
CLEM COURT

STATE OF SOUTH CAROLINA 2010 SEP 30 P 3:41

ORDER

2010 GS 37-886, 887, 888, 889

DENNIS TEMPLE

Defendant

1. THE DEFENDANT IN THIS MATTER, DENNIS TEMPLE, APPEARED BEFORE THIS COURT ON SEPTEMBER 14, 2010 TO CLARIFY ISSUES REGARDING REPRESENTATION.
2. THE COURT FINDS THAT THE DEFENDANT HAS INDICATED HE DOES NOT WISH TO PROCEED *PRO SE* IN THIS MATTER AND THAT HE DESIRES LEGAL COUNSEL BE APPOINTED BY THIS COURT.
3. KURT TAVERNIER, ESQ., OF THE ANDERSON COUNTY BAR IS HEREBY APPOINTED AS COUNSEL IN THE ABOVE REFERENCED MATTER. THE DEFENDANT IS FURTHER ORDERED TO COOPERATE WITH MR. TAVERNIER IN HIS REPRESENTATION.
4. PENDING WITNESS AVAILABILITY AND COMPLETION OF EVIDENTIARY TESTING, THIS CASE SHALL BE CALLED FOR TRIAL DURING THE DECEMBER 13, 2010 TERM OF COURT IN OCONEE COUNTY, *as set forth in*

IT IS SO ORDERED.

Order of this Court. (Signature)

Anderson, South Carolina
September 27, 2010

(Signature)
The Honorable J. Cordell Maddox, Jr.
Judge of the 10th Judicial Circuit

State of South Carolina

In the Court of General Sessions

County of Oconee

State of South Carolina,

Plaintiff,

-VS-

Dennis Maurice Temple,

Defendant.

2010-GS-37-250

2010-GS-37-251

2010-GS-37-252

2010-GS-37-253

October 21, 2010

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Christine Adams, Esquire
Solicitor for Tenth Judicial Circuit
Attorney for the State

Kurt Tavernier, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

INDEX

Motion to Relieve Counsel
Certificate of Reporter

PAGE

3
32

EXHIBITS

No

DESCRIPTION

ID EV

No Exhibits Were Presented During the Hearing

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

3

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 3:02 p.m.)

4 THE COURT: Okay. We're on the record in the
5 State versus Temple; is that correct?

6 MR. TAVERNIER: Come on around, Mr. Temple.

7 THE COURT: Okay. What do we have before -- I
8 know we have a couple of issues we've got to deal with.

9 How are you doing, Mr. Temple?

10 MS. ADAMS: Your Honor, just for the record,
11 Mr. Temple, as you know, has been indicted on 2010-886
12 grand larceny, 887 criminal sexual conduct first degree,
13 888 kidnaping and 889 a second count of criminal sexual
14 conduct first degree. And we are mainly here, Your
15 Honor, to deal with Mr. Temple's representation concerns
16 and issues.

17 THE COURT: All right. Mr. Temple, do you
18 remember when you were here -- you were down here with me
19 before?

20 THE DEFENDANT: September the 14th, that's
21 right.

22 THE COURT: Right. And I appointed Mr.
23 Tavernier. What's going on now?

24 THE DEFENDANT: Well, as you know, Your Honor,
25 the record shows -- I mean, I feel that when y'all

1 appointed this attorney y'all didn't have my best
2 interest at stake when I came here September the 14th
3 because all the issues that I brought forth were denied.
4 And then you turned around and appoint Mr. Tavernier to
5 me on my case. Mr. Tavernier has made threats against
6 his people killing my family and me if I don't plead
7 guilty. He said also that -- what else -- for me not to
8 say nothing about vindictive prosecution claims that I
9 had against the Solicitor or a speedy trial. Anyway, he
10 refused to file my motion ---

11 THE COURT: What motion?

12 THE DEFENDANT: --- and defend me in reference
13 to the DNA.

14 THE COURT: What did you want done with DNA?

15 THE DEFENDANT: Well, first of all, I mean, I
16 am accused of crimes I have been -- since the beginning I
17 have been declaring my innocence of these charges. And
18 since the beginning also, I have been refused or denied
19 defense by my previous lawyer and this attorney here as
20 well.

21 THE COURT: What do you want him to do that he
22 hasn't done?

23 THE DEFENDANT: I want defense.

24 THE COURT: And what do you want him to do?

25 THE DEFENDANT: I gave Mr. Tavernier a copy of

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

5

1 my motion to dismiss the indictments which was based on
2 vindictive prosecution. He completely ignored it. I
3 sent a fax to him, as a matter of fact, before he even
4 come to see me on the 21st of September telling him what I
5 wanted done. He still refused -- he issued -- well, he
6 asked to dismiss my -- the indictments based on his point
7 which was not in the best of my defense.

8 THE COURT: What did you do for a living?
9 What's been your profession?

10 THE DEFENDANT: I do whatever it takes, Your
11 Honor. Well, not necessarily anything.

12 THE COURT: What job are you best at?

13 THE DEFENDANT: I do a variety of things. I'm
14 unlimited. I don't limit myself.

15 THE COURT: Well, what job have you done that
16 was your best? Where did you work that you thought you
17 were most able to do well?

18 THE DEFENDANT: I have done welding. I have
19 done plumbing. I've done structure.

20 THE COURT: Okay. Let me tell you a problem
21 I've got. I don't know anything about welding. And if
22 you were out working welding and I came out and showed
23 you -- and had no idea how to weld and started telling
24 you how to weld, you'd think I was an idiot. And I would
25 be an idiot. What I'm telling you is that, you know,

1 this would be ---

2 THE DEFENDANT: Are you saying, Your Honor,
3 that I don't have experience in the law? I have fifteen
4 years experience in the law.

5 THE COURT: How many times have you been in a
6 courtroom?

7 THE DEFENDANT: How many times?

8 THE COURT: When you weren't a defendant?

9 THE DEFENDANT: In front of a defendant?

10 THE COURT: When you weren't a defendant. How
11 many times have you been representing someone in a
12 courtroom?

13 THE DEFENDANT: Well, I have -- I don't have
14 certain training in the field of law. I don't have
15 experience in the courtroom and experience in dealing
16 with a lot of strategies and stuff like that. However, I
17 do know the basics especially when it comes to the
18 warrant requirements and, you know, the process of the
19 rules of criminal procedures and such, Your Honor. And I
20 know as I research my case, this case has no proper
21 cause. I've been illegally arrested.

22 THE COURT: Okay. And you're telling me that
23 Mr. Tavernier threatened to kill you and your family?

24 THE DEFENDANT: Yes. If I did not be quiet and
25 don't say nothing about the vindictive prosecution and

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

7

1 the other matters and refused to file my motions that I
2 told him previously to file.

3 THE COURT: And he said what?

4 THE DEFENDANT: Your Honor, he just stated when
5 he said it that he -- before I came in the courtroom, he
6 was like, don't say nothing about no vindictive
7 prosecution, no fast or speedy trial and no sixty --
8 which is my -- my motion to dismiss my indictments was
9 based on vindictive prosecution and these other three
10 claims, but he didn't -- he failed to mention anything
11 about them.

12 THE COURT: All right.

13 MR. TAVERNIER: Your Honor, Mr. Temple filed a
14 grievance with the Supreme Court which I received a copy
15 of Tuesday indicating that I had threatened to kill -- or
16 my people had threatened to kill him and his family. I
17 have never been alone with Mr. Temple. I was accompanied
18 by Kendra Gurley who is my investigator out at the Public
19 Defender's office. Not my private practice, but at the
20 P.D. office. She accompanied me when I went to speak
21 with Mr. Temple at the Oconee Detention Center. I have
22 never been alone with Mr. Temple. I have never conveyed
23 that I would kill him or that my people would kill him.
24 Whether he pleads guilty, I don't care.

25 Pertaining to the issue of vindictive prosecution,

1 he wanted to raise that as an issue to have the
2 indictments dismissed. He had no basis and legal
3 argument to make that accusation because he had no
4 factual background at that particular time to raise the
5 issue. All he said was he wanted to raise the issue, but
6 he had no background. I said, it's not appropriate to
7 raise it at this particular time to dismiss your
8 indictments.

9 What I did tell him -- and I'm not going to go into
10 a whole lot regarding privilege.

11 THE COURT: No.

12 MR. TAVERNIER: But that at that particular
13 time, dismissal of the indictments would not be based or
14 predicated upon vindictive prosecution. And that the
15 judge would make a determination upon that at a later
16 date when he had a factual basis to back it up.

17 THE DEFENDANT: No, that's not ---

18 MR. TAVERNIER: He had no factual basis.

19 THE DEFENDANT: That's a lie. You never even
20 stated nothing to that effect. Nothing.

21 THE COURT: Okay. All right. Well, here's the
22 deal. When is this case set for trial?

23 MS. ADAMS: Your Honor, we have it scheduled
24 for December the 13th.

25 THE COURT: What do you want to do?

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

9

1 THE DEFENDANT: I want to go on trial. However

2 ---

3 THE COURT: Well, listen to me. You're going
4 to trial.

5 THE DEFENDANT: Okay. That's what I'm here
6 for, a trial.

7 THE COURT: December 13th. The question is do
8 you want to represent yourself, or do you want to get a
9 lawyer? I've now appointed ---

10 THE DEFENDANT: Well, according to ---

11 THE COURT: Wait a minute. Wait a minute.
12 I've appointed -- you've had how many lawyers?

13 MS. ADAMS: Mr. Tavernier is his fourth lawyer,
14 Your Honor.

15 THE COURT: You've had four lawyers, all
16 appointed.

17 THE DEFENDANT: My fourth lawyer? I can only
18 recall me asking for one which is this one.

19 THE COURT: Who's ---

20 THE DEFENDANT: But ---

21 THE COURT: Hold on a minute.

22 Who's been appointed?

23 MS. ADAMS: Mills Airial represented him.
24 Sarah Drawdy, Keith Denny and now Mr. Tavernier.

25 THE DEFENDANT: Mr. Mills Airial was a paid-for

1 attorney which was -- he was paid for to do a bond
2 reduction and not defend me on these charges.

3 THE COURT: Okay. All right. So take him out;
4 then you've got three. What do you want to do? You want
5 to defend yourself or you want to hire a lawyer?

6 THE DEFENDANT: Well, Your Honor, according to
7 the Constitution, the United States Constitution, I am
8 entitled to a defense attorney. Just because the Court
9 appoint me an attorney and he has skills in the law, that
10 doesn't mean that he's using those skills to defend me.
11 So I still to this day have not been able to defend
12 myself because you refuse to give me a lawyer to defend
13 me, myself. Refuse. I have had no lawyer to defend me
14 yet to this day.

15 THE COURT: Well, let me just tell you, that's
16 not right. But I'm not going to argue with you. That's
17 not my job. Here's the deal. I've appointed Mr.
18 Tavernier. I have all the confidence in the world in Mr.
19 Tavernier.

20 THE DEFENDANT: Yeah.

21 THE COURT: Wait a minute.

22 THE DEFENDANT: That's you, Your Honor.

23 THE COURT: Wait a minute.

24 THE DEFENDANT: That's you.

25 THE COURT: Wait a minute.

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

11

1 THE DEFENDANT: But I know personally ---

2 THE COURT: Wait a minute.

3 THE DEFENDANT: --- what he doing.

4 THE COURT: Wait a minute. Don't say another
5 word. My job is to give you representation. Later on
6 down the line, no matter what happens in this case, if
7 you feel like Mr. Tavernier has done something incorrect
8 or has not defended you in some way, there are avenues
9 that you have. But I can't keep appointing lawyers for
10 you. In fact, I'm not going to do that. You know,
11 you're welcome to hire a lawyer or you're welcome to
12 represent yourself, or you could have Mr. Tavernier who
13 I've appointed for you. Those are your three options.
14 And you don't have to make the decision now.

15 THE DEFENDANT: I want Mr. Tavernier off my
16 case because he has no interest, no best interest --
17 there's no best -- he don't have my best interest at
18 stake. I am furious with his defense. I cannot work
19 with somebody who's not -- have the best interest of my
20 defense.

21 THE COURT: All right.

22 What's the State's position?

23 MS. ADAMS: Your Honor, if I may, Mr. Temple
24 did go down on this past Monday, October 18th, down to
25 Columbia and spoke to Dr. Friarson in regards to his

1 competence evaluation. Mr. Friarson has not been able to
2 do a written report. He actually went out of town the
3 day after he did the evaluation. But he did speak to Ms.
4 Simmons in my office, and we have shared this with Mr.
5 Tavernier. He feels that he is very competent to stand
6 trial, first of all.

7 And they also discussed, according to Dr. Friarson,
8 that Mr. Temple's claims that Mr. Tavernier threatened to
9 kill him -- Mr. Friarson believes that there's no basis
10 in the attorney threatening to kill him and that Mr.
11 Temple knows that it is not true. That Dr. Friarson
12 believes that it is simply a tactic to get a new attorney
13 and delay the trial.

14 THE DEFENDANT: Well, Your Honor ---

15 MS. ADAMS: And Your Honor ---

16 THE COURT: Hold on. Don't interrupt.

17 MS. ADAMS: And based on his prior history with
18 the other two court-appointed lawyers, he constantly
19 wants to fire his attorneys. And just for the Court to
20 know as well, Your Honor, he has given and sent us
21 numerous motions and letters even after our hearing which
22 was held September 22nd in front of Judge Macaulay when
23 Judge Macaulay specifically told him to direct all
24 motions through his attorney. They dealt with his desire
25 to speak to the media. As soon as that hearing was over,

1 he contacted the media. He is very much aware, I
2 believe, of what's going on and that it's simply a delay
3 tactic.

4 In the -- a search warrant was served obviously
5 where this incident occurred in his storage shed unit.
6 Just for the Court, Your Honor, I'd like to make these
7 Court's exhibits if we can. We've showed them to Mr.
8 Tavernier. These are the motions that he has filed.
9 They're extremely logical if you want to look through
10 them. Very organized thoughts.

11 THE COURT: Extremely logical?

12 MS. ADAMS: Yes, very organized which goes to
13 his competency. And he had in the storage shed unit a
14 book checked out of the Oconee County Library, *How and*
15 *When to Be Your Own Lawyer*, the *Georgetown Law Journal*
16 about the annual review of criminal procedure. He had a
17 book -- a page open where he had made his own notes
18 regarding certain case law. And then a *Jailhouse*
19 *Lawyer's Manual*. This was all in his storage shed where
20 he was living where the incident occurred. So I think
21 that's what he's referring to when he says he has fifteen
22 years experience with the law.

23 THE DEFENDANT: Well ...

24 MS. ADAMS: And I can mark these, Your Honor

25

1 THE COURT: Okay. Yeah, mark them as exhibits.

2 MS. ADAMS: ... as Court's exhibits.

3 THE COURT: Just as one.

4 (WHEREUPON, Court's Exhibit Number 1 was marked for
5 identification only.)

6 THE COURT: Yes, sir?

7 THE DEFENDANT: Well, the psychologist, he's
8 entitled to his own opinion. However, I find him
9 incredible because he had a -- some type of problem with
10 me from when I stepped in there. I mean, he detested me
11 when I came in there, so I deem his assumptions of me
12 incorrect and, you know, it's obvious -- and then by the
13 way, the delay tactic. You have not even served me the
14 motions of discovery in this case, so how is I'm
15 delaying?

16 THE COURT: You need ---

17 THE DEFENDANT: And I ask you ---

18 THE COURT: Here's one of the things.

19 THE DEFENDANT: And also ---

20 THE COURT: Wait a minute. Wait a minute.

21 Wait, wait. Two things you need to learn. And it
22 doesn't matter if you like it. If I start talking,
23 you've got to stop. That's what the lawyers do. If I
24 start talking, they stop. If they don't, I yell at them.
25 You've got to do the same thing. The second thing is --

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

15

1 that you need to understand -- you've got to talk to me,
2 not to her.

3 So what's your issue with discovery?

4 THE DEFENDANT: Well, I apologize to the Court.

5 THE COURT: That's all right.

6 THE DEFENDANT: But I am extremely emotional
7 right now because I know that I am not being defended and
8 the Solicitor is using the excuses to make it seem as if
9 I'm delaying this trial when I have not received no
10 discovery yet in this case. I receive a half of
11 discovery. Before trial -- discovery is required before
12 trial, not during trial or after trial. Also, I have not
13 seen none of the evidence that the State is intending to
14 use against me during trial. So how am I delaying trial?

15 THE COURT: Well, the trial is going to take
16 place. And before the trial ---

17 THE DEFENDANT: I'm not ---

18 THE COURT: --- takes place -- before the trial
19 takes place, you'll get the information. That's just the
20 way it is. If they don't give it to you, we don't go to
21 trial.

22 THE DEFENDANT: But if it's a delay tactic,
23 then ...

24 THE COURT: I think the problem is, Mr. Temple
25 -- I mean, man-to-man the problem is there's a feeling

1 that you keep getting rid of these lawyers because you
2 think that's going to push the trial back. And that
3 ain't going to happen.

4 THE DEFENDANT: Your Honor, we all have our
5 feelings. Our feelings are not absolute.

6 THE COURT: You're correct about that.

7 THE DEFENDANT: They're not absolute.

8 THE COURT: All right. Well, are you going to
9 hire a lawyer, or are you going to represent yourself, or
10 do you want to think about it? Because I'm leaving Mr.
11 Tavernier on the case, but not as your lawyer. I'm going
12 to order him -- and I'll do an order -- to sit at the
13 table and to be available for you to ask him questions
14 during the course of the trial unless you hire another
15 lawyer.

16 THE DEFENDANT: To do that, Your Honor, you
17 would continue to hinder my case.

18 THE COURT: I don't know how.

19 THE DEFENDANT: Because if he's not in the best
20 of my interest before trial, how would he be in the best
21 interest during trial?

22 THE COURT: You'd be representing yourself.
23 That's what I'm telling you. You've got until the day of
24 trial to either hire a lawyer or represent yourself. And
25 if you represent yourself, Mr. Tavernier will be

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

17

1 available. He won't say a word to you unless you have a
2 question for him. I don't know what else to do. I can
3 appoint another lawyer. The first lawyers that were
4 appointed, I assume were with the Public Defender.

5 The Public Defender is not involved in this right?

6 MS. ADAMS: Not anymore, no, sir.

7 THE COURT: And they can't be; is that correct?

8 MS. ADAMS: (Nodded head up and down in the
9 affirmative)

10 THE COURT: You're shaking your head yes; is
11 that right?

12 MS. ADAMS: They have a conflict.

13 THE COURT: Because they have a conflict. So I
14 can't do that.

15 You had Ms. Drawdy. You asked me to remove her. I
16 did. Then I appointed Mr. Tavernier. Trust me. Mr.
17 Tavernier wasn't interested in doing this, but I
18 appointed him. Now you're telling me you want to get rid
19 of him. I can't do that anymore.

20 THE DEFENDANT: Your Honor?

21 THE COURT: Yeah.

22 THE DEFENDANT: He had -- September the 14th, I
23 come in here. He didn't have my best interest at stake
24 nor you.

25 THE COURT: I didn't?

1 THE DEFENDANT: No, you didn't. I'm being
2 honest here. I feel that you didn't have my best
3 interest because you denied everything that I asked for.
4 You denied -- and it was according to the law. It wasn't
5 according to what I wanted.

6 THE COURT: What did you ask me for?

7 THE DEFENDANT: It's not my wants.

8 THE COURT: What did you ask me for?

9 THE DEFENDANT: I asked you -- I told you
10 simply that those indictments, they was based upon
11 vindictive prosecution. Well, at the time -- and I
12 requested that they be dismissed in accordance to South
13 Carolina Rules of Criminal Procedure Rule 3 because they
14 was untimely.

15 THE COURT: The indictments were untimely?

16 THE DEFENDANT: Those indictments that the
17 Solicitor issued on me September the 7th were untimely
18 according to the South Carolina Rules of Criminal
19 Procedure, not according to me.

20 THE COURT: How were they untimely?

21 THE DEFENDANT: They was not served within
22 ninety days.

23 MS. ADAMS: Your Honor, what he's referring to
24 is that it took a little longer than ninety days for the
25 charges to be indicted. It was roughly a hundred and

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

19

1 some odd days versus date of arrest until the Grand Jury
2 actually indicted them. And he's referring to the rule
3 that says the charges must be indicted within ninety
4 days. But you dealt with this, and I do believe Judge
5 Macaulay dealt with this. And basically, according to
6 case law, that's administrative.

7 THE COURT: Yeah, do you understand that?

8 THE DEFENDANT: Okay. Let's say if for
9 administration. Well, aren't the same -- ain't the
10 discovery issued to me on my attorney based upon these
11 same rules? Is that true or not?

12 THE COURT: That's true.

13 THE DEFENDANT: Okay. So if the discovery is
14 issued to me in accordance with these rules, then why
15 can't these indictments be dismissed to the same rules?
16 I mean, they the same rules.

17 THE COURT: All right.

18 THE DEFENDANT: They apply.

19 THE COURT: This is my wedding story again.
20 But I'm not going to go over it again.

21 THE DEFENDANT: Okay. I understand what you're
22 saying.

23 THE COURT: You want to make that motion now
24 for me to dismiss them based upon timeliness?

25 THE DEFENDANT: Your Honor, I don't want you to

1 do me no favors. I'm not here for favors.

2 THE COURT: I understand.

3 THE DEFENDANT: I'm here ---

4 THE COURT: I'm saying, do you want to make
5 that motion now?

6 THE DEFENDANT: I'm here to be judged according
7 to the law. I hope and pray that ---

8 THE COURT: That's what's going to happen.

9 THE DEFENDANT: --- you or any judge would do.

10 THE COURT: It's going to be me, and that's
11 what's going to happen. And I'm going to do the best I
12 can to protect your rights, protect the victim's rights
13 and to make sure that justice is done. What I'm not
14 going to do is be delayed. I'm not going to have
15 somebody talk over me, and I'm not going to have a
16 circus. Now -- and it ain't going to happen. Now, do
17 you want to make those motions to dismiss again, now, for
18 untimely indictments under Rule 3? Is that correct? Is
19 it Rule 3?

20 THE DEFENDANT: Your Honor, if I do that --
21 Your Honor, at this point, I don't have no faith in you.

22 THE COURT: Okay. Well, you don't have to have
23 faith in me.

24 THE DEFENDANT: So I'm not going to make that
25 motion.

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

21

1 THE COURT: Okay. All right.

2 THE DEFENDANT: I have no faith in ---

3 THE COURT: So is that motion withdrawn?

4 THE DEFENDANT: So I'm not going to make no
5 motions here today.

6 THE COURT: All right.

7 THE DEFENDANT: I'll make it later on.

8 THE COURT: Okay.

9 THE DEFENDANT: Whatever.

10 THE COURT: It's going to be in front of me.

11 THE DEFENDANT: Well, I'm just saying I'm
12 speaking earnestly. I don't have no faith in you period.

13 THE COURT: Okay. Well, I'm speaking honestly
14 to you too. It doesn't matter.

15 THE DEFENDANT: I'm not trying to get in your
16 feelings or nothing.

17 THE COURT: Listen, after the week I've had,
18 don't worry about it. All right. Here's the deal.

19 The trial is set for December what, 13th?

20 MS. ADAMS: December 13th, yes, sir.

21 THE COURT: You've got to make a decision. I'm
22 not going to tell you what to do. If you hire a lawyer,
23 they'll represent you. If you don't hire a lawyer and
24 you don't like Mr. Tavernier -- and just so this is real
25 clear -- and believe it or not, I'm trying to protect

1 you. I am refusing to appoint another attorney so that
2 if the Court of Appeals or the Supreme Court says that I
3 should have appointed a fifth attorney, then I was wrong.
4 So I'm refusing to do that, but I am ordering Mr.
5 Tavernier to sit as standby counsel at the table. You
6 can go through -- if you represent yourself, you can go
7 through the whole trial and never speak to him. He's not
8 going to speak to you. But if you have any questions for
9 legal issues, then, you know, we'll deal with it.

10 Now, I need, Ms. Adams, for you to do an order to
11 that effect. And make sure that it's clear, again, to
12 protect his right, that I am denying the appointment of a
13 new counsel. You got that?

14 THE DEFENDANT: So you're saying ---

15 THE COURT: Hold on a minute. I need to make
16 sure she's got it.

17 Okay. Yeah?

18 MS. ADAMS: May we approach real quickly?

19 (WHEREUPON, a bench conference was held off the
20 record.)

21 THE COURT: Let me just -- what she's asking me
22 is, I mean, there's a question about whether or not I
23 should appoint you another attorney. What I'm saying is
24 that you've had four. I've appointed Mr. Tavernier.
25 You've told me that Mr. Tavernier said that his people

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

23

1 were going to kill you and your family. I don't believe
2 that. I am not going to appoint another lawyer to put
3 him in the same position, so based upon what you've told
4 me here today and based upon my experience from the last
5 hearing -- I was doing you a favor last time -- I'm not
6 going to do it again. So you have every right in the
7 world to hire a lawyer or to get another lawyer to
8 represent you. It doesn't matter to me. I hope you do.
9 Or you can represent yourself. But if you represent
10 yourself, I'm appointing Mr. Tavernier as standby
11 counsel.

12 MS. ADAMS: And Your Honor, my only concern is
13 if his family or if he does hire a lawyer, as long as
14 they are very clear that if they take that case it is
15 still going to trial December 13th.

16 THE COURT: Yeah. Just do me an order.

17 MS. ADAMS: And not another ---

18 THE COURT: That's why I say ---

19 MS. ADAMS: --- delay.

20 THE COURT: Do an order it's set for the 13th.
21 Do an order that I denied his motion to appoint a new
22 lawyer. And I want that in writing so that if I'm wrong,
23 I'm wrong. And that's based upon the fact that he's had
24 four and that his accusations against Mr. Tavernier don't
25 carry any weight with me at this point -- is probably the

1 best way to put it -- and that he can represent himself
2 that week. If he does, Mr. Tavernier is going to be the
3 standby attorney. And I'll do the order for standby
4 because I've got that.

5 MS. ADAMS: Okay.

6 THE COURT: And then what's the deal with
7 discovery? Have y'all got everything ready?

8 MS. ADAMS: Yes, sir. We actually served him
9 personally on June the 22nd of this year with discovery,
10 and there have been several supplemental discovery served
11 on his attorney.

12 THE COURT: Did you get all that information
13 that they say they sent you?

14 THE DEFENDANT: I have got no discovery, no
15 supplements, no nothing.

16 THE COURT: They didn't send you something on
17 June 22nd?

18 THE DEFENDANT: I've got a half of discovery.

19 THE COURT: You've got what they sent you on
20 the 22nd; is that right? That's the stuff they handed you
21 yourself at the jail probably.

22 THE DEFENDANT: Right.

23 THE COURT: Okay. Well, I hate to run your
24 copiers up. But how about re-serving individually up at
25 the jail with his discovery.

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

25

1 THE DEFENDANT: And also ---

2 THE COURT: I'm going to make sure you get it
3 all. Yes, sir?

4 THE DEFENDANT: Also, Your Honor, could you
5 tell her to let me see the evidence that's going to be
6 used against me?

7 THE COURT: That's what I'm telling her. I'm
8 telling her to give you all the discovery even though she
9 says that it may have been sent. Just to make sure,
10 she's going to redo it and give it to you in one packet.

11 MS. ADAMS: Yes, sir.

12 THE COURT: Now, what about DNA testing? Has
13 the been done?

14 MS. ADAMS: There's still some left, Your
15 Honor. But we have spoken to them, and it should be back
16 very shortly. It will not delay anything.

17 THE COURT: All right. The minute that comes
18 back ---

19 MS. ADAMS: He will have it.

20 THE COURT: --- you get it.

21 THE DEFENDANT: In addition, Your Honor, to
22 that, I would like to say that Mr. Tavernier here, like
23 I've been speaking of, was not in the best interest of
24 me. So the motions that he has made previous were not in
25 the best of my defense, and I ask -- well, maybe I'd

1 better not ask today. But in the future ---

2 THE COURT: What motions are you talking about?

3 THE DEFENDANT: I'm going to request to dismiss
4 anything that he's done on this case because ---

5 THE COURT: Well, what's he done?

6 THE DEFENDANT: --- it's not been done to the
7 best of my interest.

8 THE COURT: What have you done?

9 MR. TAVERNIER: Your Honor, to the best of my
10 recollection, we discussed the *Schmerber* order that was
11 issued by Judge Macaulay.

12 THE COURT: Right.

13 MR. TAVERNIER: And which based on my research
14 and view of the file, there was no basis in fact to
15 object to it. It was going to be ordered, and there was
16 no basis -- legal argument that we could generate to do
17 that. We were successful in quashing the search warrant
18 in which they obtained samples off of him. He seems to
19 forget that.

20 THE DEFENDANT: Well ---

21 THE COURT: Hold on. Let him finish.

22 MR. TAVERNIER: But that was probably other
23 than the timeliness of the indictments were the three
24 things that were addressed other than my caution
25 regarding his contact of the press and his waiver of his

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

27

1 right to remain silent.

2 THE DEFENDANT: Mr. Tavernier, those search
3 warrants was squashed not based upon what you did. And
4 also -- because I previously already filed a motion to
5 dismiss the DNA because it was done illegally. I never
6 received a copy no DNA order or the results of any test.

7 THE COURT: Well, they're not back yet. When
8 they come back -- it takes a little while. When they
9 come back, she'll tell you.

10 THE DEFENDANT: Okay, Your Honor. But what I'm
11 saying and what I'm getting at is my attorney, Kurt
12 Tavernier, failed to put up a defense in reference to the
13 new test they was taking which the defense was the case
14 is not based upon proper cause. And also, the Solicitor
15 didn't even abide by the first order, so how could he let
16 her get another order for DNA? That was the defense.

17 THE COURT: All right. Well, you understand
18 the order. You've got to either represent yourself,
19 you've got to hire a lawyer. If you represent yourself,
20 Mr. Tavernier is going to be standby counsel sitting
21 there. The case will be tried the 13th of December. I
22 think it's now been switched so that I'm doing it for
23 scheduling purposes.

24 I guess it will be done in Oconee?

25 MS. ADAMS: Yes, sir.

1 THE COURT: Is there anything else that you can
2 think of that you need now, I mean, while you're here?

3 THE DEFENDANT: Your Honor, I'm going to make
4 my -- I don't know, Your Honor. I'm scared. Really I'm
5 fearful that my motion is going to be denied. But I'm
6 asking you -- I think that they should be granted in
7 regards to the situation that I'm in, especially when it
8 comes to these searches and seizures.

9 THE COURT: Right.

10 THE DEFENDANT: Suppression hearing. I would
11 like a suppression hearing based upon these charges
12 that's being lodged against me.

13 THE COURT: Well, let me tell you -- and I'll
14 hear all your motions. And I'm just going to tell you
15 the way I look at this. You don't actually have to have
16 any confidence in me, and you don't have to have any ---
17 well, you actually do have to have some respect for the
18 job. You don't have to have it for me personally. I'm
19 going to do everything I can the right way. I'm going to
20 -- I believe in the Constitution. You are not guilty as
21 you stand here. That is exactly what I'll tell a jury.
22 You're not -- he's not guilty. And so I treat you as not
23 guilty. And therefore, I'm going to listen to all your
24 motions, and I will rule based upon the law. What I'm
25 telling you is you'd better get a lawyer or you'd better

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

29

1 get right with Mr. Tavernier. That's the biggest mistake
2 you can make is to show up on December 13th representing
3 yourself. I've been a judge for ten years. I wouldn't
4 represent myself. I wouldn't do it. But it's up to you.
5 I've had people to do it, you know.

6 THE DEFENDANT: Your Honor, I've heard of
7 pitfalls. But y'all -- can't beat everybody. I mean, I
8 can't beat -- there's no defense here. I mean, I have no
9 other choice.

10 THE COURT: Okay. And neither do I.

11 THE DEFENDANT: Especially if you're not going
12 to appoint another lawyer.

13 THE COURT: I'm not appointing another one.
14 I've appointed four.

15 Yes, sir?

16 MR. TAVERNIER: Your Honor, based on your last
17 comment, do I prepare for trial ---

18 THE COURT: No.

19 MR. TAVERNIER: -- or if he decides and changes
20 his mind that he gets right with me? Or do I prepare for
21 trial or do I ---

22 THE COURT: If he gets right with you, it's
23 still going forward on the 13th. So you've got to do what
24 you -- if you -- if he decides on the 11th that now he
25 wants you as his lawyer and you say -- no, I'm not going

1 to do that to you. But I'm not going to continue this
2 case without legitimate legal cause. I mean, I'm not
3 going to say I'm not going to continue it. I mean, I'm
4 not going to do that. But it's going to have to be
5 something pretty dadgum important.

6 MR. TAVERNIER: Okay.

7 THE COURT: Okay.

8 MS. ADAMS: And Your Honor, just a housekeeping
9 matter. One of the indictments, 2010-887 which is a
10 criminal sexual conduct first-degree was actually a
11 direct indictment. And we have served him in the jail
12 with this, so he is aware of this indictment and has a
13 copy. But we'd like to do an official arraignment just
14 for the record ---

15 THE COURT: Okay.

16 MS. ADAMS: --- if that's okay.

17 THE COURT: Yeah.

18 All right. Do you understand what they're doing?
19 They have a direct indictment which charges you with
20 criminal sexual conduct in the first degree. And I'm
21 assuming you plead not guilty to that; is that correct?

22 THE DEFENDANT: That's right.

23 THE COURT: All right. So you're pleading not
24 guilty. Do you need me to explain anything about this
25 indictment to you? Have you seen a copy of it?

State v. Dennis Maurice Temple 2010-GS-30-250/253
Motion to Relieve Counsel October 21, 2010

31

1 THE DEFENDANT: Yes, I have.

2 THE COURT: Do you have any questions about it
3 now?

4 THE DEFENDANT: Pretty much -- no, sir, no
5 questions about it now.

6 THE COURT: Okay. All right. So we'll take
7 that as a not guilty plea, and it will be set for trial.

8 MS. ADAMS: Thank you, Your Honor.

9 THE COURT: Okay. All right. Thanks.

10 MR. TAVERNIER: Thank you, Your Honor.

11 (WHEREUPON, the hearing ended at approximately 3:34
12 p.m.)

13 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Oconee County, South Carolina,
9 on the 21st day of October 2010.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 July 26, 2012

15

16

17

Renee H. Tollison

Circuit Court Reporter

Tavernier

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

State of South Carolina

vs.

Dennis M. Temple

IN THE COURT OF GENERAL SESSIONS

2010-GS-37-886 through 889

AMENDED ORDER APPOINTING STANDBY COUNSEL

PUBLIC COUNSEL, SC
BEVERLY R. HITCHFIELD
CLERK OF COURT

2010 NOV 15 P 4:38

FACTS

This matter was before the Court on October 21, 2010, pursuant to the Defendant's Motion to Relieve Counsel in the above-referenced matter. The court has already appointed three attorneys to represent the Defendant, Mills Arlall, Sarah Drawdy, and Keith Denny. Mr. Tavernier was the fourth attorney to be appointed. At the hearing, the Defendant requested that the court remove Mr. Tavernier and appoint a fifth attorney to represent him at his upcoming trial. The Defendant's Motion for a new attorney was denied, and Mr. Tavernier was relieved as counsel. The Defendant now wishes to proceed *pro se*. Although the Defendant has performed much of the legal research in the case and has filed his own motions, the court hereby orders that an advisor with legal training assist him in preparation for and at trial. This court appoints Kurt Tavernier to serve in that capacity. At Mr. Tavernier's request, the court will clarify his role in this case.

LAW

A. The Sixth Amendment Right to Assistance of Counsel

The 6th Amendment to the U.S. Constitution guarantees a criminal defendant the right to "assistance of counsel." Two aspects of this right are fundamental. First, courts have long required effective, competent representation pursuant to the 6th Amendment, thereby acknowledging that some qualitative threshold of performance must be met. Ineffective participation by counsel is no less a violation of the right than no representation at all. Accordingly, in South Carolina collateral review of counsel's performance is available through the Post-Conviction Relief Statute, S.C. Code §17-27-10 et

seq. Second, the guarantee of the 6th Amendment is of the *right* to assistance of counsel, not to the assistance itself. Therefore, like the right to a jury trial or to confront witnesses, a defendant may choose not to exercise the right to assistance of counsel. In Faretta v. California, 422 U.S. 806 (1975), the U.S. Supreme Court recognized that the right to the assistance of counsel may be waived and the defendant himself may step forward and serve as his own advocate.

B. The Right to Appear *Pro Se*

Faretta and subsequent cases leave no doubt that the right to represent oneself in a criminal case is fundamental and must be respected by courts subject only to narrowly drawn exceptions.¹ The right to represent oneself may not be used merely to delay trial, and a trial court may refuse to permit a defendant to proceed *pro se* if the assertion of the right is untimely and causes undo delay. See e.g. United States v. Singleton, 107 F.3d 1091 (4th Cir. 1997), United States v. Jones, 938 F.2d 737 (7th Cir. 1991). Most importantly, the right to appear *pro se* must be understood as it relates to the right to assistance of counsel. As logic suggests, the two are mutually exclusive. United States v. Lawrence, 161 F.3d 2e 509, 253 (4th Cir. 1995) ("The Sixth Amendment does not require a court to grant advisory counsel to a criminal defendant who chooses to exercise his right to self-representation..."); United States v. LaChance, 817 F.2d 1491, 149\ (11th Cir. 1987) ("It is the law of this circuit that the right to counsel and the right to proceed *pro se* exist in the alternative and the decision to permit a defendant to proceed in a hybrid fashion rests in the sound discretion of the trial court."); United States v. Halbert, 640 F.2d 1000, 1009 (9th Cir. 1981) ("The defendant, however, does not have a constitutional right to hybrid representation.... That is, the defendant cannot demand the right to act as co-counsel...

McKaskie v. Wiggins, 465 U.S. 168 (1984), sets out the conditions under which counsel may be appointed to assist over a *pro se* defendant's objections. Counsel must not undermine the appearance to the jury that the defendant is in control of the case and all strategic conflicts between counsel and the defendant must be resolved in the defendant's favor. Because the defendant in the present case has requested appointment of counsel, extended discussion of McKaskie is not necessary.

The district court may properly require the defendant to choose either to proceed, *pro se*, with or without the help of standby counsel, or to utilize the full assistance of counsel, who would present the defendant's defense."); United States v. Swinney, 970 F.2d 494, 498 (8th Cir. 1992) ("The decision to allow this type of hybrid presentation is squarely within the discretion of the district court.") Courts uniformly refuse to permit *pro se* representation absent an explicit waiver of the 6th Amendment right. "An accused has the constitutional right to self-representation, of course, but the decision to waive the right to counsel is valid only if it is timely, not for the purposes of delay, unequivocal, and knowing and intelligent." United States v. Keen, 104 F.3d 1111, 1113-14 (9th Cir. 1996).

C. South Carolina Law

The South Carolina Constitution provides in Article I, Section 14 that the accused "shall enjoy the right...to be fully heard in his defense by himself or by his counsel or by both." In State v. Sanders, 237 S.E.2d 53 (1977), our Supreme Court that "a defendant does have the right to assistance of counsel, even if he (defendant) is representing himself." However, the court concluded that Mr. Sanders was not entitled to hybrid representation, which it defined as "partially *pro se* and partially by counsel although the court noted with approval that he had "the advice and assistance of two Public Defenders while he represented himself." The Sanders court did not define "assistance of counsel" or identify the source of the right but went on to approve the analysis provided by the Texas Court of Criminal Appeals in Landers v. Texas, 550 S.W.2d 272 (1977), which construed a nearly identical provision of that state's constitution. The Landers court conducted a full review of the law interpreting the essentially identical constitutional provisions of at least ten other states. The court traced the history of the English common law principle of disqualification for interest which rendered the accused "incompetent to be a witness in his own cause."

The court concluded: "Article 1, Section 10, and similar constitutional provisions were intended to afford an accused the right to participate and be heard in his trial while at the same time removing the restrictions to full representation and participation of counsel. However, these provisions were not intended to encompass the right to counsel as that right is delineated in Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975)." Like Texas, South Carolina apparently has extended some degree of assistance to *pro se* defendants but has left the decision how to provide that assistance to the discretion of the trial judge. Numerous courts have recognized that the trial court has broad discretion to guide or limit what, if any, assistance counsel may provide to the *pro se* defendant. See e.g., United States v. Lawrence, 161 F.3d 250, 253 (4th Cir. 1999) (trial court "under no obligation to provide" standby counsel); United States v. Singleton, 107 F.3d 1091, 1102 (4th Cir. 1997) ("[T]he district court was under no obligation to provide {Defendant} any intermediate accommodation.")

2 It is unclear on what basis the court reached this conclusion. The opinion does not cite the source of the "right" nor does it define the extent of the "right." While it may appear that the court found this "right" in Article I, Section 14 of the South Carolina Constitution, the court never so stated, but instead adopted the reasoning of the Texas Court of Criminal Appeals in Landers v. Texas, 550 S.W.2d 272 (1977), discussed herein. That court specifically found that the referenced language *did not confer any right to counsel* but referred only to the defendant's right to testify.

1The Texas provision provides that an accused in criminal cases, "shall have the right of being heard by himself or counsel, or both."

D. Role of Counsel Assisting *Pro Se* Defendant

The court has carefully reviewed the decisions of our Supreme Court as well as cases from other states and the federal system in seeking to define counsel's role in assisting a *pro se* defendant. This court concludes that the proper role of counsel is to serve as "advisory counsel," as that term is further defined herein.

Various terms are used by courts to describe the role of an attorney appointed to assist a defendant who has waived his right to counsel. There is no uniformity in the use of these terms and on many occasions they are used inconsistently and interchangeably. For clarification, this court uses the following definitions⁴: Hybrid representation means participation by both the defendant and his lawyer at trial. Both are free to examine and cross examine witnesses, argue to the court and the jury and make objections. Hybrid representation is a "cc-counsel" relationship. Stand-by counsel must be present in the courtroom at all critical stages, including trial, must prepare the case as if he were fully representing the defendant, and must be ready to take over trial if requested to do so. Advisory counsel must be present at all critical stages of the prosecution, including the entire trial. He must give advice to the defendant on procedural or substantive matters when requested by either the defendant or the court to do so. He has no duty to prepare the case for trial or to be prepared to take over the defense of the case. He must not offer unsolicited advice.

⁴Note that the court's definition of these terms does not necessarily correspond to the overlapping definitions of the role of an attorney assisting a *pro se* defendant provided by the cases cited in section B of this Order on pages 3 and 4. Those cases use various phrases to refer to the entire spectrum of attorney/*pro se* defendant relationships whereas the definitions provided here are intended to identify sub-categories.

The appointment of counsel to assist a *pro se* defendant serves at least two purposes. First, a defendant who has exercised his right to self representation still benefits from the skill, knowledge and advice of trained counsel while being allowed to control his own defense. Second, the Court is freed of the burden of advising the defendant on matters of courtroom procedure, making for a more orderly and efficient trial. In choosing between the three types of assistance described above, this court must identify the substantive and logistical strength and weaknesses of each.

Hybrid counsel has been looked upon with disfavor for good reason. The arrangement would put an attorney in a vexing situation.

We can foresee irreconcilable differences arising from the varying obligations of lawyer and defendant if the defendant were to have a constitutional right to have counsel appointed for any role he sees fit. As an officer of the court, the lawyer has obligations, including the duty of disclosure, the duty to ask only appropriate questions, and the duty not to suborn perjury, which have not been considered personally binding on the defendant. In addition, the lawyer's duty of attorney-client confidentiality could be seriously compromised by a system in which the defendant selectively employs his attorney while make his own defense. And in a case in which these conflicts or mere differences of strategy bubbled to the surface before the jury, the last hope of properly presenting the relevant facts to the trier of fact could quickly be obscured by the side show of internecine strife between the defendant and his counsel. United States v. Singleton, 107 F.3d 1091, 1102 (4th Cir. 1987).

Counsel's trial strategy could be ruined at any instant by the defendant's decision to pursue a particular course of action. It is unrealistic to expect counsel and the Defendant to develop the kind of symbiotic relationship that exists between co-counsel when both are attorneys. The very fact that a defendant wishes to present himself often indicates distrust in the attorney's ability and trustworthiness. Hybrid representation would require the attorney to shift gears constantly during the course of litigation, trying to correct past mistakes and anticipate future ones. Moreover, appellate review of a hybrid relationship would be a near impossible task. Rather than simply evaluating performance, an appellate court would be forced to guess at which tasks the attorney undertook (or should have undertaken) and which the defendant wished to perform himself. Of course, most of these decisions would be absent from the official record, making the guessing game a virtually hopeless endeavor.

Similarly, the appointment of **standby counsel** would prove unworkable and would unduly compromise the integrity of the trial process. First, an appointed attorney would be required to spend the time and effort (and the state the expense) of preparing a case. The attorney may or may not ever have to present that case. Second, as in the case of hybrid representation, the attorney's role would be unclear. As an advocate and officer of the court, the attorney might feel compelled to appeal to the defendant or the court to be permitted to step in any time the defendant makes a poor trial strategy decision. Is standby counsel obligated to do so? On the other hand, undue zeal in trying to persuade a defendant to accept a particular course of action would run the risk of overstepping the bounds of standby status in violation of Faretta and McKaskle. Finally, providing a fully prepared standby counsel to a *pro se* defendant invites abuse of the system. Such an arrangement allows defendants to have it both ways. A defendant can proceed *pro se* and if it does not work out, can toss the responsibility back across the table any time. The extensive colloquy and warnings given to a defendant before allowing him to proceed *pro se* is undertaken precisely because that choice can have dire consequences. By supplying a state funded safety net to avoid those consequences, a court would extend to the *pro se* defendant an extra benefit to which he is not entitled and which would unduly tax the judicial system, to say nothing of the peer lawyer who finds himself between the devil and the deep blue sea.

Advisory counsel, unlike the above-described arrangements, provides for both clarity as to an attorney's role and meaningful assistance to the defendant and trial judge. The defendant would have sole responsibility for trying the case but would be able to avail himself of the attorney's legal expertise as needed. The trial judge could avoid length and disrupted legal lectures from the bench by directing advisory counsel to explain various points of law. In evaluating counsel's performance, an appellate court would have the benefit of a clear standard: did counsel adequately explain the law on the issue raised to him by the defendant or the court?

To the extent that State v. Sanders, 269 S.C. 215, 237 S.E.2d 53 (1977), recognizes any "right" to the assistance of counsel for a *pro se* defendant, appointment of advisory counsel adequately facilitates the enjoyment of that right. The advisory counsel arrangement achieves the optimal balance of fairness to the defendant, preservation of the integrity of the judicial process, and setting a clear standard for attorney performance that can be meaningfully reviewed by the appellate court.

ORDER

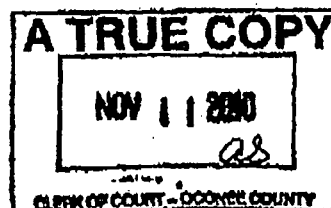
The Defendant is scheduled for trial the week of December 13, 2010 before the Honorable J. Cordell Maddox, Jr. Mr. Tavernier shall be present during the trial of this case. Prior to that time, Mr. Tavernier shall continue to make periodic visits to the defendant and shall furnish such advice and assistance in non-legal matters. Regarding matters which would conflict with Mr. Tavernier's ethical obligations, Mr. Tavernier is not obligated to comply. While the defendant has requested to represent himself *pro se*, Mr. Tavernier is ordered to continue to prepare for trial. Therefore, in the event that the defendant changes his mind and decides to allow Mr. Tavernier to represent him, it will not be grounds for a delay. Mr. Tavernier shall not be responsible for providing the Defendant any unsolicited advice. As "lead counsel" the Defendant himself may petition this court to resolve any conflict that may arise.

The defendant has filed numerous motions with the Oconee Clerk of Court's Office without providing copies to Mr. Tavernier. The defendant is hereby ordered to give Mr. Tavernier a copy of any and all documents that he files with the Oconee County Clerk of Court's Office. The Oconee County Solicitor's Office is also ordered to provide a copy to Mr. Tavernier of any and all documents that the defendant sends to them.

IT IS SO ORDERED.

November 8, 2010
Anderson, S.C.


The Honorable J. Cordell Maddox, Jr.
10th Circuit Court Judge



FILED
CLERK OF COURT
2010 NOV 15 P 4:38

State of South Carolina

County of Oconee

In the Court of General Sessions

State of South Carolina,

Plaintiff,

-vs-

Dennis Temple,

Defendant.

2010-GS-04-0886, 0889

December 7, 2010

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Christina Adams, Esquire
Solicitor for Tenth Judicial Circuit
Lindsey Simmons, Esquire
Assistant Solicitor for Tenth Judicial Circuit
Attorneys for the State

Kurt Tavernier, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

INDEX

	DIRECT	CROSS	REDIRECT	RECROSS	PAGE
Pretrial Hearing					3
Greg Reed					
Adams	32				
Temple		37			
Catherine McGough					
Adams	42		49		
Temple		48			
Certificate of Reporter					92

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

3

EXHIBITS

No	DESCRIPTION	ID	EV
C1	Photo Lineup	36	
C2	Search Warrant of May 10, 2010	55	
C3	Search Warrant of May 11, 2010	55	
C4	Search Warrant of May 13, 2010	72	
C5	SLED DNA Analysis Report	74	
C6	SLED DNA Supplemental Report	74	

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

4

1 December 7, 2010

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 2:55 p.m.)

5 THE COURT: All right. We're on the record in
6 the matter of the State versus Temple. We've got a good
7 many motions to take up today in preparation for the
8 trial next week in Oconee. It looks like I've got
9 probably six or eight motions filed by Mr. Temple, and I
10 also have two filed by the State. I'd like to do the
11 State's first if that would be all right with you.

12 Mr. Temple, have you got any more motions that you
13 filed that I might not have? You sent everything to the
14 Clerk's office up there?

15 MR. TEMPLE: I have about three other motions
16 that I would like to file that I've not filed with the
17 Clerk.

18 THE COURT: Okay. What I'm going to do is let
19 the State go first, and then I'll let you do it. At the
20 end of the ones -- we're going to -- I'm going to go
21 through the list I have of yours, and then we'll do a
22 cleanup after all of those and figure out how many more
23 you've got, okay?

24 MR. TEMPLE: All right.

25 THE COURT: All right. Yes, ma'am?

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

5

1 MS. SIMMONS: Thank you, Your Honor.

2 THE COURT: I have two motions filed by the
3 State; is that right?

4 MS. SIMMONS: Yes, Your Honor. The State filed
5 two motions yesterday in this matter. They were served
6 on Mr. Temple at Oconee County Detention Center. We
7 first filed a motion in limine regarding South Carolina
8 Code Section § 16-3-659, and that would be what is
9 commonly know as the South Carolina Rape Shield Statute.

10 THE COURT: Right.

11 MS. SIMMONS: Under subsection two of that
12 statute, we have not received notice from Mr. Temple, as
13 required by the Statute, that he intends to offer any
14 evidence of the victim's prior sexual conduct,
15 reputation, or specific instances of prior sexual
16 conduct. We would ask for an order from this Court
17 prohibiting Mr. Temple from going into that.

18 There's a pretty strict test on this issue. And our
19 SLED testing indicated only one profile exists for the
20 swabs taken as a result of this sexual assault. Any
21 introduction by the Defendant of any other specific
22 evidence -- specific instances of sexual activity by the
23 victim would be solely for prejudicial purposes in front
24 of the jury.

25 THE COURT: All right. All right. Mr. Temple,

1 you don't have to stand because I know it's uncomfortable
2 for you. And if Renee can't hear you, I may ask you just
3 to speak up.

4 Their motion -- basically they're asking me to rule
5 that you cannot introduce any evidence of other sexual
6 acts on the part of the victim in this case. I suspect
7 what they're telling me is that you don't -- haven't told
8 them you're going to do that. But I need to know if you
9 intend at any time to try to offer that kind of evidence
10 in the court next week.

11 MR. TEMPLE: No, sir, not -- well, besides the
12 D.N.A. test and the sexual assault protocol that was
13 taken of the victim ---

14 THE COURT: Right.

15 MR. TEMPLE: --- during admission in the Oconee
16 County Memorial Hospital -- besides that, that's it.

17 THE COURT: Okay.

18 MS. SIMMONS: Judge, that's precisely why I
19 filed this motion. There is consensual sexual activity
20 by the victim where contraception was used the day
21 before. There is no evidence of a second party present
22 in the samples that were submitted to SLED. I don't want
23 to get into a situation where on cross-examination of
24 her, he asks her about the specific instance of that
25 because it is prejudicial..

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

7

1 THE COURT: All right. Is that what you intend
2 to do?

3 MR. TEMPLE: Well, Your Honor, as I just
4 stated, it is a part of the protocol during an alleged
5 rape case. I mean, the State is asking to exclude that
6 matter when it's pertinent. It's very important in this
7 situation. I also think that it's not inflammatory and
8 it's not prejudgment -- it's not outweighed by the
9 probative value. It's not.

10 I mean, the victim stated her -- she stated this
11 information to the nurse, which, like I said, it's part
12 of the sexual protocol. Any victim that alleges rape
13 will answer to these questions. I mean, it's clearly
14 noted in the protocol.

15 THE COURT: All right. But that's part of the
16 protocol. South Carolina law doesn't allow you to ask
17 those questions. It's very clear if you've read the
18 statute that you -- that those questions can't be asked
19 unless there's a certain burden met.

20 Can you put on the record what the burden is just so
21 it's on the record?

22 MS. SIMMONS: Yes, Your Honor. Specific
23 instances of sexual conduct with persons other than the
24 Defendant can be introduced to show the origin or source
25 of semen, pregnancy or disease about which evidence has

1 been introduced previously at trial if the judge finds
2 that such evidence is relevant to a material fact and
3 issue in the case and that its inflammatory or
4 prejudicial nature does not outweigh its probative value.

5 THE COURT: Okay.

6 And Mr. Temple, what I've got to decide is how
7 evidence of consensual sexual activity with contraceptive
8 -- contraception would in any way be relevant to the
9 incident that you're charged with.

10 MR. TEMPLE: Well, Your Honor, let me state
11 this. That the showing that the alleged victim had
12 sexual intercourse that same day -- you have to remember,
13 now, that the prosecution is intending to prove -- well,
14 she has to prove beyond a reasonable doubt that there was
15 aggravated battery and also that there is penetration. I
16 mean, this right here shows that there was penetration
17 involved by another party. So why -- if you exclude this
18 from the evidence, then you put the burden on me to prove
19 that I didn't, you know -- you put the burden on me, in
20 other words, and exclude the State from the burden.

21 And the law of § 16-3-6951 states clearly that --
22 says, however, the evidence of the victim's sexual
23 conduct with the Defendant or the evidence -- specific
24 instances of sexual activity with a person other than the
25 Defendant introduced to show the origin of the semen.

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

9

1 Well, I intend to show the origin of penetration that was
2 not caused by me or caused by -- you know, alleged by me.

3 THE COURT: All right. What do you have D.N.A.
4 wise regarding ...

5 MS. SIMMONS: Your Honor, SLED conducted
6 testing regarding the D.N.A. sample in this case. It was
7 submitted, and there was one profile developed from the
8 swabs collected at the rape -- the rape kit. It was a
9 semen profile, and the SLED results indicate that it is a
10 one in three hundred and thirty trillion match to the
11 Defendant. There is no evidence of another contributor
12 to the sample.

13 THE COURT: None at all?

14 MS. SIMMONS: None at all.

15 THE COURT: Okay.

16 MR. TEMPLE: Well, Your Honor, there was also
17 evidence that it was a third-party there in the D.N.A.
18 test. I mean, it was just not two parties. It was three
19 -- it was three people involved, and the forensic exclude
20 the alleged victim.

21 THE COURT: What evidence is there that there's
22 another person?

23 MR. TEMPLE: D.N.A.

24 THE COURT: What evidence in the D.N.A.?
25 They're telling me there's one profile.

1 MR. TEMPLE: It was -- the victim alleged that
2 she was -- after the assailant had sexual intercourse and
3 had made orgasm, that he tried to clean her out and that
4 he used a rag -- she stated that he dipped the rag in
5 cleaning solution and ---

6 THE COURT: You're talking about what the
7 victim said that -- what you're charged with doing?
8 You're not talking about -- a third person. In other
9 words, there's not a third person, you're just denying it
10 was you, so there had to be a third person; is that
11 right?

12 MR. TEMPLE: I don't quite understand.

13 THE COURT: Well, you said that there was
14 another person involved, and she's telling me that
15 there's only one profile in the D.N.A. What I'm
16 understanding you to say is that your position is that
17 the victim's allegations of what the perpetrator did,
18 you're denying those allegations, so there had to be a
19 third person.

20 I'm just trying to understand your argument so I can
21 rule. You don't have any evidence of a third person.
22 You're just saying it wasn't you, so there had to be
23 somebody else, right?

24 MR. TEMPLE: Well, no. I'm saying that -- I'm
25 saying that there was more than the -- the D.N.A. test

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

11

1 clearly state that there was more than three people
2 involved and that there was a mixture of D.N.A. between
3 two other parties that excluded the victim.

4 THE COURT: All right. And you're telling me
5 that there is no mixture?

6 MS. ADAMS: Your Honor, if I may, I think he's
7 confused. For the semen from the sexual assault kit,
8 there was only one individual. And that was the match,
9 one in three hundred and thirty trillion, to Mr. Temple.
10 What he's referring to, there was a piece of clothing.
11 There was a hood found in the victim's car that had been
12 abandoned, and we tested that for D.N.A. And the
13 swabbings of that hood, that doesn't even belong to the
14 victim that was found in her car, had a mixture of at
15 least three individuals.

16 THE COURT: Okay. Is that what you're talking
17 about Mr. Temple?

18 MS. ADAMS: So he's talking about different
19 items, not the actual rape kit.

20 THE COURT: Okay. Anything else on this issue?

21 MR. TEMPLE: I'm not quite clear on this issue,
22 Your Honor. It's not quite clear because the D.N.A. test
23 shows otherwise.

24 THE COURT: Okay. All right. What I'm going
25 to do is I'm going to grant your motion. I don't find

1 that based upon -- now, obviously things change based
2 upon what I hear at trial, and so I won't foreclose that.
3 But based upon what the State's telling me today, there's
4 only one D.N.A., there's only one profile. And so I'll
5 grant your motion regarding specific instance of the
6 victim's sexual conduct, reputation, et cetera. I don't
7 think that has anything to do with this, especially the
8 -- anything that may have occurred the day before. So
9 what I'm telling you is, Mr. Temple, you can't get into
10 that evidence in your questions.

11 All right. And that's pretty clear-cut unless
12 there's some -- the only reason it wouldn't be clear-cut
13 is if you had a D.N.A. sample that came back -- and I'm
14 talking about the D.N.A. from the profile kit, not any
15 other items that might have been found -- that might have
16 a mixture of two or three D.N.A. That would be a
17 different story. Obviously, there isn't anything. So
18 I'm going to grant your motion on that. Both sides are
19 prohibited from asking ---

20 MR. TEMPLE: Your Honor?

21 THE COURT: Yeah. Hold on.

22 MR. TEMPLE: I'm sorry. I'm sorry.

23 THE COURT: Let me finish what I'm going to
24 tell you, and then I'll let you talk. Both sides are
25 prohibited from asking any questions regarding the

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

13

1 victim's sexual conduct, reputation or any other
2 questions in that regard or in that genre.

3 All right. Yes, sir?

4 MR. TEMPLE: Am I allowed to object to your
5 order? Because I think it's -- I think it's prejudice --
6 it's prejudice to my case, my whole case.

7 THE COURT: You can -- well, obviously, on an
8 appeal, I feel certain that you're going to object to my
9 order. That's what every lawyer does that doesn't agree
10 with me. But you can object. I mean, we're doing this
11 on the record.

12 Here's the problem, Mr. Temple. And we're going to
13 get into this in the end. The problem is you're
14 representing yourself. I have to hold you to the same
15 standards I would hold any lawyer. In other words,
16 you're presumed to know the rules of evidence. You're
17 presumed to understand that when I issue a ruling from
18 the bench -- and I'm going to have a bunch of them.
19 You're presumed to understand that, quite frankly, inside
20 these four walls, what I say goes. And that's just the
21 way it is.

22 MR. TEMPLE: Okay.

23 THE COURT: So you know, you need to understand
24 that. But, yeah, you're protected. All of this is on
25 the record. At some point, the Court of Appeals, I'm

1 sure, will take this up and determine whether or not I
2 ruled correctly. So, yeah.

3 All right. What's your second motion of third-party
4 guilt?

5 MS. SIMMONS: Yes, Your Honor. We filed a
6 motion in limine yesterday regarding Defense introduction
7 of third-party guilt. This motion was filed out of an
8 abundance of caution. We have not received any evidence
9 from Mr. Temple that he plans to introduce third-party
10 guilt in this matter. However, we wanted to make sure
11 that he is on notice that the standard from *State v.*
12 *Gregory*, 198 S.C. 98, is that evidence offered by the
13 Defendant about the commission of a crime by another is
14 limited to facts consistent -- inconsistent with his own
15 guilt and which raise a reasonable inference as to his
16 innocence. Evidence that casts merely a bare suspicion
17 on another party is not enough.

18 And he -- the burden is on him to establish a train
19 of facts or circumstances that will point out another
20 person as a guilty party. Unless Mr. Temple can meet the
21 burden of that train of facts and circumstances pointing
22 a third party, we would ask for an order from this Court
23 precluding him from introducing third-party guilt that
24 will merely cast suspicion on another party.

25 THE COURT: Okay. All right. Mr. Temple, what

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

15

1 she's doing -- this happens in a lot of cases. And it's
2 up to me to have to determine whether you've met your
3 burden. Do you intend to introduce any facts that would
4 point the finger, in other words, at another party? In
5 other words, someone else as the person that did this.
6 Do you have any facts that would intimate that would be
7 true?

8 MR. TEMPLE: Well, I have -- there is evidence
9 that there was -- well, like I say, from D.N.A. tests,
10 that there was more than two participants in this alleged
11 -- allegation of criminal sexual conduct. I think that
12 this information, these facts that -- or scientific
13 discovery is relevant to the case and should not be
14 excluded. Those are the only issues that I intend to
15 present.

16 THE COURT: Okay. So you intend -- I mean,
17 look, my ruling wouldn't prohibit you from asking a SLED
18 D.N.A. person or a police officer, was there other D.N.A.
19 found on a hat in your car? That's not the issue. The
20 issue is are you going to stand up and say, I didn't do
21 this, he did it?

22 MR. TEMPLE: Oh, no, sir.

23 THE COURT: All right. So you don't have
24 anybody else that you are going to take the position --
25 you're not going to take the position that there is a

1 specific person that you know of that did this?

2 MR. TEMPLE: No, sir.

3 THE COURT: All right. That's fine. I'm not
4 going to -- I mean, I'll have to make the decisions on
5 the fly about whether or not your questions are relevant
6 when you ask them, but I'm going to allow you the same
7 latitude that I would allow a lawyer under cross-
8 examination. Okay.

9 All right. Any other matters from the State?

10 MS. SIMMONS: Not at this time, Your Honor.

11 THE COURT: Okay.

12 All right. Well, let's go through this list. All
13 right. Mr. Temple, the first motion I've got was your
14 motion to suppress the sexual transmitted disease testing
15 order issued by Judge McIntosh.

16 MR. TEMPLE: The first -- that was the first
17 that you got?

18 THE COURT: Well, that's not the -- I'm not
19 talking about -- that's the first thing I'm going to take
20 up. I've got them all here. I've got -- let me just
21 tell you what I've got. I've got that motion. I've got
22 a suppression of the lineup, a search warrant
23 suppression, an arrest warrant suppression, a request for
24 an injunction or a declaratory judgment against the jail,
25 a motion to suppress D.N.A. testing conducted pursuant to

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

17

1 my Schmerber order, a motion to dismiss the indictments
2 and a motion to compel discovery. That's what I have.
3 And I understand you may have three more. But let's
4 start with the motion to suppress the S.T.D. order
5 because I'm really going linearly from the first order.

6 So Judge McIntosh apparently ordered testing for
7 sexually transmitted disease; is that right?

8 Is that right from the State?

9 MS. SIMMONS: Yes, Your Honor.

10 THE COURT: All right. Do you have any problem
11 with that order? You filed a motion that you want me to
12 suppress it, so now's the time for you to tell me why I
13 should.

14 MR. TEMPLE: Yes, Your Honor. With that
15 specific state statute § 16-3-740, it was in violation of
16 my Fourth, Fifth, and Fourteenth Amendment.

17 THE COURT: Why?

18 MR. TEMPLE: Why? Specifically, because the
19 order required a showing of probable cause in this case
20 that me, the alleged victim -- I mean, alleged assailant
21 committed a crime. Based upon the arrest warrants, they
22 was issued in violation of the Fourth Amendment. The
23 arrest warrants, all three arrest warrants. The arrest
24 warrants never connected me to any criminal activity.
25 They never connected the storage room that the victim

1 alleges she was -- the victim and the police allege that
2 she was taken out of; never connected that. Never
3 connected me to the storage room as well, which the
4 Fourth Amendment requires a connection.

5 The Fourth Amendment states, the right of the people
6 shall be secure in their persons, house, papers and
7 effects against unreasonable search and seizure, shall
8 not be violated and no warrant shall issue but upon
9 probable cause supported by oath or affirmation, and
10 particularly describing the place to be searched and the
11 person or things to be seized. I mean, it clearly states
12 -- and then you would go to case law on, I believe it's
13 Ward versus -- Ward ---

14 THE COURT: So basically you're telling me that
15 the order from Judge McIntosh that required S.T.D.
16 testing violated your Fourth Amendment right?

17 MR. TEMPLE: Well, a requirement to get the
18 test, get the order.

19 THE COURT: Right.

20 MR. TEMPLE: You must show probable cause.

21 THE COURT: Right.

22 MR. TEMPLE: Okay. It's also a requirement
23 that the State get a written consent from the victim or
24 the victim's guardian and -- what is another requirement
25 of it? Another requirement is -- probable cause --

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

19

1 there's at least one more requirement.

2 THE COURT: All right. Well, so basically
3 you're arguing the Fourth Amendment prevented it and
4 you're including in that the penumbra of the Sixth and
5 Tenth and everything else, right?

6 MR. TEMPLE: Well, also that the State did not
7 present me with a copy of the first D.N.A. test that was
8 taken which is a requirement to get another one. I mean,
9 if the State didn't satisfy those first ---

10 THE COURT: Well, this is the S.T.D. test.

11 MR. TEMPLE: § 16-3-740.

12 THE COURT: Right. The sexually transmitted
13 disease test is what we're talking about now, not the
14 D.N.A. That was what your motion was to suppress Judge
15 McIntosh -- he must have issued an order testing, I
16 assume, all parties for -- testing you for a sexually
17 transmitted disease. And I don't know what it showed at
18 this point.

19 MR. TEMPLE: Not only that, Your Honor, most of
20 all, though, I was not represented by counsel which is
21 also a requirement.

22 THE COURT: Okay.

23 Yes, ma'am, what's y'all's position on that?

24 MS. SIMMONS: Judge, back when we did the
25 S.T.D. testing order before Judge McIntosh, the Defendant

1 was given notice pursuant to the statute that the hearing
2 was going to occur. My notice to him specifically said,
3 if you do not have a lawyer or wish to get a lawyer,
4 please do so. This is when you're going to have this
5 hearing. He came to this hearing, he waived counsel
6 multiple times on the record. Judge McIntosh inquired to
7 him multiple times if he wanted an attorney present. I
8 called Sergeant Scott Arnold, the chief investigative
9 officer in this case, who offered sworn probable cause
10 testimony on the issue, and Judge Maddox issued -- Judge
11 McIntosh issued the S.T.D. testing order.

12 Personally, the State is not -- the State maintains
13 that that order is valid. However, we went later, out of
14 an abundance of caution, when Mr. Temple did have
15 counsel, and sought the *Schmerber* order. The sample that
16 was obtained from the *Schmerber* order with Judge
17 Macaulay, again, finding probable cause that this
18 Defendant had committed these acts, that is what we will
19 proceed on at trial. That is SLED sample six, and that
20 is the standard to which the rape kit collected from the
21 victim was compared.

22 THE COURT: So do you even need the first
23 S.T.D. testing?

24 MS. SIMMONS: Judge, we are not planning to
25 introduce any evidence of the Defendant's sexually

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

21

1 transmitted disease status at this trial.

2 THE COURT: Okay. All right. Then I'll grant
3 your motion to suppress it. It's got going to be needed.
4 But I mean, we need to deal with all this now so we're
5 not dealing with it next week.

6 MR. TEMPLE: Okay. Another issue too as well
7 as the motion to suppress that *Schmerber* hearing as well.
8 It was in violation.

9 THE COURT: All right. Well, let's go ahead
10 and deal with that now. You think it was in violation
11 for the same reason, the Fourth, Sixth, Tenth Amendment
12 and ---

13 MR. TEMPLE: Your Honor, any way I could have
14 -- I need to get to my work, paperwork, a little better
15 than what I am.

16 THE COURT: No. You can sit down. Sit down.
17 You don't have to stand up. I mean, like I said,
18 normally anybody that speaks -- and next week we're going
19 to have to deal with that. We're going to talk about
20 what we're going to do to keep it from being a circus at
21 the end of this, but we've got to -- I'll let you sit
22 this time. Most of the time, anybody that speaks has to
23 stand up. But you're all right now.

24 All right. What about *Schmerber*?

25 MR. TEMPLE: The *Schmerber* hearing. Well, like

1 I said, the first D.N.A. test, § 16-3-740 was not
2 satisfied. And at that time, when the *Schmerber* hearing
3 came around, you gave me Mr. Tavernier here as my lawyer.
4 Before me and Mr. Tavernier had even gone to court in
5 reference to the *Schmerber* hearing, I faxed Mr. Tavernier
6 here ---

7 THE COURT: Mr. Tavernier. Tavernier. Just
8 for the record.

9 MR. TEMPLE: Mr. Tavernier.

10 THE COURT: Yeah.

11 MR. TEMPLE: --- information. I tell him what
12 I want exactly done. I told him to put up a defense for
13 the *Schmerber* hearing. I also told him, advised him
14 about motioning to dismiss the indictments in reference
15 to ---

16 THE COURT: Right.

17 MR. TEMPLE: --- vindictive prosecution, speedy
18 trial, 1974, Sixth Amendment and based upon South
19 Carolina Rules of Criminal Procedures, Rule -- for the
20 indictments. My request was disregarded by the attorney.
21 And as you are well aware ---

22 THE COURT: Go ahead. I just want to be able
23 to see you when I sit back, so go ahead.

24 MR. TEMPLE: As you're well aware, I also filed
25 a motion to dismiss Mr. Tavernier for threats and

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

23

1 likewise.

2 THE COURT: Right.

3 MR. TEMPLE: So just from my evidence shows
4 that he was notified before he even went to the hearing
5 to put up a defense in reference to the D.N.A., which the
6 defense was there was no probable cause. Also, and the
7 State failed to satisfy the requirements of the first
8 D.N.A. testing. So it would be, I think, prejudice to
9 issue another order on behalf of the State when they
10 didn't satisfy the first requirement, two defenses, Your
11 Honor.

12 THE COURT: Okay. Yes, ma'am?

13 MS. SIMMONS: Judge, to give you a factual
14 background, the *Schmerber* motion in this case was
15 originally scheduled before Your Honor when the Defendant
16 had different counsel. He dismissed that counsel, and it
17 was subsequently rescheduled before Judge Macaulay in
18 Oconee.

19 After adequate notice to the defense, after you had
20 appointed Mr. Tavernier, Judge Macaulay conducted a
21 *Schmerber* hearing in Oconee on September 22nd of 2010.
22 At that time, he considered argument from the prosecution
23 as well as the previous sworn testimony that had
24 established probable cause. And he again ruled there was
25 probable cause to be found that the Defendant committed

1 this act and ruled there was clear indication material
2 evidence would be found as a result of obtaining this
3 Defendant's blood sample. Mr. Tavernier was acting as
4 the Defendant's counsel at the time. He conceded on the
5 record there was not a good faith argument to contest the
6 *Schmerber* motion.

7 The State has fully established the elements of
8 probable cause on more than one occasion. This Defendant
9 -- the officer testified this Defendant was picked out of
10 a photo lineup by the victim. He was picked out of a
11 photo lineup by the storage unit manager. He is the
12 renter of the storage unit, and we have ownership
13 documents linking him to this storage unit. Clearly, Mr.
14 Temple had the opportunity to have a *Schmerber* hearing.
15 He -- Judge Macaulay fully understood the facts in this
16 case when he found probable cause, and we believe the
17 order's valid.

18 THE COURT: Okay.

19 MR. TEMPLE: Your Honor, that does not satisfy
20 the requirements of probable cause when you're issuing a
21 warrant. I mean, the affidavit that was used to support
22 the warrant clearly did not state my name. It did not
23 state the storage unit that criminal activity was
24 allegedly taking place at. It did not connect me. The
25 affidavit, that's what is relevant, Your Honor. Any

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

25

1 outside information, according to the Supreme Court, is
2 irrelevant to the case, to the cause, to have probable
3 cause.

4 THE COURT: Do y'all have the affidavit with
5 you?

6 MS. SIMMONS: The warrants, Your Honor?

7 THE COURT: Well, yeah, and the -- whatever
8 he's talking about. The affidavit or the warrant, yeah.

9 MS. SIMMONS: Judge, I believe he's moved on to
10 arrest warrants now.

11 THE COURT: Well, yeah. But I don't want to do
12 that. I want to keep it straight. I'm going to be as
13 patient as I can possibly, in my heart, be with
14 everybody, and I'm going to keep it straight. So we're
15 talking about *Schmerber*, but you're talking about the
16 warrant. I just want to look at it.

17 MR. TEMPLE: Yeah.

18 MS. SIMMONS: Yes, Your Honor. I'll be happy
19 to pass that up.

20 MR. TEMPLE: Please do, Your Honor.

21 MS. SIMMONS: May I approach?

22 THE COURT: Yeah. Oh, yeah.

23 (WHEREUPON, Ms. Simmons handed up document to the
24 Court.)

25 MR. TEMPLE: Your Honor, I also have a relevant

1 case law.

2 THE COURT: You what?

3 MR. TEMPLE: A relevant case law.

4 THE COURT: All right. Hold on just a second.

5 Let me read it.

6 (Pause while the Court reviewed document.)

7 THE COURT: Okay. If you've got some case law,
8 hand it up.

9 MR. TEMPLE: I would like to present you with
10 *Illinois v. Gates*, and *Unger v. Texas* (phonic) as well,
11 but I didn't bring it.

12 THE COURT: All right. His issue is that the
13 warrant's not supported by probable cause. What's
14 y'all's position on that?

15 MS. SIMMONS: Judge, *Thompson v. State* -- of
16 course, we allege that the warrant is supported by
17 probable cause. An arrest warrant is issued on
18 information and belief. It need not set forth the source
19 of the information or the specific grounds of the belief.
20 And that's *Town of Mayesville v. Clamp*, 149 S.C. 346,
21 from 1929.

22 Further, once the Defendant's been indicted by the
23 Grand Jury, even if there's problems with the arrest
24 warrant, the General Sessions Court has jurisdiction over
25 this Defendant. And that *Thompson v. State*, 251 S.C.

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

27

1 593, from 1968.

2 THE COURT: Okay.

3 All right. Mr. Temple, here's the problem. And you
4 keep going back to the probable cause for the arrest, and
5 you seem to be hanging your hat on all of these
6 successive motions based upon the fact that you shouldn't
7 have been arrested in the first place, based upon the
8 fact that the warrants were issued based upon affidavits
9 that weren't sufficient under the Fourth, Sixth and Tenth
10 Amendment. Okay? I mean, that's what I'm hearing in all
11 these motions. You keep going back to that. The problem
12 is that at this point, while it'll be relevant on any
13 appeal if there's an appeal -- and if you're convicted,
14 you, of course, can appeal, and that could be one of your
15 issues. But you've had at least two judges other than me
16 who've been involved in this case that have found
17 probable cause.

18 Is that correct? At least.

19 MS. SIMMONS: Yes, Your Honor. Probable cause
20 was found by Judge McIntosh, Judge Macaulay. And he even
21 received a preliminary hearing when he was represented by
22 counsel, and probable cause was found and we were bound
23 over for Grand Jury.

24 THE COURT: Okay. So basically those issues
25 are what they are now and, again, will be an issue for an

1 appeal. So to the extent that the *Schmerber* hearing was
2 not based -- that the order resulting from the hearing
3 was not based on probable cause, I'm going to deny your
4 motion there.

5 MR. TEMPLE: Well, Your Honor, what about the
6 other issue? The issue with the attorney. I mean, even
7 if -- even if the State alleged that there was probable
8 cause, which there's clearly not -- I mean, according to
9 the case and the Fourth Amendment, there should have been
10 an establishment of a connection of me to the crime,
11 which the affidavit that you have in hand clearly does
12 not mention me or any criminal activity that connected me
13 to the storage unit. I mean, to -- it's clear. But I
14 understand. Okay, appeal. All right. Appeal.

15 THE COURT: No. I'm going to -- like I said,
16 I'm going to treat this -- I'm going to do it just the
17 way we always do it.

18 What's y'all's position on that?

19 MS. SIMMONS: Judge, there was sworn -- there
20 was argument by prosecution as well as prior sworn
21 testimony for probable cause before Judge McIntosh on the
22 issue of the *Schmerber*. I believe that he is misplacing
23 his argument on the probable cause of the arrest warrants
24 with the *Schmerber*.

25 THE COURT: Well, I think at this point he's

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

29

1 asking about the probable cause and the arrest warrant
2 too. So if you can just address that again for the
3 record because we need to keep it straight.

4 MS. SIMMONS: Of course, we contend that there
5 is probable cause for the arrest warrant. But once he
6 was indicted by the Grand Jury, any problems with the
7 arrest warrant, if they had existed, have been cured.
8 And that's *Thompson v. State*.

9 MR. TEMPLE: Your Honor, even if that's so, the
10 indictments that was issued, according to the South
11 Carolina Rules of Criminal Procedure, Rule -- let's see.
12 Right here. Rule 3, disposition of arrest warrants,
13 action on the warrant, within ninety days after receipt
14 of an arrest warrant from the Clerk of Court, the
15 solicitor shall take action on the warrant by preparing
16 an indictment. None of this was done within ninety days.
17 These indictments were issued on me ---

18 THE COURT: Okay. All right. We're going to
19 get to the indictments.

20 MR. TEMPLE: --- on the one hundred and
21 eleventh day.

22 THE COURT: All right. We're going to get to
23 the indictments. All right. All right. So what I'm
24 going to do is the *Schmerber*, I'm going to deny your
25 motion there.

1 Now let's go to the lineup. You've filed a motion
2 to suppress, I guess, the results of the lineup? What's
3 your position on that?

4 MR. TEMPLE: Motion to suppress what?

5 THE COURT: The lineup?

6 MR. TEMPLE: Well ...

7 THE COURT: You've got suppression of lineup.
8 I guess you mean you want to suppress the lineup and
9 anything that came from the lineup; is that correct?

10 MR. TEMPLE: Your Honor, you -- yeah. What I
11 want to show you was -- I can't even present my case
12 properly because of these restraints, Your Honor. But
13 the photo lineup that was taken of me, six photos, three
14 of the participants -- two of the participants in the
15 photo are of non -- well, me and another participant of
16 the photo are a darker shade black folks. So the victim
17 alleged in her affidavit it was a black male between a
18 certain amount of age. She didn't really give a -- she
19 didn't give a description besides just black male. Well,
20 according to the Supreme Court, a suspect is -- it's
21 proper that a suspect is aligned with suspects or
22 prospect suspects that meet similar requirements or look
23 similar to me.

24 In this case, like I said, it's four other people in
25 this photo lineup. One guy, he has a high top. The

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

31

1 other three guys, they also are a lighter shade. This
2 right here, according to the Supreme Court, it's -- it
3 draws out identification of someone. I had a --
4 according to this, to the Supreme Court, Your Honor, I
5 had basically a fifty/fifty chance. It was really
6 between me and two guys really instead of me and six
7 guys.

8 THE COURT: Okay. All right. That actually,
9 quite frankly, is a legitimate motion, so let's deal with
10 it.

11 Yes, ma'am?

12 MS. ADAMS: Your Honor, and we are prepared to
13 go forward with that. And we have the officer here that
14 got the photo lineup together, and we're ready to have
15 testimony.

16 THE COURT: All right. I've got to take a
17 five-minute break.

18 MS. ADAMS: Okay.

19 THE COURT: And then what we're going to do,
20 call the officer up, and I'm going to let you question
21 him, okay?

22 MS. ADAMS: And we have the victim here as
23 well, Your Honor.

24 THE COURT: Okay. We're going to deal with it,
25 and we're going to get through it today. I'll be right

State v. Dennis Temple 2010-GS-37-0886
Greg Reed - Direct Examination by Ms. Adams

32

1 back. Five minutes. Take a break.

2 (WHEREUPON, court stood at recess for a short
3 break.)

4 THE COURT: Thanks. Have a seat. Sorry about
5 that.

6 All right. Yes, ma'am. We're dealing with the
7 lineup now?

8 MS. ADAMS: Yes, sir, Your Honor.

9 THE COURT: Okay.

10 MS. ADAMS: The State calls Lieutenant Greg
11 Reed to the stand.

12 GREG REED,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MS. ADAMS:

16 Q. Lieutenant Reed, where are you employed?

17 A. Oconee County Sheriff's Office.

18 Q. And how long have you been employed there?

19 A. Twenty-five plus years.

20 Q. Did you have an occasion to conduct a photographic
21 display in this case?

22 A. Yes, I did.

23 Q. Approximately how long after the alleged crime was
24 committed was this display conducted?

25 A. Approximately five hours, I believe.

State v. Dennis Temple 2010-GS-37-0886
Greg Reed - Direct Examination by Ms. Adams

33

1 Q. Okay. Who did you show the photographic display to?

2 A. To the victim, Catherine.

3 Q. All right. Was anyone else present when you showed
4 her this display?

5 A. Yes, there was. There was Vickie Bottom who is a
6 victim's advocate with our department. Also, a rape
7 crisis counselor and a uniform officer, Danielson.

8 Q. Okay. Did they participate or say anything during
9 this time?

10 A. No, they didn't.

11 Q. Okay. Where were you when you showed Catherine that
12 photo display?

13 A. At the Oconee Medical Center.

14 Q. What, if anything, did you tell her before you
15 showed her this display?

16 A. To make it short, I just told her she needed to be
17 one hundred percent positive of any individual that she
18 may or may not point out on the display that I showed
19 her.

20 Q. And did you explain the process, obviously, to her
21 what you were there to do and what you wanted her to do?

22 A. Yes, I did.

23 Q. Okay. How many photos were in that display?

24 A. Six.

25 Q. Okay. And how were they presented to her, one-by-

1 one or all together at the same time?

2 A. They were all placed on a sheet of paper.

3 Q. Okay. Can you please describe the photos that you
4 chose to put in that display?

5 A. They were taken from the Sheriff's Department
6 database using the suspect, Dennis Temple, as the suspect
7 individual. I asked the computer to pick out similar
8 individuals, and which it furnished me with a database at
9 that time. And I picked five other individuals that I
10 believed to be of similar age, all of the same race, with
11 similar characteristics.

12 Q. Okay. So you actually get those photos from a
13 database?

14 A. That's correct.

15 Q. All right. Now, are they -- describe the photos.
16 Like are they face-to-face? Are they black and white or
17 are they color?

18 A. No. They're all full facial photographs.

19 Q. Okay. And they're black and white, correct?

20 A. That's correct.

21 Q. Okay. How about what each of the individuals is
22 wearing? Is that similar?

23 A. Yes. They're all draped with a black cloth, so it's
24 pretty much an upper shoulder and facial shot.

25 Q. Okay. So no really one person would stand out for

State v. Dennis Temple 2010-GS-37-0886
Greg Reed - Direct Examination by Ms. Adams

35

1 clothing?

2 A. That's correct.

3 Q. All right. Describe the individuals in there in the
4 sense of physical description like age, height, weight.

5 A. They're all of similar age. Of course, the height
6 -- the height wouldn't really matter because you're only
7 getting the shoulder and above shot. But all are
8 similar. Like I said, similar age, facial
9 characteristics, skin tone ...

10 Q. Build?

11 A. Build, hair, just -- I make it as close as the
12 database will allow me to.

13 Q. Okay. When you showed this to Catherine, did you
14 try to influence her or suggest to her in any way who to
15 pick out of those photos?

16 A. Absolutely not.

17 Q. Did Catherine select a photo when you showed it to
18 her?

19 A. She did.

20 Q. Okay. About how long did it take her to pick out
21 that picture?

22 A. Actually, once I presented her with the display, she
23 looked at it. And within three seconds, she said, I see
24 him. But I'm going to do what you suggested and really
25 take my time. Nine seconds later, she produced and said,

1 that's him right here. And she pointed to Dennis
2 Temple's photograph.

3 Q. And once she picked out immediately that individual,
4 what did you do?

5 A. I had her to circle the picture, which I had done
6 explained to her. She circled it, date and time and
7 initial.

8 Q. Okay. And whose photo did Catherine select?

9 A. Dennis Temple.

10 Q. And how certain was she of this identification?

11 A. One hundred percent.

12 (WHEREUPON, Court's Exhibit Number 1 was marked for
13 identification only.)

14 Q. Okay. Now, Lieutenant, I'm going to show you what
15 we've marked ...

16 MS. ADAMS: Judge, I've marked it as a Court's
17 exhibit for now.

18 THE COURT: All right. That's fine.

19 Q. ... Court's Exhibit 1. Can you please identify this
20 for the Judge?

21 A. Yes, Your Honor. This is the photographic lineup
22 that was presented to Catherine that night at Oconee
23 Memorial.

24 Q. And that is actually the original one?

25 A. That is the original.

State v. Dennis Temple 2010-GS-37-0886
Greg Reed - Cross-Examination by Mr. Temple

37

1 Q. Not a copy?

2 A. No, sir. That is the original.

3 Q. Okay. And this is where Catherine circled the
4 Defendant. And whose initials are those?

5 A. Well, this is actually hers, her signature, the date
6 and time. And then down here at the bottom, I wrote,
7 twelve seconds, and initialed it.

8 Q. Okay. But that was the total time even though she
9 immediately picked it out?

10 A. That's correct. That's the total time.

11 Q. And obviously, Lieutenant Reed, that photographic
12 display has not been altered or tampered with in any way
13 since Catherine picked the Defendant out of that lineup
14 immediately; is that right?

15 A. No, it has not.

16 MS. ADAMS: Your Honor, I have no further
17 questions for Lieutenant Reed.

18 THE COURT: All right. Yes, sir, do you have
19 any questions?

20 MR. TEMPLE: Yes.

21 CROSS-EXAMINATION

22 BY MR. TEMPLE:

23 Q. I would like to ask Mr. Reed how many people would
24 you say that are -- how many black men would you say that
25 are in your database?

1 A. How many black individuals, male individuals, are in
2 the database?

3 Q. Yes. Yes, sir.

4 A. It depends on what characteristics you're looking
5 for. If I was to use another individual with different
6 characteristics than you, there may be seven or eight
7 hundred. Using yours, I'm not sure without looking at
8 the actual -- actually going back to the database and
9 looking.

10 Q. Okay. Would you say that there is more than twelve
11 light skinned, black males in your database?

12 A. I would feel that there would be. Again, I would
13 have to actually look at the database again to see.

14 Q. Are you aware that it's different shades of black
15 males?

16 A. Yes, I am.

17 Q. You are? And you're saying that, yes, there's more
18 than twelve light-skinned black males in your database?

19 A. I would feel like that there would be. Again, I
20 would have to actually look at the database and see.

21 Q. So you're more safely to say yes or more safely to
22 say no to this question?

23 A. Again, I would I have to ---

24 Q. Would you say yes?

25 A. I would have to look at the database. You're asking

State v. Dennis Temple 2010-GS-37-0886
Greg Reed - Cross-Examination by Mr. Temple

39

1 me to make a guess is what you're asking me to do.

2 Q. Well, during your -- you've got twenty-five years
3 experience in law enforcement. I mean, that's a lot of
4 experience. I mean, you just ain't came across ---

5 A. If you want me to guess, I'd say yes.

6 Q Okay. Well, let me ask you this. How many black
7 males would you say -- dark-skinned black males that are
8 in your database? Twenty-five years of experience, now.

9 A. I would say there would -- black individuals in our
10 database, that would be in the hundreds I would imagine.

11 Q. All right. So have you done this procedure before?

12 A. Yes, I have.

13 Q. More than ten times?

14 A. Yes, sir.

15 Q. Are you aware that in the photo array lineup that
16 you put together of me as a suspect, you included me with
17 only one dark-skinned male and four other light-skinned
18 males?

19 A. I looked at the lineup very well after I put it
20 together. I printed it out in black and white, and I
21 don't think there's a whole lot of difference in the skin
22 tone.

23 Q. You say you wasn't paying attention?

24 A. No, sir. I'm paying attention.

25 THE COURT: He said there was no difference in

State v. Dennis Temple 2010-GS-37-0886
Greg Reed - Cross-Examination by Mr. Temple

40

1 the skin tone.

2 Q. No difference in the skin tone?

3 A. I said very little difference in the skin tone.

4 Q. Well, are you aware that one of the participants in
5 the photo lineup had a high-cut hair like a box fade,
6 which the primary suspect did not have?

7 A. It is impossible to go through in any database and
8 pick out six individuals that are identical. It wouldn't
9 be much use in doing a lineup.

10 Q. But you clearly had -- there was clearly five
11 individuals that had short hair, but one individual had
12 exceedingly longer hair. This right here itself.

13 A. I don't think any of the individuals had exceedingly
14 long hair.

15 MR. TEMPLE: Your Honor, can we show Mr. Reed
16 the photo lineup, please?

17 THE COURT: Sure.

18 MS. ADAMS: I'll get it for you.

19 THE COURT: Yeah. And if you've got one in
20 particular, point it out to him so that he can ...

21 Q. It would be the bottom row on the left, all the way
22 to the left, and the right. The left and the right at
23 the bottom row.

24 MS. ADAMS: So the two next to you?

25 MR. TEMPLE: Right.

State v. Dennis Temple 2010-GS-37-0886
Greg Reed - Cross-Examination by Mr. Temple

41

1 Q. Dissimilar features. Well, what about the skin
2 tone, Mr. Reed, with the two photo suspects in the
3 middle? You don't notice a difference between the skin
4 tone between those two and the other four individuals?

5 A. If there is a difference in the skin tone, it would
6 be -- depending on how you would count from left to
7 right, it would be picture number three and picture
8 number six. More than anything, it may be the flash
9 that's used on the camera or how the bounce of the light
10 is in the room when it's taken.

11 As far as the hair, you said a substantial
12 difference or how was it you put it?

13 Q. A difference. Dissimilar, something ---

14 A. Now, you said there was a great difference in the
15 length of hair. The ---

16 Q. A dissimilar.

17 A. The male picture as number six has -- what did you
18 call it? A high cut what?

19 Q. It's called a high top.

20 A. A high top?

21 Q. A high top.

22 A. It looks like his hair may be, I don't know, maybe a
23 half inch long.

24 Q. A half an inch?

25 A. That's what it looks like to me.

1 Q. You say that's the one on the right?

2 A. Number six, if you're counting left to right.

3 Q. Okay. What about the one, the one, the number
4 fourth one if you count from left to right? Wouldn't you
5 also say his hair's a little longer than the primary
6 suspect in that picture?

7 A. Yes. I would say it's slightly longer, yes.

8 Q. Yes, I would say that too.

9 MR. TEMPLE: All right. Your Honor, that's all
10 I have.

11 THE COURT: All right. Anything on redirect?

12 MS. ADAMS: No, sir, Your Honor.

13 THE COURT: All right. Thank you, sir. You
14 can step down. Appreciate it.

15 Call your next witness.

16 MS. ADAMS: Your Honor, the State calls
17 Catherine McGough.

18 CATHERINE MCGOUGH,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. ADAMS:

22 Q. Catherine, you are the victim in this case, correct?

23 A. I am.

24 Q. How old are you?

25 A. I'm twenty.

State v. Dennis Temple 2010-GS-37-0886
Catherine McGough - Direct Examination by Ms. Adams

43

1 Q. Okay. Did Detective Reed show you a photographic
2 lineup on May the 10th of this year?

3 A. He did.

4 Q. Okay. And where were you when he showed you that
5 lineup?

6 A. I was at the Oconee Hospital.

7 Q. Okay. Do you recall or have any idea about what
8 time that was?

9 A. It was around five o'clock.

10 Q. Okay. Catherine, do you remember the time frame
11 after you were found by the police in the Defendant's
12 storage unit to when you saw that?

13 A. It was about four hours.

14 Q. Okay. What, if anything, did Detective Reed tell
15 you before you looked at those photos?

16 A. To be sure of the person I pick out and to take my
17 time to make sure.

18 Q. Okay. Did anybody else in the room that was present
19 in the hospital when you looked at it participate at all,
20 or was it just you and Greg Reed?

21 A. No one else participated.

22 Q. Okay. And you looked at these six photos that we
23 have just shown, right?

24 A. Yes, ma'am.

25 Q. Okay. How did Greg Reed show you those photos? Did

1 he hand them to you all at once or one-by-one?

2 A. On one sheet.

3 Q. Okay. When was the first time you ever saw the
4 Defendant?

5 A. On May 9th on my way into the storage unit. It was
6 around four-thirty.

7 Q. Okay. And we're talking about All-Safe Storage Unit
8 in Seneca, right?

9 A. Yes, ma'am.

10 Q. Okay. Do you remember what time that was that you
11 got to your storage unit?

12 A. It was about four-thirty.

13 Q. Okay. So it was four-thirty in the afternoon, so it
14 was broad daylight, right?

15 A. Yes, ma'am.

16 Q. Okay. When did you first notice the Defendant while
17 you were at the storage unit?

18 A. When I was coming into the storage, I noticed he was
19 leaving.

20 Q. Okay. So he was on foot?

21 A. Yes.

22 Q. Okay. What made you notice him?

23 A. I thought it was strange that someone would be
24 walking around without any possessions and without a car
25 in the storage unit.

State v. Dennis Temple 2010-GS-37-0886
Catherine McGough - Direct Examination by Ms. Adams

45

1 Q. Okay. Did he say anything to you, or did you have
2 any contact with him at this time?

3 A. No, ma'am.

4 Q. Okay. When did you see him again?

5 A. He approached me at my storage unit a few minutes
6 later.

7 Q. Did he say anything to you at this time?

8 A. He greeted me and we had a conversation.

9 Q. Okay. How long did that conversation last?

10 A. A few minutes.

11 Q. So were you face-to-face and able to look at him
12 during this conversation?

13 A. We were a few feet apart, yes.

14 Q. Okay. What did you observe about him while you were
15 talking this first time?

16 A. I noticed his face and his voice and what he was
17 wearing.

18 Q. And all -- again, Catherine this is all outside at
19 about four-thirty in the afternoon with plenty of light,
20 correct?

21 A. Yes, ma'am.

22 Q. All right. When he first attacked you, Catherine,
23 just a few minutes later after this first initial meeting
24 and conversation took place, how close was he to you
25 during that attack?

State v. Dennis Temple 2010-GS-37-0886
Catherine McGough - Direct Examination by Ms. Adams

46

1 A. His face was inches away from mine.

2 Q. Okay. And during that attack and your struggle,
3 were you able to get a good look at him?

4 A. Yes, ma'am. A very good look.

5 Q. Okay. Once he got you from your storage unit to his
6 storage unit, were you also able to look at him?

7 A. Yes. There was enough light in the storage unit to
8 see him.

9 Q. So when you first were forced into his unit, it was
10 still broad daylight and there was plenty of light,
11 correct?

12 A. Yes, ma'am.

13 Q. Okay. And when you first found yourself even in his
14 storage unit, there was plenty of light coming in,
15 correct? In other words, you think that the door to his
16 unit was even still open, right?

17 A. Yes. I got a very good look again.

18 Q. Okay. Now, Catherine, during the actual sexual
19 assault, were you also able to get a good look at him?

20 A. Yes, ma'am.

21 Q. Okay. How close was he to you during that?

22 A. At points, inches away.

23 Q. Was there light in the unit at that time?

24 A. Yes.

25 Q. Now, was the door to the unit closed at that time?

State v. Dennis Temple 2010-GS-37-0886
Catherine McGough - Direct Examination by Ms. Adams

47

1 A. Yes.

2 Q. But was it still daylight outside?

3 A. Yes. There was enough light to see well.

4 Q. So the light was still coming in through the closed
5 door?

6 A. Yes.

7 Q. Okay. Now, Catherine, you were locked in there for
8 approximately nine hours we know. During those nine
9 hours, how much of that were you -- how much time were
10 you able to get a good look at the Defendant?

11 A. At least an hour.

12 Q. Okay. When you looked at this lineup, Catherine --
13 I want to show it to you, Court's Exhibit Number 1 -- is
14 this the lineup that Lieutenant Reed showed you?

15 A. It is.

16 Q. Okay. And is that your signature?

17 A. Yes, it is.

18 Q. Okay. And is that the person that you picked out?

19 A. Yes, it is.

20 Q. Okay. Is the person that you picked out in this
21 lineup in this courtroom right now?

22 A. Yes, it is.

23 Q. And where is he?

24 A. He's sitting there.

25 Q. Okay. So it is the Defendant that you're referring

State v. Dennis Temple 2010-GS-37-0886
Catherine McGough - Cross-Examination by Mr. Temple

48

1 to, right? Mr. Temple?

2 A. Yes.

3 Q. Catherine, how sure are you that that is the man who
4 attacked you that day?

5 A. I am one hundred percent positive.

6 Q. Catherine, I don't have any other questions right
7 now. Please answer anything the Defendant may have,
8 okay?

9 THE COURT: All right. Yes, sir. Any
10 questions?

11 MR. TEMPLE: Yes.

12 CROSS-EXAMINATION

13 BY MR. TEMPLE:

14 Q. Ms. McGough, is it true that -- is it true or is it
15 not true that the initial contact that you allege, wasn't
16 that -- wasn't it twenty to forty feet you say you first
17 -- y'all was apart? You and the assailant?

18 A. We were feet away.

19 Q. Forty to -- twenty to forty feet?

20 A. No. Conversation distance. A few feet.

21 Q. And the focus of the conversation, was it ---

22 A. It was about shoe -- you were selling shoes.

23 Q. Okay. And was you -- is true or is it not true that
24 you was nervous because you were suspicious or something?

25 A. I was nervous because I was alone in a storage unit

State v. Dennis Temple 2010-GS-37-0886
Catherline McGough - Cross-Examination by Mr. Temple

49

1 and a man was approaching me.

2 Q. And you was -- you allege that you and the Defendant
3 was -- the Defendant had pushed you into your storage
4 shed. Was you wearing any corrective lenses?

5 A. I was wearing glasses, yes.

6 Q. And what time did your corrective lenses became
7 misplaced off your ---

8 A. They came off when you hit me in the face.

9 Q. In the face? What are corrective lenses for?

10 A. To improve your vision.

11 Q. To improve your vision? So without these corrective
12 lenses that improve your vision -- but you stated that --
13 how could you have a clear look at me if you had no --
14 well, did you have your corrective lenses on during the
15 time that you was allegedly in the storage shed with the
16 assailant?

17 A. I did not have my glasses on when you were raping
18 me.

19 Q. So how could you have ---

20 A. I don't need glasses to see someone who's inches
21 away from me.

22 MR. TEMPLE: That's all at this time, Your
23 Honor.

24 THE COURT: Thank you.

25 Anything?

State v. Dennis Temple 2010-GS-37-0886
Catherine McGough - Redirect Examination by Ms. Adams

50

1 MS. ADAMS: Your Honor ---

2 REDIRECT EXAMINATION

3 BY MS. ADAMS:

4 Q. Catherine, you only wear glasses to drive?

5 A. I wear glasses when I'm driving or sitting in the
6 back of class.

7 Q. Okay. Because right now you don't have any glasses
8 on, right?

9 A. No, ma'am.

10 Q. Okay. So it's mainly just for distances and to make
11 sure you can see signs when you drive, right?

12 A. Yes.

13 Q. Thank you.

14 THE COURT: Thank you, ma'am. You can step
15 down.

16 Anything else from the State?

17 MS. ADAMS: No, sir.

18 THE COURT: Mr. Temple, anybody you want to
19 call regarding the lineup?

20 MR. TEMPLE: No, sir. That would be it.

21 THE COURT: All right.

22 All right. In regards to the motion to suppress the
23 lineup, I'm going to deny that motion and allow its
24 introduction next week.

25 All right. The next motion was to suppress the

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

51

1 search warrant. Mr. Temple, what's your position on
2 that? I assume it's the Fourth, Sixth, Tenth Amendment,
3 the same sort of thing, the search warrant. I don't want
4 to put words in your mouth. I just need to know for the
5 record what you're ---

6 MR. TEMPLE: So have we did that arrest warrant
7 yet?

8 THE COURT: No. We're doing the -- well, we
9 can start with the arrest warrant. Let's do the arrest
10 warrant first. What's your position on suppressing the
11 arrest warrant?

12 MR. TEMPLE: Well, Your Honor, the same
13 position that I had -- it's in violation of my Fourth
14 Amendment right. There is -- the Fourth Amendment
15 requires a connection between the criminal activity and
16 the storage unit, criminal activity between the Defendant
17 as well, and a connection between the Defendant and the
18 storage unit. There was no connection -- there was none
19 of these three was in the affidavit that was issued in
20 support of the warrant.

21 THE COURT: All right. Yes, ma'am?

22 MS. SIMMONS: Judge, you have copies of the
23 arrest warrant before you. I believe they set forth
24 specific and certain grounds, enough to establish
25 probable cause that this Defendant be arrested. However,

1 as I will point out again, *Thompson v. State*, 259 S.C.
2 593, once the Defendant was indicted by the Grand Jury,
3 any problems, if any, with the arrest warrant were cured.

4 MR. TEMPLE: So are we on the indictments now,
5 Your Honor?

6 THE COURT: No. We're still on the arrest
7 warrant. I've got to rule on that. All right. I'm
8 going to deny your motion on the arrest warrant based
9 upon South Carolina case law and also, quite frankly, a
10 long-standing line of cases regarding probable cause. So
11 I'll deny your motion on the suppression of the arrest
12 warrant.

13 We're on the search warrant now. So why do you want
14 me to suppress the search warrant?

15 MR. TEMPLE: The search warrants -- like I say
16 -- well, the Fourth Amendment requires a connection to
17 the individual and the -- or either the place to be
18 searched. Relevant case law, in 2005 there was a -- the
19 defendant [sic] in this case, Scott Arnold, a police
20 officer who initially went to the magistrate to get the
21 issuance of the warrant, took bits and pieces of the
22 victim's statement and the first officer on the scene
23 verbal statement. He took bits and pieces of the alleged
24 victim's statement and the officer's statement and made
25 an affidavit. The -- it says, as the United States of

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

53

1 Appeal [sic] has indicated in *United States v. Collins*
2 4th volume, F.3d, page twelve hundred, 1204, Third
3 Circuit, 1993, when a District Court in reviewing a
4 magistrate's determination of probable cause based upon
5 probable cause ruling solely of the facts contained from
6 the affidavit, we exercise preliminary review of the
7 District Court decision.

8 The basis of -- in contrast, the reviewing court may
9 not conduct a new review of the magistrate judge's
10 determination of probable cause, *Collins* versus -- it
11 says, both we and the District Court exercise only a
12 difference -- a deferential review of the initial
13 probable cause determination made by the magistrate. The
14 magistrate's determination of probable cause should be
15 paid great deference by reviewing courts. A reviewing
16 court must determine that the magistrate judge had a
17 substantial basis for concluding probable cause existed
18 in upholding the warrant.

19 The main part of this, Your Honor, is what I want to
20 say is this right here. The supporting affidavit must be
21 read in its entirety and in a common sense and technical
22 manner. Statements in the affidavit may not be read in
23 isolation. The affidavit must be read as a whole.
24 Here's -- I mean, the officer's affidavit that was used
25 to get the warrant. The search warrant had bits and

1 pieces, and it did not meet the magistrate's requirements
2 for review the -- for making the determination. It says,
3 the test of the issuing magistrate is to make a practical
4 common sense decision whether given all the circumstances
5 set forth in the affidavit for him, there is a fair
6 probability that contraband or evidence of a crime will
7 be found in a particular place. I mean ...

8 THE COURT: Mr. Temple, you just read me a case
9 that doesn't support your position and actually supports
10 the State's position, which is that I'm to be deferential
11 to the issuing officer and their determination about
12 whether there was probable cause.

13 MR. TEMPLE: Well, this is -- Your Honor, it
14 says that the magistrate must have all the information
15 set forth before him before he can make a determination.
16 See, the officer's report never came out until like the
17 27th.

18 THE COURT: Okay. All right. What's y'all's
19 position on the search warrant?

20 MS. SIMMONS: Your Honor, as Mr. Temple just
21 said, that you may not conduct a review of the probable
22 cause determination by a magistrate absent certain facts
23 being set forth. In *State v. Patton*, 322 S.C. 408, he
24 must first -- the Defendant must first articulate
25 specific factual and legal grounds to support his

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

55

1 contention that the search warrant should be suppressed.
2 And you are only required to grant a suppression hearing
3 if he states definite, specific and detailed facts
4 questioning the validity of the search warrant. The test
5 by case law on the veracity of a search warrant, you are
6 looking at deliberate falsehoods and reckless disregard
7 for the truth or allegedly false or reckless statements
8 by the officer.

9 Your Honor, I'll be happy to pass up as Court's
10 exhibits two certified copies of the search warrants in
11 question. I do not believe that Mr. Temple has
12 established any deliberate falsehoods in them.

13 THE COURT: All right. You can pass them up.
14 I'll look at them.

15 (WHEREUPON, Court's Exhibit Number 2 and 3 were
16 marked for identification only.)

17 THE COURT: Yes, sir, anything else?

18 MR. TEMPLE: Your Honor, that's -- well, yes,
19 there is. My main question was how could the magistrate
20 make a determination when he did not have all the
21 information set forth?

22 THE COURT: Tell me what information you think
23 he lacked?

24 MR. TEMPLE: Well, he didn't have all the
25 facts, Your Honor. I mean, he didn't have ---

1 THE COURT: But, I mean, I think your burden is
2 what fact didn't he have.

3 MR. TEMPLE: The fact that I was never
4 mentioned in the crime. I was never ---

5 THE COURT: Wasn't the search warrant for the
6 storage unit?

7 MR. TEMPLE: Yes, sir.

8 MS. SIMMONS: Yes, Your Honor. The search
9 warrant was for the storage unit, and the storage unit
10 was unit [REDACTED] where the victim was found and recounted
11 she'd been raped and held against her will.

12 THE COURT: And did you own that search warrant
13 or did you rent that search warrant? That storage unit,
14 excuse me.

15 MR. TEMPLE: That storage unit was not rented
16 in my name.

17 MS. SIMMONS: Your Honor, the storage unit
18 manager picked him out of a photographic display. He
19 signed the storage unit rental documents, Dennis Temple.

20 THE COURT: Did you?

21 MR. TEMPLE: No.

22 THE COURT: Okay. All right. Well, on the
23 search warrant -- and I understand a lot of these motions
24 to suppress are based upon sort of general grounds. And
25 I'm going to assume for the purposes of the ruling that

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

57

1 you're objecting to the Fourth, Sixth and Tenth Amendment
2 and also the case law requiring there to be some
3 connection and some connection with the Defendant and
4 also some determination by the issuing officer that there
5 is probable cause. So I'm going to deny your motion on
6 the search warrant.

7 We dealt with *Schmerber*, I think, earlier. Now
8 we're sort of getting to the meat of these things. I'm
9 going to skip the injunction for declaratory judgment
10 against the jail. I'm going to do that. Let's get to
11 the motion to dismiss the indictments which is, quite
12 frankly, the underpinning of the case. What's your
13 position on why I should dismiss the indictments?

14 MR. TEMPLE: My main position there, Your
15 Honor, is that the Fifth Amendment states clearly that no
16 person shall be -- no person shall -- relevant part, no
17 person shall be held to answer to a capital or otherwise
18 infamous crime unless on presentment or indictment of the
19 Grand Jury. The State of South Carolina has adopted its
20 own ---

21 THE COURT: Rule?

22 MR. TEMPLE: --- statute in reference to the
23 indictments which conform to the highest law in the land.
24 The state statute states that South Carolina Rules of
25 Criminal Procedure, Rule 3, disposition of arrest warrant

1 states, action on the warrant, within ninety days after
2 receipt of an arrest warrant from the Clerk of Court, the
3 solicitor shall take action on the warrant by preparing
4 an indictment for the Grand Jury. Well, preparing an
5 indictment for presentment to the Grand Jury. Which
6 indictment shall be found -- I mean, Your Honor, these
7 are mandatory predicates too, shall. It don't say may or
8 -- as you know. It state, preparing the indictment for
9 presentment to the Grand Jury, which indictment shall be
10 filed with the Clerk of Court, assigned a criminal case
11 number and presented to the Grand Jury formally
12 dismissing the warrant, noted on the face of the warrant
13 the action taken, make an affirmative -- other
14 affirmative dispositions in writing and filing such
15 action with the Clerk of Court.

16 It also speak of an extension too, as well, Your
17 Honor, but the State did not get an extension of ninety
18 days.

19 THE COURT: Okay. Hold on just a second. All
20 right. So you're saying that they didn't present it
21 within ninety days and they didn't get an extension?

22 MR. TEMPLE: That's right.

23 THE COURT: And that's -- okay.

24 Yes, ma'am?

25 MS. SIMMONS: Judge, Your Honor has previously

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

59

1 ruled on this issue as well as Judge Macaulay. Again, I
2 would draw the Court's attention to *State v. Edwards*, 364
3 S.C. 543, wherein the South Carolina Supreme Court
4 reviewed Rule 3 and interpreted that rule as
5 administrative, not jurisdictional. And further, the
6 Court stated that a solicitor's delay in itself does not
7 invalidate a warrant or prevent prosecution.

8 THE COURT: All right. What was the time
9 limit? What was the time?

10 MS. SIMMONS: Approximately a hundred and ten
11 days.

12 THE COURT: So it was a hundred and ten days
13 rather than ninety?

14 MS. SIMMONS: Yes, sir.

15 THE COURT: Okay.

16 All right. Do you understand what she's saying,
17 that our Supreme Court has said that that's an
18 administrative rule, it's not jurisdictional?

19 MR. TEMPLE: Yes, sir, I understand. I thought
20 though that the rules have a primary purpose for ---

21 THE COURT: Well, they do have a purpose. I
22 mean, it's an administrative. Can you cite as an example
23 for Mr. Temple as to why it would be administrative, what
24 would happen, say if it was a hundred and ten days? What
25 normally happens in your office if there's a delay?

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

60

1 MS. SIMMONS: Judge, if we -- if you did not --
2 let's say you didn't go a hundred and eighty days on
3 those warrants.

4 THE COURT: Right.

5 MS. SIMMONS: I could present an indictment to
6 -- a direct indictment to the Grand Jury and get that --
7 and bring formal charges against Mr. Temple, even if I
8 did not have warrants.

9 THE COURT: I mean, I understand why you're
10 reading that ruling thinking that somehow that takes
11 jurisdiction from the courts and therefore I should
12 indict them. I remember one of the earlier hearings you
13 -- and this may have been one of the falling-out points
14 you had with Mr. Tavernier, I think. And I understood at
15 the time that you were reading that rule as a
16 jurisdictional rule. And I think the problem Mr.
17 Tavernier was saying you're not going to get anywhere
18 with that because the Supreme Court, our Supreme Court,
19 has said it's an administrative rule. And also, just as
20 a matter of course and practice, they could still direct
21 indict.

22 But again, this is going to be one -- if there's
23 anything to all of your motions that may be reviewed by
24 the Supreme Court, it may be this one because Rule 3 is
25 somewhat of an interesting rule in that it is

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

61

1 administrative.

2 I'm going to deny it based upon ---

3 MR. TEMPLE: If ---

4 THE COURT: Go ahead.

5 MR. TEMPLE: Your Honor, so these are Rules of
6 Criminal Procedures, are not they? These are the South
7 Carolina Rules of Criminal Procedure. Aren't these the
8 Rules of the Criminal Procedures of the court?

9 THE COURT: Right. But they're interpreted by
10 the Supreme Court.

11 MR. TEMPLE: Let me -- let me read something
12 else to you as well. In *United States v. Kennedy*, volume
13 372 F.3d page 686, 696, 430 2004, criminal procedures are
14 the rules governing the mechanism under which the crimes
15 are investigated by the prosecution, adjudicated by the
16 judge, the court, and punished. It includes the
17 protection of the accused person's constitutional rights.
18 All right. These rights, I don't see how ...

19 THE COURT: Okay. All right. Well, what I'm
20 going to do, as I said, based upon South Carolina Supreme
21 Court's Ruling, I'm going to deny your motion to suppress
22 the indictments.

23 Let's move on to the motion to compel discovery, and
24 then we've got that last one about the jail.

25 What do you need from the Solicitor's office that

1 you don't have? You filed a motion to get information
2 from them?

3 MR. TEMPLE: I don't understand.

4 THE COURT: You filed a motion to compel
5 discovery.

6 MR. TEMPLE: Compel the discovery? Basically
7 ---

8 THE COURT: Rule 5 basically -- let me just say
9 this. Rule 5, which is a very serious rule of criminal
10 procedure, requires them to give you everything.

11 I'm assuming you've given him everything you have?

12 MS. SIMMONS: Yes, Your Honor, we have given
13 him everything we have. I have prepared a duplicate copy
14 of everything for my file. It's this thick.

15 THE COURT: All right.

16 MS. SIMMONS: He has everything we have. We
17 actually went to the evidence storage at the Sheriff's
18 office with him last week, and he has actually looked at
19 all the physical evidence in this case against him. At
20 that time, he was further asked if there was anything
21 else he needed from us or anything he wanted to see, and
22 he said he had everything.

23 THE COURT: All right. Is that true?

24 MR. TEMPLE: Somewhat, Your Honor.

25 THE COURT: Well, it either is or it isn't.

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

63

1 Did you go to the evidence locker with them, look at all
2 the physical evidence and say, I don't need anything
3 else?

4 MR. TEMPLE: Your Honor, I do not know what the
5 prosecution intend to present as evidence, Your Honor.

6 THE COURT: Well, they probably don't either at
7 this point completely. I mean, things like that move.
8 But whatever they're going to present has to be within
9 those documents that they have sent you. So you should
10 have everything that they intend to use. I suspect you
11 have a lot of stuff they don't intend to use. But the
12 rule is they have to give you anything that they intend
13 to use at trial. So you should have everything. If at
14 some point over the weekend you discover that there's
15 something missing, we'll have to get it to you Monday.

16 MR. TEMPLE: You say they -- okay. They must
17 do this?

18 THE COURT: Yeah. But they have, it sounds
19 like. I mean, it's -- that's one of the base rules.
20 They -- South Carolina has a Rule 5 that requires the
21 prosecutor to give you everything. They usually send it
22 to your lawyer. If the lawyer thinks that there's
23 something particular missing or an oversight, then they
24 call them and they send it to them.

25 MR. TEMPLE: Aren't these Rules of Criminal

1 Procedures too, as well?

2 THE COURT: That's what I'm telling you.

3 MR. TEMPLE: So, Your Honor -- but what you're
4 saying is one rule apply to one situation, but the Rule 3
5 don't apply to ---

6 THE COURT: I'm saying that Rule 3 applies.
7 It's administrative. This is the reason why you are
8 making a huge mistake representing yourself. But I've
9 given you every shot. This is not nuclear physics, but
10 it is not an easy thing. And you're going to have to
11 understand that some rules our Supreme Court have
12 determined are administrative, some of them are
13 mandatory. And Rule 5 is something that I take seriously
14 because every defense lawyer in the world shows up here
15 at some point and says, I don't have all the information.
16 Quite frankly, if we get to Wednesday of next week and
17 you discover that there's something that you should have
18 had and you don't have it, it is a huge problem for the
19 Solicitor's office. As a result, I can promise you that
20 my experience, after ten years on the bench, that
21 solicitors give you everything, even stuff they don't
22 care to use.

23 So you're telling me as an officer of the court,
24 you've sent him everything that you have?

25 MS. SIMMONS: Yes, Your Honor.

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

65

1 THE COURT: Okay. All right. So you should
2 have everything. If you discover something different ...

3 All right. Last one and then I've got a couple of
4 issues that I want to deal with and set some ground rules
5 for next week. But the last one is a request for
6 injunction or declaratory judgment against the jail. And
7 I don't, quite frankly, know what that's about.

8 MR. TEMPLE: Well, Your Honor, there's actually
9 another one as well.

10 THE COURT: What else do you have?

11 MR. TEMPLE: And the issue about the -- the
12 motion that I filed for a fast and speedy trial.

13 THE COURT: Well, you're getting that Monday..

14 MR. TEMPLE: Excuse me?

15 THE COURT: That was granted. You got it.

16 You're going to trial Monday. So I mean, you made a
17 motion for a fast and speedy trial, and you got it.

18 MR. TEMPLE: The requirement wasn't satisfied.

19 THE COURT: What requirement?

20 MR. TEMPLE: Upon the -- well, you want to do
21 them one at a time?

22 THE COURT: No. Go ahead and do that one since
23 that's on your mind because then we can deal with the
24 jail.

25 MR. TEMPLE: Well, back in -- August the 19th,

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

66

1 I filed a motion for a fast and speedy trial in reference
2 to Section § 17-23-90 of the South Carolina Code of Laws.
3 In accordance with the speedy trial act, it says to put a
4 time limit on it, and the time limit was not satisfied.

5 THE COURT: Well, I don't think it ever was
6 heard by a judge was it?

7 MS. SIMMONS: No, Your Honor.

8 THE COURT: Yeah. Normally, what would happen
9 is you would file a motion for speedy trial. It would be
10 set in front of a judge to rule on whether or not -- in
11 fact, before you came in here, we had another defendant
12 that made a motion for speedy trial, and I actually held
13 the hearing. And we set it for -- we're going to end up
14 probably setting it for March. That's what happens.

15 In this case, you made the motion for a speedy
16 trial. Without me having to order the Solicitor's office
17 to set it, they set it for Monday. So that's really a
18 moot issue. I mean, on appeal it may be something you
19 can bring up, but it doesn't matter.

20 MR. TEMPLE: So you're denying it?

21 THE COURT: No, I'm granting it. It's Monday.
22 So you got -- you got that one.

23 MR. TEMPLE: Well, what I'm saying is, Your
24 Honor, it has not been satisfied. I mean, there's -- the
25 only way to remedy the matter is to dismiss the charges.

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

67

1 THE COURT: I'm granting your motion for a
2 speedy trial Monday.

3 MR. TEMPLE: But -- but -- okay. I understand.
4 Okay. All right.

5 THE COURT: I can't do it today. All right.

6 All right. Then I've got this request for
7 injunction or declaratory judgment against the jail.

8 And let me just say for the record, I'm actually not
9 granting it. It's moot. We're having the trial.

10 Okay. What's your problem with the jail, and what
11 do you want me to order them to do? I assume this is the
12 Oconee County Jail?

13 MR. TEMPLE: Well, Your Honor, it's kind of
14 like way too late for that. I mean, these motions that I
15 filed, they are very -- some of them are real old. I
16 mean, if I'm going to trial this coming Monday, the
17 relief will be -- once I go to trial and get convicted or
18 get found not guilty, the relief would be leaving or
19 going to the penitentiary or either go home. I mean,
20 there would -- this motion really, Your Honor, it's not
21 going to be any good to me.

22 THE COURT: Okay. All right. I understand
23 that. All right. So we'll just -- I won't make you
24 officially withdraw it. We'll just rule that that's moot
25 now. And you know, it may be an issue that you can bring

1 up under another -- in another court at some other later
2 date, not in regard to this trial. Okay.

3 MR. TEMPLE: D.N.A. test, § 17-13-140.

4 THE COURT: All right. We'll do that one.

5 That was the *Schmerber* order. I've already ruled that
6 that's ---.

7 MR. TEMPLE: No, sir, that was -- there was --
8 there was also a -- these relevant D.N.A. tests that were
9 taken ---.

10 THE COURT: Then you've got a motion just
11 generally about the D.N.A. test not under the *Schmerber*?

12 MR. TEMPLE: Not under *Schmerber*.

13 THE COURT: Okay. All right. What's your
14 motion regarding those?

15 MR. TEMPLE: This is the D.N.A. test that was
16 taken pursuant to statute § 17-13-140, which is in
17 violation of my Fourth, Fifth and Fourteenth Amendment as
18 well. Like I say, it was -- it's not the only grounds or
19 probable cause and I believe illegal arrest rather. No
20 probable cause. But also that -- what else?

21 MS. SIMMONS: Judge, I may can speed this up a
22 little bit.

23 THE COURT: All right. Let her -- yeah. Go
24 ahead if you've got something to add to it.

25 MS. SIMMONS: He's referring to the search

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

69

1 warrant § 17-13-140. Search warrant for blood and
2 suspect kit was done in this case. We never even sent
3 that for testing. We tested under the *Schmerber* order.

4 THE COURT: Okay.

5 Do you understand that? That was something that ...

6 Did I issue that order?

7 MR. TEMPLE: Your Honor ---

8 THE COURT: Hold on a second.

9 MS. SIMMONS: The magistrate issued a search
10 warrant for samples from the Defendant. We never even
11 sent that to SLED for testing.

12 MR. TEMPLE: I was a participant of this order.
13 They served this search warrant on me before I even took
14 blood. They took blood, the values of blood, pubic
15 hairs, head hairs, combing hairs.

16 THE COURT: Pursuant to that statute. And
17 she's telling me that they -- that that was not sent to
18 D.N.A. It ain't going to be used, not going to be a
19 part.

20 MR. TEMPLE: Okay. Listen to what I'm saying
21 though, Your Honor.

22 THE COURT: I'm listening.

23 MR. TEMPLE: The D.N.A. test that Mr. Tavernier
24 had dismissed were these tests which are the results of
25 the test. Do you understand what I'm saying?

1 THE COURT: No.

2 Can you enlighten me?

3 MS. SIMMONS: We never tested the samples that
4 were based on the search warrant. I believed that it was
5 more prudent to go to trial under the *Schmerber* order.
6 That is the sample that was actually collected from the
7 Defendant and compared to the rape kit that was sent to
8 the hospital. At the point in time when Mr. Tavernier
9 brought up the search warrant, we conceded we were not
10 using that, that we were not using the samples out of the
11 search warrant. And that is the time where he is -- he's
12 viewing that as Mr. Tavernier got that dismissed. We
13 conceded we weren't going to use it.

14 THE COURT: Okay.

15 MR. TEMPLE: Your Honor?

16 THE COURT: Basically, you won that without
17 them having to do anything.

18 MR. TEMPLE: But I don't think you probably
19 understand me though.

20 THE COURT: I mean, I understand. What is your
21 objection to the fact that they took this information
22 under a search warrant and then determined not to use it
23 or send it off for testing? They just basically
24 abandoned it.

25 MR. TEMPLE: The D.N. -- it's obvious that

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

71

1 there was a result because it was only one pubic hair
2 combing that I did on all the D.N.A. tests. I took three
3 D.N.A. tests. It was only one pubic hair combings, and
4 that's the results of the test which are being used.

5 THE COURT: So you're alleging that the State
6 is lying to me about the fact that they didn't use that.

7 MR. TEMPLE: Well, you can look at the
8 information. You can look at the evidence right here,
9 and the evidence will show you itself. I mean, the
10 records state it. I mean, the test says -- the first
11 test that was done was pubic hair test which included
12 blood. And these tests ...

13 THE COURT: So you're saying that even though
14 they're telling me they didn't, they did use the items
15 recovered under the statute for D.N.A. testing? I think
16 that's what you're telling me. I understand what you're
17 saying. She's telling me they didn't. You're saying,
18 well, they had to because they had pubic hair and that's
19 the only ---

20 MR. TEMPLE: Yeah. That's exactly what -- I'm
21 saying that ---

22 THE COURT: I got you. Okay. I understand.
23 All right. What's -- tell me ---

24 MS. SIMMONS: Judge, there's no pubic hair
25 results that were issued from SLED in this case. And out

1 of an abundance of caution, the May 13th, 2010, search
2 warrant that we're not proceeding under, here's a
3 certified copy for the record. We can make that a
4 Court's exhibit.

5 THE COURT: Yeah. Make that a copy for the
6 record.

7 (WHEREUPON, Court's Exhibit 4 was marked for
8 identification only.)

9 MR. TEMPLE: Here we go right here, Your Honor.
10 It says clearly right here. Known pubic hairs, pubic
11 hair combings, suspect Dennis Temple. This is the first
12 test.

13 THE COURT: Well, it says, no, doesn't it?
14 Show the Solicitor what you're talking about there so we
15 can understand and we're on the same page.

16 (Off record discussion)

17 THE COURT: I think what you're
18 misunderstanding is there wasn't -- there was a decision
19 made by the Solicitor's office not to send that stuff for
20 D.N.A. testing.

21 Is that correct?

22 MS. ADAMS: Your Honor, it was -- what he's
23 talking about is their -- and I will make these Court's
24 exhibit, Your Honor, but there are two SLED reports. One
25 is dated July the 2nd of this year, and one is dated

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

73

1 November 8th, which is a supplemental report. And
2 really, the difference is, out of an abundance of
3 caution, the November 8th, which we are using, is the
4 sample of the Defendant's that was received from the
5 *Schmerber* instead of the S.T.D. test, which is where this
6 one comes from.

7 THE COURT: Right.

8 MS. ADAMS: So ---

9 THE COURT: So the *Schmerber* order was sent for
10 D.N.A. testing. The S.T.D. test that we talked about at
11 the very beginning was not.

12 MS. SIMMONS: The S.T.D. test was sent for
13 testing under the S.T.D. testing statute. Judge McIntosh
14 made a specific finding that we could use that sample for
15 scientific testing. It went to SLED. In the interim,
16 this Defendant filed a motion to quash Judge McIntosh's
17 order. So at that point, out of an abundance of caution,
18 we went ahead and re-filed under *Schmerber*, got a sample
19 with him being represented by counsel.

20 THE COURT: Okay. So the bottom line is you
21 are going to use the sample resulting from the *Schmerber*
22 hearing, not the earlier S.T.D. testing under the
23 statute?

24 MS. SIMMONS: Correct, Your Honor.

25 THE COURT: Okay.

1 MR. TEMPLE: Your Honor, it's says -- it says
2 supplemental on this November the 8th.

3 THE COURT: All right. Why does it say
4 supplemental?

5 MS. ADAMS: That's how SLED does it. That's
6 their procedure, Judge.

7 THE COURT: There will be a SLED agent here, I
8 assume, right?

9 MS. ADAMS: Yes, sir, absolutely.

10 THE COURT: You'll be able to ask him why. I
11 don't know why they put supplemental other than they've
12 issued one and they have another and they want to make
13 sure that -- but you're going to be able to cross-exam
14 the SLED agent, and you can ask him that.

15 MS. ADAMS: And Your Honor, I will make both of
16 these Court's exhibits.

17 (WHEREUPON, Court's Exhibit Number 5 and 6 were
18 marked for identification only.)

19 THE COURT: Okay. What other motions do we
20 have? Because I do want to get to a couple of serious
21 issues I've got for next week.

22 MR. TEMPLE: Other motions I have?

23 THE COURT: Now, if they haven't been served on
24 the Solicitor's office, we're going to have to take them
25 up Monday. But tell me what they are so we'll all know.

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

75

1 MR. TEMPLE: I think I might have covered all
2 of them.

3 THE COURT: All right. Make sure that you go
4 through your list. I've covered everything that I've got
5 here. And it's -- just so you'll know, it's this.
6 That's what we made our list from. If you think over the
7 weekend or between now and Monday that there's something
8 else before we -- actually, after we select the jury but
9 before we start the trial, I'll take up any other
10 motions.

11 All right. Anything else from the State before I go
12 into a couple of other matters?

13 MS. SIMMONS: Not at this time, Your Honor.

14 THE COURT: Mr. Temple, anything else you want
15 to bring up? I want to talk to you about Dr. Friarson's
16 hearing and also how we're going to handle next week.

17 MR. TEMPLE: Not that I can recall.

18 THE COURT: Okay. All right. The first thing
19 I want to tell you is my understanding is that you have
20 an appointment at nine-thirty a.m. December 13th with Dr.
21 Friarson; is that right?

22 MR. SIMMONS: Yes, Your Honor. Dr. Friarson
23 contacted me. He did conduct the initial competency
24 evaluation ordered by Your Honor in this case. In order
25 to protect the record, Dr. Friarson was planning on

1 having a brief thirty-minute meeting with him prior to
2 jury selection just to affirm his findings and report
3 them to Your Honor.

4 THE COURT: Yeah, which is normal. Dr.
5 Friarson apparently is coming up here. He's already
6 ruled that you are competent. My concern in any case
7 like this is whether or not there's been some change from
8 the previous exam. So he'll come up here Monday morning.
9 He will talk to you. I can't tell you what to do. I
10 would obviously cooperate with him. He doesn't have a
11 dog in this show. But he'll be here at nine-thirty to
12 talk to you for a half hour, however long he needs. And
13 I'll give him as much time with you as he needs. Because
14 he's going to either then say, Mr. Temple's still
15 competent, or he's going to come and say, you know,
16 there's a problem. And then I'll just have to deal with
17 it then. So he'll be there Monday morning.

18 Yes, ma'am?

19 (Off record discussion)

20 THE COURT: All right. The second to last
21 thing before I talk about what we're going to do Monday,
22 Mr. Temple, I've gone over exhaustively your right to
23 counsel. I know you and I don't agree on some of these
24 issues. And that's fine. Unfortunately, the law does
25 basically say that we may not agree, but what I say is

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

77

1 final. Mr. Tavernier, who has sat here very quietly all
2 day, deserves to know for his preparation if you have
3 changed your mind about whether or not he's going to
4 represent you or whether you intend on Monday of next
5 week to represent yourself. For my sake, I just need you
6 to tell me, have you changed your mind? You still want
7 to represent yourself?

8 MR. TEMPLE: If I could get some kind of
9 stipulation between me, Mr. Tavernier and the Court upon
10 certain things that I would like to be done during trial,
11 I would let him be the attorney on this case. I would
12 let him try this case. However, I am trying to preserve
13 all these rights that I just presented also in trial.
14 Arrest warrants, the issues, Fourth Amendment, all the
15 violations. Arrest warrants, search warrants, D.N.A.
16 testing, section § 16-3-740, D.N.A. test, § 17-13-140,
17 photo lineup, indictments, speedy trial acts. I'm trying
18 to preserve all these issues for appeal.

19 THE COURT: Right.

20 MR. TEMPLE: I must object to them when they
21 are presented.

22 THE COURT: Well, I understand. I don't take
23 it personally. I understand.

24 MR. TEMPLE: If I could get some kind of
25 agreement on having these issues taken care of during

1 trial, then I would let Mr. Tavernier try this case.

2 THE COURT: All right. Do you need some time
3 now to speak with Mr. Tavernier to find out what the -- I
4 mean, I don't want to force you to say in open court what
5 the issues are that you -- I mean, you don't have to do
6 that. But I'm going to give you time here now to speak
7 with Mr. Tavernier and see ...

8 I mean, look, here's the deal. I appointed him as
9 your lawyer. You asked me to let him go. I did. In the
10 abundance of caution, I issued a long order basically
11 recognizing your Sixth Amendment right to counsel, and I
12 required him to sit. Basically what he's been doing is
13 even though he's not representing you, he's been keeping
14 up with all this stuff. And if you tell me today, I
15 don't want him to represent me, I'm still going to make
16 him come to Oconee, sit there just like he has. And if
17 you had had a question today about anything, you can turn
18 to him and he's got to answer it. But talk to him now.
19 I'm going to give you a minute to talk. I'll let y'all
20 go over here.

21 And Mr. Tavernier, what I need you to do is find out
22 what issues he needs some agreement on.

23 Yes, sir?

24 MR. TEMPLE: Because, Your Honor, frankly, I
25 mean, my plans were to go through the trial and just

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

79

1 preserve all my rights. And I'm one hundred percent sure
2 I'll win on appeal, which will take anywhere from six to
3 fourteen months. I mean, I've been illegally arrested.
4 I know this.

5 THE COURT: Okay. All right. All right.
6 Well, talk to Mr. Tavernier. I'll give you about five or
7 ten minutes or how much time you need. Let's take a
8 break. And then what I want to do no matter what is I'm
9 going to come back briefly and I'm going to set some
10 ground rules for next week. And that ain't going to be a
11 joke. So I'll be back.

12 Y'all let me know when you've had a chance to talk.

13 (WHEREUPON, court stood a recess for a short break.)

14 THE COURT: Thank you. Have a seat.

15 Okay. We took a break so that Mr. Tavernier could
16 speak to Mr. Temple about the parameters of his
17 representation.

18 All right. Mr. Tavernier, have you had plenty of
19 time to speak with him? I know I've put you in a very
20 precarious position because you're under an appointment
21 now to sit and assist Mr. Temple during the course of the
22 trial. And I understand the precarious position I've put
23 you in. Before the break there was some indication that
24 Mr. Temple might want you to represent him. If -- and
25 what I'm assuming he meant ...

1 And Mr. Temple, correct me if I'm wrong -- that you
2 want him to represent you if he will preserve the issues
3 that you've brought up in these motion hearings and other
4 ones that we've had for appeal. Is that right,
5 basically?

6 MR. TEMPLE: Yes, sir.

7 THE COURT: Okay. All right.

8 Yes, sir, what's your feeling?

9 MR. TAVERNIER: Your Honor, there are three
10 concerns that I have, the first being my preparation for
11 this trial in a sense became extremely stalled when Mr.
12 Temple filed the grievance with the Supreme Court with
13 the allegation that I have people that would kill him and
14 his family if he didn't listen to me. At that point in
15 time when the grievance was filed, I kind of in a sense
16 ceased aggressive preparation on this trial because of
17 that pending grievance. I have kept up with the motions,
18 but I have not pursued them in a manner I would have,
19 Your Honor, had I been, quite frankly, attorney of record
20 and representing Mr. Temple to the best of my ability.

21 The second concern I have is this. I have had brief
22 discussions with Mr. Temple pursuant to your direction
23 this afternoon. In that regard, there are certain, for
24 lack of a better term, confines or restrictions that Mr.
25 Temple has requested or made plain that I would be

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

81

1 confined to in a trial of this case. I don't necessarily
2 agree with those, and I think it presents somewhat of an
3 ethical dilemma to me in the fact that I would be held
4 accountable as attorney of record to a standard to which
5 I would be precluded from doing so if I comply with what
6 Mr. Temple has requested. I will qualify that he wants
7 ~~I have~~ attorney/client. I better stay away from that,
8 Your Honor.

9 THE COURT: Okay.

10 MR. TAVERNIER: I'm going to base it on that
11 statement without divulging any confidence or privilege.

12 The third basis, Your Honor, is if there is a change
13 in my status, there becomes a really substantial legal
14 question. Would I be -- would the attorney be confined
15 to the motions that Mr. Temple has already argued with
16 the Court and the findings which have already been
17 determined, or would it be open for subsequent legal
18 argument in which he has made some points, but his
19 argument has lacked sufficient legal basis? But in
20 principle, I think he knows where he wants to go but
21 hasn't been able to present the basis for a legal
22 argument that would stand as a proffer for proper
23 appellate argument for them to be able to review.

24 So that and then -- that would kind of play off of
25 some of the confines for representation. What I think,

1 and I'm going to make a suggestion not to tell -- also,
2 quite frankly, Your Honor, if my status were to change, I
3 think it would create a delay of several weeks before I
4 would be comfortable and prepared enough to go forward
5 which would then be contradictory to what we've already
6 determined about proceeding to trial on Monday.

7 So based on that, Your Honor, I would state this.

8 And I have recommended this to Mr. Temple and was -- and
9 I haven't formulated it in its entirety, so I'm kind of
10 thinking on my feet here. But if my role were to become
11 more as the advisory counsel and allow him to meet --
12 allow me to meet with him, go over what legal arguments
13 he wishes to present, be able to present to him a more
14 substantial legal basis that would stand muster as far as
15 his appellate review, which he wants to protect ---.

16 THE COURT: Right.

17 MR. TAVERNIER: --- and the objections that he
18 wants to protect on the record, I could present those to
19 him more than just as standby counsel and not be allowed
20 to make recommendations to him. I could give him some
21 advice rather than just answer the specific questions.
22 Because quite frankly, what he has demonstrated is I
23 think he knows where he wants to get, but he doesn't know
24 how to get there and does not necessarily know how to
25 frame the question nor present the argument with the

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

83

1 principles that he's discovered or that he's been able to
2 research.

3 So there's kind of a fine-line distinction between
4 what standby counsel would be as far as being prepared
5 and ready to step in as opposed to advisory counsel. But
6 I think we could probably reach a comfortable medium
7 where I wouldn't necessarily be a participant in trial,
8 but I would be free to offer advice, suggestions to him
9 and not provide any undue delay for the trial on Monday.

10 I'm free. I have a pretty free weekend. Quite
11 frankly, a weekend and the rest of the week. I've got
12 pleas to do on Thursday. But to accommodate Mr. Temple,
13 his calendar, I could go up to Oconee -- that's not a
14 problem -- and get these things accomplished and do
15 what's necessary in order to properly prepare him with
16 what he needs ---

17 THE COURT: So you've got time to meet with him
18 before the trial?

19 MR. TAVERNIER: Your Honor, I would have
20 virtually five or six hours I could meet with him
21 tomorrow, a couple of hours on Thursday, virtually all
22 day Friday. I could meet with him Saturday afternoon and
23 Sunday afternoon after church.

24 THE COURT: Okay. And you'd rather stay as
25 advisory counsel pursuant to my order, given some of the

1 restrictions that would be placed upon -- and again, I
2 understand that you're trying to protect the
3 attorney/client privilege. But you would be more
4 comfortable staying as advisory counsel given some of the
5 restrictions placed upon your representation. But your
6 intention, even as advisory counsel, is to meet with him
7 prior to trial and be with him during trial in the event
8 that he has a question or whatever that may come up. Is
9 that what you're telling me basically?

10 MR. TAVERNIER: Yes, Your Honor, because I
11 think that would alleviate the ethical dilemmas that I
12 would have as being counsel with discussions that I've
13 had with him. And I think that would accomplish both
14 ends.

15 THE COURT: Okay. Mr. Temple, you've had time
16 to talk to him. I know you haven't had a whole lot of
17 time, but obviously some time. And it sounds to me like
18 he's going to try to spend as much time as he can with
19 you. Are you comfortable with the current situation as
20 it stands?

21 MR. TEMPLE: Yes. I mean, I been -- I been
22 proceeding like this from, pretty much from the
23 beginning. So I mean ...

24 THE COURT: Okay. So you want to keep him
25 basically as advisory counsel? I mean, I -- to tell you

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

85

1 the truth, if you said, no, I don't want him as advisory
2 counsel, this might be the one time that I would just
3 look at you and say, sorry, I'm going to keep him.
4 Because, quite frankly, all this -- and from your
5 perspective it may not seem true. But from my
6 perspective, I'm doing everything I can to protect your
7 constitutional rights.

8 Now, we may disagree on what I do, but that's why I
9 have appointed him. And I've written a fairly long order
10 expanding on his Sixth Amendment right. There's a lot of
11 reasons for that, but I want to make sure that you
12 understand that he'll continue as your advisory counsel.
13 He'll be there. He's going to spend time with you before
14 trial and be with you. If you've got any pleas next
15 week, they're continued. Do you have pleas next week
16 here?

17 MR. TAVERNIER: No, Your Honor.

18 THE COURT: Oh, okay.

19 MR. TAVERNIER: My next week ---

20 THE COURT: I'm sorry. I misheard that.

21 MR. TAVERNIER: --- is wide open.

22 THE COURT: Oh, I misheard that.

23 MR. TAVERNIER: It's this Thursday I have some
24 scheduled, so I'm fine.

25 THE COURT: Okay. Whatever. I mean,

1 obviously, this takes precedence. And you know, I'm
2 going to issue -- if you will do an order because there
3 are obviously -- I want to make sure that you're covered.
4 All right. So he'll remain as advisory counsel. We'll
5 move on next Monday.

6 MS. ADAMS: Your Honor, I just want to be clear
7 that he's choosing to go pro se and that we're not in the
8 situation of hybrid representation, because I'm a little
9 confused on Mr. Tavernier saying he wants to kind of tell
10 him what to do without representing him.

11 THE COURT: No. He's going to assist him under
12 my previous order. It's not hybrid representation. Mr.
13 Temple is proceeding pro se.

14 Is that correct, Mr. Temple. But he's going to be
15 there as your advisory counsel; is that right?

16 MR. TEMPLE: Right.

17 THE COURT: Okay.

18 Anything?

19 MS. ADAMS: I guess basically now Mr. Temple's
20 just saying he's willing to ask Mr. Tavernier questions
21 if he feels the need to during the trial?

22 THE COURT: Yeah, although ---

23 MS. ADAMS: Where before he didn't really want
24 him there.

25 THE COURT: No. He wants him -- I mean, he's

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

87

1 -- I think he probably is not going to take a position on
2 whether he wants him there. But Mr. Tavernier is
3 basically saying, under my order, he's going to meet with
4 him prior to trial to assist Mr. Temple in his own
5 preparation and to represent himself pro se.

6 Is that about the best way to say it, Mr. Tavernier?

7 MR. TAVERNIER: Yes, Your Honor. Quite
8 frankly, without divulging any confidence, I think the
9 Court has noted that Mr. Temple is somewhat overwhelmed
10 with the volume of information. And he wants to be able
11 to get that put in proper perspective, and that's the
12 purpose of the meeting. And that's the way I'll be able
13 to handle it. I'll address what he is addressing. And
14 if he comes across and needs to be able to understand how
15 to present an argument, then I will make that available
16 to him.

17 THE COURT: Okay. All right. We're good
18 there.

19 Okay. Let me also just tell you then for the last
20 thing that yesterday I went up to Oconee. I looked at
21 the new courtroom. They have a -- they're redoing that
22 courtroom. And what I want is -- and I spent a good bit
23 of time in there with Beverly, the Clerk of Court. And
24 I'll show you on Monday.

25 There's going to be a piece of tape between the

1 Clerk's box and the jury box that will be the point at
2 which the lawyers and Mr. Temple need to stop in their
3 questioning, okay? And actually I told them to put a
4 mike at the place where y'all will be able to get up and
5 question because you're going to be able to stand up in
6 the courtroom, move to a point in the courtroom with a
7 microphone to ask your questions. You need to do that
8 because the court reporter can't hear you.

9 I'm putting that restriction on both sides because I
10 think that's fair. I'll show you Monday. This is not a
11 big deal. It's just I'm giving the witnesses -- under
12 that new setup in the courthouse up there, I want to give
13 all the witnesses a zone within which the attorneys don't
14 encroach, okay? And you'll see when you get up there.

15 But basically -- in here, oftentimes, lawyers will
16 walk around. They'll stand right here to question. In
17 civil and criminal cases, they'll question, they'll hand
18 documents. And basically they're standing right next to
19 each other. Because of the way that new -- and they're
20 literally working on the courtroom right now, or they
21 were yesterday. It's set up perfectly to do what I want
22 to do which is basically you're going to have a line from
23 that television to the jury that's probably ten or twelve
24 feet that the attorneys can't cross. I'll show you when
25 I get up there. That gives all the witnesses and all the

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

89

1 attorneys a zone within which their comfort levels are
2 met.

3 It doesn't make any sense now, I realize as I say
4 it. It'll make sense when you get up there. It's just
5 basically nobody's going to get too close to the
6 witnesses when they question them, including the
7 prosecutor. Okay?

8 What time is the jury coming in up in Oconee?

9 MS. ADAMS: I think ten, Your Honor.

10 THE COURT: Ten o'clock? All right. We might
11 as well address this now, too. Is there a plan -- there
12 was some discussion yesterday about a security belt for
13 Mr. -- obviously, Mr. Temple is able to wear ...

14 You're not going to be up there in an orange
15 uniform. You've got a suit you're going to wear?
16 Normally, in those circumstances what they'll do is,
17 they're probably going to put a security belt under your
18 suit. Have they talked to you about that?

19 MR. TEMPLE: No, Your Honor.

20 THE COURT: Okay. Well, it's just a security
21 -- it's one of the ways -- and we're going to have to
22 deal Monday when we get up there with whether or not
23 you're shackled and all of that business. I mean, I
24 suspect that what we're going to end up doing is not have
25 you shackled. But you'll have a belt under you. And I

1 think the way it works -- the way it works down here
2 basically is there's going to be deputy with a button.
3 If you do something, you know, if you take off out the
4 back door, they hit the button, it gives you a beep. My
5 advice to you is not to do that. I'm not saying you're
6 going to, but it's -- that's the only way I know to give
7 every -- to resolve security issues and also allow you to
8 wear a regular suit and not be completely shackled in
9 front of the jury. Okay?

10 MR. TEMPLE: Your Honor, I'm not going nowhere.
11 I've not committed no crime.

12 THE COURT: Okay. Well, like I said, it is an
13 issue that some defendants don't like. And I'm sorry
14 about it. I either have to leave you shackled or I can
15 use that security belt. I prefer to use the security
16 belt because quite frankly nobody will even know it's on
17 you unless there's a problem with it. And if there's a
18 problem, everybody knows it's on you.

19 Okay. Anything else we need to deal with today
20 before Monday from the State?

21 MS. ADAMS: No, sir, Your Honor.

22 THE COURT: Mr. Temple?

23 MR. TEMPLE: I've got a question.

24 THE COURT: Sure.

25 MR. TEMPLE: So was all my motions denied?

State v. Dennis Temple 2010-GS-37-0886
Pretrial Hearing (December 7, 2010)

91

1 THE COURT: No. I granted one. Well, I
2 granted one, and then one was basically moot. I granted
3 your suppression of the S.T.D.

4 MR. TEMPLE: S.T.D.

5 THE COURT: That's the sexually transmitted
6 disease. I think you made a motion to suppress the
7 evidence obtained under Judge McIntosh's order. I think
8 the Solicitor's office had already determined not to use
9 any of that, so I granted that motion.

10 Is that correct? I'm not stepping on y'all, am I?
11 Isn't that correct?

12 MS. SIMMONS: Yes, Your Honor. We do not
13 intend to introduce evidence of ---

14 THE COURT: So I granted your motion to
15 suppress. And then the issue of the injunction,
16 declaratory judgment, against the jail was moot. The
17 rest of them I did deny. Okay.

18 All right. I'll see y'all Monday up there. The
19 jury's coming in at ten, so I'll be up there early.

20 (WHEREUPON, the hearing ended at approximately 5:35
21 p.m.)

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 7th day of December 2010.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 November 21, 2011

15

16

Renee H. Tollison

17

Circuit Court Reporter

1

2

State of South
Carolina) In the Court of General
) Sessions

3

County of Oconee

) Indictments Nos:
) 2010-GS-37-00886, 00887,
) 00888, and 00889

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7

State of South
Carolina

8

Plaintiff,

) Transcript of Record
) Trial - Volume 1
) Pages 1 through 152

9

-vs-

10

Dennis Temple,

11

Defendant.

12

December 13, 2010
Walhalla, South Carolina

13

B E F O R E:

14

15

The Honorable J. Cordell Maddox, Jr., Judge; and a
Jury.

16

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

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1	INDEX	
2		
3	WITNESSES	PAGE
4		
5	Catherine McGough	
6	Direct Examination by Ms. Adams	84
7	Cross-Examination by Mr. Temple	131
8	Redirect examination by Ms. Adams	146
9		
10		
11		
12	Defendant's Motions for Continuance and Counsel	60
13	The Court's Ruling on Defendant's Motions	61
14	The Jury was Sworn	66
15	Opening Statement on Behalf of the State	76
16	Opening Statement by the Defendant	81
17	Certificate of Court Reporter	152
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS	
2	NUMBER AND DESCRIPTION	ID./EV.
3		
4	State's 1, copy of photo line-up	55/
5	State's 2, photo of crime scene or car	55/
6	State's 3, photo of crime scene or car	55/
7	State's 4, photo of crime scene or car	55/94
8	State's 5, photo of crime scene or car	55/102
9	State's 6, photo, crime scene or car	55/102
10	State's 7, photo, crime scene or car	55/127
11	State's 8, photo, crime scene or car	55/127
12	State's 9, photo, crime scene or car	55/127
13	State's 10, photo, crime scene or car	55/127
14	State's 11, photo, victim	55/
15	State's 12, Photo, Victim	55/
16	State's 13, photo, victim	56/
17	State's 14, photo, victim	56/
18	State's 15, photo, victim	56/
19	State's 16, photo, victim	56/
20	State's 17, photo, victim	56/
21	State's 18, photo, victim	56/
22	State's 19, photo, victim	56/
23	State's 20, photo, victim	56/
24	State's 21, photo, victim	56/
25	State's 22, photo, victim	56/

1	EXHIBITS	
2	NUMBER AND DESCRIPTION	ID. / EV.
3		
4	State's 23, photo, exterior crime scene	56/
5	State's 24, exterior crime scene photo	56/
6	State's 25, exterior crime scene photo	56/
7	State's 26, exterior crime scene photo	56/
8	State's 27, photo, exterior of unit 193	57/
9	State's 28, photo, exterior of unit 193	57/
10	State's 29, photo, exterior of unit 193	57/
11	State's 30, exterior of unit 193	57/
12	State's 31, photo of exterior of unit 193	57/
13	State's 32, exterior of unit 193	57/
14	State's 33, photo of exterior of unit 193	57/
15	State's 34, photo, storage unit interior	57/
16	State's 35, photo, storage unit interior	57/
17	State's 36, photo of storage unit interior	57/
18	State's 37, photo, storage unit interior	57/
19	State's 38, photo, storage unit interior	58/
20	State's 39, photo of storage unit interior	58/
21	State's 40, photo of storage unit interior	58/
22	State's 41, photo, storage unit interior	58/
23	State's 42, photo, storage unit interior	58/
24		
25		

1	EXHIBITS	
2	NUMBER AND DESCRIPTION	ID./EV.
3		
4	State's 43, photo, storage unit interior	58/
5	State's 44, photo, storage unit interior	58/
6	State's 45, photo, storage unit interior	58/
7	State's 46, photo, storage unit interior	58/
8	State's 47, photo, storage unit interior	58/
9	State's 48, photo, storage unit interior	58/
10	State's 49, photo, storage unit interior	58/
11	State's 50, photo, storage unit interior	58/
12	State's 51, photo, storage unit interior	59/
13	State's 52, photo, storage unit interior	59/
14	State's 53, photo, glasses	59/
15	State's 54, 9-1-1 CD -- NOT TRANSCRIBED	59/
16	State's 55, headlight	59/
17	State's 56, belt	59/
18	State's 57, photo of defendant taken	146/148
19	5-11-2010	
20		
21	Court's 1-T, Report of Dr. Frierson dated	54
22	11/1/2010, from evaluation on 10/18/2010	
23		
24	Court's 2-T, washcloth	138
25		

1 ** Start of Requested Transcript of Record **

2 (Whereupon, the trial in the matter of the
3 *State of South Carolina v. Dennis Temple*,
4 Indictments Numbers 2010-GS-37-886,
5 2010-GS-37-887, 2010-GS-37-888, and
6 2010-GS-37-889, commenced on the 13th day of
7 December, 2010, at approximately 11:50 a.m.)

8 **THE COURT:** Okay. All right. Ladies and gentlemen,
9 what we're gonna do now is select the jury for this case.
10 I have some more questions I need to ask you that are
11 particular to this case.

12 What I'm gonna do now is ask the Defendant to stand
13 up, introduce himself, ask the attorneys for the State to
14 stand up, introduce themselves. Afterwards I'm gonna ask
15 you if you are related by blood or marriage to any of the
16 parties or attorneys in this case, or if you have any
17 close business or personal relationship to any of the
18 parties.

19 All right. Yes, sir. Stand up and just introduce
20 yourself.

21 **THE DEFENDANT:** Hello. I'm Dennis Temple from
22 Seneca, South Carolina.

23 **THE COURT:** All right.

24 **MS. ADAMS:** Thank you, Your Honor, may it please the
25 Court.

1 My name is Chrissy Adams, the Solicitor for the 10th
2 Circuit, which is Anderson and Oconee. And with me is
3 Lindsey Simmons, She's a prosecutor in my office. And
4 this is Lieutenant Greg Reed with the Oconee County
5 Sheriff's Department.

6 **THE COURT:** Okay. Is anyone related by blood or
7 marriage or do you have any close business or personal
8 relationship with either the attorneys or with
9 Mr. Temple? If so, please stand.

10 Yes, sir. Give us your name and number.

11 **PROSPECTIVE JUROR WRIGHT:** Randall Wright, 228. If
12 I may speak with you?

13 **THE COURT:** Yeah, come on up.

14 (Prospective juror Randall Wright approached
15 the bench.)

16 **THE COURT:** Could you please give us your name and
17 number again?

18 **PROSPECTIVE JUROR WRIGHT:** Yes, sir. Randall
19 Wright, 228. I believe you went with Tammy Dix
20 (phonetic)?

21 **THE DEFENDANT:** No, sir.

22 **PROSPECTIVE JUROR WRIGHT:** His aunt, one of his
23 kids, and I go with his sister, so I know the family.

24 **THE COURT:** All right. You understand that since he
25 has got a connection, I wanted to let him go. What did

1 you do before you retired?

2 PROSPECTIVE JUROR WRIGHT: I was a pastor. I also
3 work at Duke Energy.

4 THE COURT: 228 is excused on this one.

5 (Prospective Juror Wright was excused on the
6 trial of this case.)

7 THE COURT: All right. Ladies and gentlemen, I'm
8 gonna read to you a long list of potential witnesses. I
9 don't know whether or not all these witnesses are gonna
10 testify. You need to assume for the purposes of my
11 question that they are. After I read this list, I'm
12 gonna ask you if you are related by blood or marriage or
13 if you have any close business or personal relationship
14 with any of these potential witnesses, okay? And I'll be
15 happy to repeat one if you need me to.

16 Catherine McGough, Scott Arnold, Greg Reed, Kevin
17 Cain, Tyrel Woodring, Allen Van Heusen, Christy Shiflett,
18 Patrick Merck, David Philpott, Amanda Webb, Doris
19 Yarbrough, Amy Stephens, Betty Butler, Sherree Brown,
20 Josetta Blair, Selena Kinard, Nikki Perry, Toni Broome,
21 Patricia Crooks, Brian Danielson, Britta Chapman,
22 Dr. Greg Cromer, Nancy Rust, Casey Smith, Vickie Bottoms,
23 Christine Steele, Jerry Moss, David Smith, Mark Miller,
24 Derek Pace, Scott McCreary, Jason Kilpatrick, Jeff
25 Underwood, Neill Burkett, Matt Saski, Kim Chewning,

1 Jeremy Rothell, Mark Tiller, Allen Sayre, Josh Underwood,
2 Tracy Call, Tandria Moon, Or Celina Nichols.

3 Now, those are all potential witnesses. Now, is
4 anyone on the panel related by blood or marriage or do
5 you have any close personal or business relationship with
6 any of them?

7 Yes, sir. Give us your name and number.

8 PROSPECTIVE JUROR CHAPMAN: Cletus Chapman, 43.
9 Britta Chapman is my niece.

10 THE COURT: Britta is your niece? At the Ocone
11 Medical Center?

12 PROSPECTIVE JUROR CHAPMAN: Yes, sir.

13 THE COURT: OKAY. I'm gonna allow you to -- you can
14 go on this one. What was your number again?

15 PROSPECTIVE JUROR CHAPMAN: 43.

16 THE COURT: All right. 43. And since this is the
17 only case we're gonna try this week, you are excused for
18 the week.

19 Okay. Yes, ma'am.

20 PROSPECTIVE JUROR PHILLIPS: Shelby Phillips, number
21 157. Britta Chapman is my second cousin and Kevin Cain
22 is married to my second cousin.

23 THE COURT: You've got a lot of second cousins.

24 PROSPECTIVE JUROR PHILLIPS: I've got a lot of
25 second cousins.

1 THE COURT: All right. Will the fact that -- that
2 relationship is not close enough for me to kick you off
3 because of that. Will the fact that you have relatives,
4 second cousins, will that prevent you from being fair and
5 impartial on this case?

6 PROSPECTIVE JUROR PHILLIPS: It will not have any
7 bearing.

8 THE COURT: All right. And can you render a verdict
9 based only on the evidence that you hear in this
10 courtroom, despite the fact that you have a relationship,
11 rather tenuous, with these people?

12 PROSPECTIVE JUROR PHILLIPS: Absolutely.

13 THE COURT: Okay.

14 Any questions of her by the State?

15 MS. ADAMS: No, sir.

16 THE COURT: Mr. Temple, anything you want me to ask
17 her?

18 THE DEFENDANT: Uh, no, sir.

19 THE COURT: Thank you, ma'am. You can stay.

20 Yes, ma'am, in the blue.

21 PROSPECTIVE JUROR LEE: Kristi Lee, 109, I'm good
22 friends with Jeff and Josh Underwood, or have been.

23 THE COURT: With the Oconee County Sheriff's Office?
24 How close friends?

25 PROSPECTIVE JUROR LEE: Jeff and I were best friends

1 growing up in school, or very good friends.

2 THE COURT: All right. And I assume that fact would
3 prevent you from being fair and impartial since he might
4 testify?

5 PROSPECTIVE JUROR LEE: Possibly, yes.

6 THE COURT: All right. And do you think you would
7 have trouble rendering a verdict based only on the
8 evidence in this case, assuming that he does testify?

9 PROSPECTIVE JUROR LEE: Yes.

10 THE COURT: Okay. All right. I'll allow you to go.

11 PROSPECTIVE JUROR LEE: Thank you.

12 THE COURT: Yes, sir.

13 PROSPECTIVE JUROR: Kim Chewning is a member of our
14 church.

15 THE COURT: All right. Give us your name and
16 number.

17 PROSPECTIVE JUROR MCCCONNELL: Johnny McConnell,
18 NUMBER 130.

19 THE COURT: So Mr. [Sic] Chewning is a member of
20 your church?

21 PROSPECTIVE JUROR MCCCONNELL: She was. She's been
22 to my house a couple of times since this event. So I
23 just wanted you to be aware of that.

24 THE COURT: Okay. Will that fact prevent you from
25 being fair and impartial in this case?

1 PROSPECTIVE JUROR MCCONNELL: No, sir.

2 THE COURT: Have you had a chance to talk to her at
3 all about this case?

4 PROSPECTIVE JUROR MCCONNELL: After it took place,
5 immediately, right after it took place, probably, so...

6 THE COURT: Do you think you could still render a
7 verdict based only on the evidence that you hear in this
8 case or would you be influenced at all by what
9 Ms. Chewning told you? And I need you to be honest with
10 me. I mean, I'm obviously just trying to pick a jury
11 that knows nothing about this case or doesn't know too
12 much about it.

13 PROSPECTIVE JUROR MCCONNELL: I believe I could be
14 fair and impartial.

15 THE COURT: Okay. How many times did you talk to
16 her after this case, or how many times was she in your
17 house?

18 PROSPECTIVE JUROR MCCONNELL: Probably twice.

19 THE COURT: And she works for All Safe Storage?

20 PROSPECTIVE JUROR MCCONNELL: Yes, sir.

21 THE COURT: Anything from the State?

22 MS. ADAMS: Your Honor, he said he could set
23 anything aside and be fair and impartial based on
24 whatever he hears in the courtroom, so we feel that he's
25 qualified.

1 THE COURT: Anything, Mr. Temple?

2 THE DEFENDANT: I'd rather not test those waters,
3 Your Honor.

4 THE COURT: How many do I have?

5 THE CLERK: At the moment only 64.

6 THE COURT: I'm gonna excuse him. That's too much
7 of a risk.

8 (Prospective Juror Johnny McConnell, number
9 130, was excused from the trial of this
10 case.)

11 THE COURT: Yes, ma'am.

12 PROSPECTIVE JUROR: I'm friends with Britta Chapman.

13 THE COURT: All right. What's your name and number?

14 PROSPECTIVE JUROR MCALLISTER: Lezlie McAllister,
15 147 I think my number is.

16 THE COURT: Okay. Britta Chapman at the Oconee
17 County Medical Center?

18 PROSPECTIVE JUROR MCALLISTER: Yes.

19 THE COURT: How close friends are you?

20 PROSPECTIVE JUROR MCALLISTER: We go to church
21 together. We do things together.

22 THE COURT: Have you talked to her about this case
23 at all?

24 PROSPECTIVE JUROR MCALLISTER: I don't know anything
25 about it.

1 THE COURT: Okay. Can you listen to the testimony
2 and render a verdict based only on the evidence that you
3 hear in this case?

4 PROSPECTIVE JUROR MCALLISTER: Yes, sir.

5 THE COURT: And do you feel like you would be
6 influenced by your friendship at all?

7 PROSPECTIVE JUROR MCALLISTER: No.

8 THE COURT: Okay. I'll allow you --
9 Anything from the State with her?

10 MS. ADAMS: No, sir.

11 THE COURT: Mr. Temple, anything?

12 THE DEFENDANT: No, sir.

13 THE COURT: Okay. Yes, ma'am.

14 PROSPECTIVE JUROR BARKER: Susan Barker, Number 12.
15 And I just, because I work at the hospital, and I know
16 Nancy and Dr. Cromer just from business. I wanted to
17 make sure that doesn't matter.

18 THE COURT: Well, yeah. And so you work there with
19 them?

20 PROSPECTIVE JUROR BARKER: I work in Records, they
21 work in the Emergency Department. But I know absolutely
22 nothing about what's going on here.

23 THE COURT: Well, if they testify, can you still
24 render a verdict based only on what you hear in this
25 courtroom and can you be uninfluenced by the fact that

1 you may have some relationship with them? That's my
2 concern. Can you be uninfluenced by the fact that you
3 have a relationship with them?

4 PROSPECTIVE JUROR BARKER: I can.

5 THE COURT: And can you render a verdict based only
6 on the evidence that you hear in this courtroom?

7 PROSPECTIVE JUROR BARKER: I can.

8 THE COURT: Okay. Thank you, ma'am.

9 Yes, ma'am. Give us your name and number.

10 PROSPECTIVE JUROR KING: Andrea King, 104. I don't
11 know what you mean by business relationship. I'm a home
12 investigator with Child Protective Services, and I've
13 licensed Christy Shiflett's foster home. She's one of
14 the witnesses.

15 THE COURT: Well, the fact that you have had that
16 relationship, whatever it may be, can you be fair and
17 impartial in this case?

18 PROSPECTIVE JUROR KING: I've also investigated some
19 of the family members of Mr. Temple.

20 THE COURT: Okay. We'll get to that in a second.

21 PROSPECTIVE JUROR KING: Oh, I'm sorry.

22 THE COURT: That's okay. But you need to answer
23 this question. And I understand it may seem ridiculous.

24 PROSPECTIVE JUROR KING: I understand.

25 THE COURT: That's okay. Can you render a verdict

1 based only on the evidence you hear in this courtroom and
2 not based upon your relationship with Ms. Shiflett?

3 PROSPECTIVE JUROR KING: Yes.

4 THE COURT: All right. Thank you.

5 I know you're gonna stand up in a minute. I
6 understand. I have to do it one at a time because it's
7 all on the record.

8 Has any member of the panel, a family member, or a
9 close personal friend ever been prosecuted by the 10th
10 Circuit Solicitor's Office, which would include Anderson
11 and Ocone? If so, please stand. (No response).

12 Has any member of the jury panel, a family friend or
13 a close personal friend ever been accused of or
14 prosecuted for kidnapping or criminal sexual assault? If
15 so, please stand.

16 All right. Give us your name and number.

17 PROSPECTIVE JUROR: Number 45.

18 THE COURT: All right. Yes, sir.

19 PROSPECTIVE JUROR: My son four or five years ago
20 was involved in a case in the 10th Circuit.

21 THE COURT: Will that fact prevent you from being
22 fair and impartial in this case?

23 PROSPECTIVE JUROR: Yep.

24 THE COURT: All right. I'll allow you -- and what
25 was your number, 45?

1 PROSPECTIVE JUROR: 45.

2 THE COURT: All right. 45 is excused.

3 (Prospective Juror 45, William A. Chiusano,
4 was excused from the trial of this case.)

5 THE COURT: Yes, sir.

6 PROSPECTIVE JUROR: My daughter is dating somebody
7 that was, served time for kidnapping.

8 THE COURT: Okay. Give us your name and number.

9 PROSPECTIVE JUROR KOTAJARVI: My stepdaughter. My
10 name is Mark Kotajarvi, number 106.

11 THE COURT: Can you be fair and impartial in this
12 case?

13 PROSPECTIVE JUROR KOTAJARVI: No problem.

14 THE COURT: All right. And can you render a verdict
15 based only on the evidence that you hear in this court?

16 PROSPECTIVE JUROR KOTAJARVI: Yes, sir.

17 THE COURT: Okay. Yes, sir.

18 PROSPECTIVE JUROR KELLY: Steve Kelly, 101. I have
19 a brother that was convicted in Pickens County and is a
20 registered sex offender.

21 THE COURT: That's okay. And I'd rather know than
22 not know. Trust me. Can you still be fair and impartial
23 in this case?

24 PROSPECTIVE JUROR KELLY: Yes, sir.

25 THE COURT: And can you render a verdict based only

1 on the evidence that you hear in this courtroom?

2 PROSPECTIVE JUROR KELLY: Yes, sir.

3 THE COURT: Okay. Thank you, sir.

4 All right. Ladies and gentlemen, the case name in
5 this matter is the *State of South Carolina versus Dennis*
6 *Temple*. In just a minute the Solicitor's Office is
7 actually gonna call that case.

8 But I need to know now, does anyone know anything
9 about this case whatsoever?

10 Okay. I need you just to stand up, and I don't want
11 to know what you know, but I need to know if just
12 generally if what you know is gonna prevent you from
13 being fair and impartial in this case, and it may
14 certainly be that I need to question you more privately
15 but I'll be happy to do that.

16 Yes, ma'am, your name and number again?

17 PROSPECTIVE JUROR KING: Andrea King.

18 THE COURT: What was your number?

19 PROSPECTIVE JUROR KING: 104.

20 THE COURT: All right. And as a D.S.S. worker you
21 have done some investigation. Do you have other
22 knowledge of this case?

23 PROSPECTIVE JUROR KING: Yes.

24 THE COURT: Okay. And would that prevent you from
25 being fair and impartial in this case?

1 PROSPECTIVE JUROR KING: Yes.

2 THE COURT: Okay. All right. You are excused. I'm
3 sorry to make you stand up twice, I just have to do it
4 this way.

5 PROSPECTIVE JUROR KING: That's fine.

6 THE COURT: Sometimes it drives me crazy, too.
7 Yes, ma'am. Give us your name and number.

8 PROSPECTIVE JUROR HARBIN: Melinda Harbin, 89. I
9 heard it on the radio and saw it in the newspaper.

10 THE COURT: All right. Can you still be fair and
11 impartial in this case?

12 PROSPECTIVE JUROR HARBIN: Yes.

13 THE COURT: And can you render a verdict based only
14 on what you hear in the courtroom?

15 PROSPECTIVE JUROR HARBIN: Yes.

16 THE COURT: And do you believe that the information
17 that you have, may have garnered from any publicity,
18 would influence you in any way?

19 PROSPECTIVE JUROR HARBIN: No.

20 THE COURT: Okay. Any questions or additional
21 information from the state?

22 MS. ADAMS: No, sir, Your Honor.

23 THE COURT: Okay. Mr. Temple?

24 THE DEFENDANT: No, sir.

25 PROSPECTIVE JUROR CLARKE: Michael Clarke, 47. I've

1 read about it in the newspaper.

2 THE COURT: So you've just read something about it
3 in the newspaper?

4 PROSPECTIVE JUROR CLARKE: Yes.

5 THE COURT: All right. Can you still be fair and
6 impartial in this case?

7 PROSPECTIVE JUROR CLARKE: Yes, Your Honor.

8 THE COURT: And can you render a verdict based only
9 on the evidence that you hear in this courtroom?

10 PROSPECTIVE JUROR CLARKE: Yes, sir, Your Honor.

11 THE COURT: And can you render a verdict
12 uninfluenced by the publicity that you may have been
13 subjected to?

14 PROSPECTIVE JUROR CLARKE: Yes, Your Honor.

15 THE COURT: All right. Any questions from the
16 State?

17 MS. ADAMS: No, sir.

18 THE COURT: Mr. Temple?

19 THE DEFENDANT: No, sir.

20 THE COURT: Okay. Yes, ma'am.

21 PROSPECTIVE JUROR BRYAN: Sandra Bryan, Number 26,
22 and I would like to speak with you in private.

23 THE COURT: Okay. I'll do that in just a second.
24 Yes, sir.

25 PROSPECTIVE JUROR BURCHFIELD: Jack Burchfield, 28.

1 I've read about it in the paper.

2 THE COURT: All right. And can you render a verdict
3 based only on the evidence you hear in this courtroom?

4 PROSPECTIVE JUROR BURCHFIELD: Yes, sir.

5 THE COURT: And can you be uninfluenced by any
6 publicity that you may have been subjected to?

7 PROSPECTIVE JUROR BURCHFIELD: Yes, sir.

8 THE COURT: Okay. Any questions from the State?

9 MS. ADAMS: No, sir.

10 THE COURT: Mr. Temple?

11 THE DEFENDANT: Questions?

12 THE COURT: For him.

13 THE DEFENDANT: No, sir.

14 THE COURT: Okay.

15 Does anyone know of any reason whatsoever that they
16 cannot serve as a juror in this particular case? If so,
17 please stand. (No response).

18 Okay. Ma'am, come on up, I'll talk to you.

19 (A juror approached the bench and conferred
20 with the Court.)

21 THE COURT: Mr. Temple, come on up.

22 Yes, ma'am. Give us your name and number again?

23 PROSPECTIVE JUROR BRYAN: Sandra Bryan, Number 26.

24 Not only had I been reading about it in the paper before
25 you called me, but I have a personal friend who is also a

1 personal friend of someone from the storage unit, and she
2 had, before I was called, had been talking to me about
3 this woman's testimony.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR BRYAN: And I'm afraid it might
6 influence me.

7 THE COURT: Okay. That's all I needed to know.
8 What was your number again?

9 PROSPECTIVE JUROR BRYAN: 26. And I'm terribly
10 sorry.

11 THE COURT: No, no. I mean, what we're trying to do
12 here is, believe it or not, people that haven't heard
13 about it and not be influenced. But I need to know.

14 All right. 26 excused.

15 (Prospective Juror Bryan, Number 26, was
16 excused from the trial of this case.)

17 THE COURT: Does anyone need to speak to me
18 personally about any problems you may have serving as a
19 juror on this case? And speak now or forever hold your
20 peace. But is there any reason again that you might not
21 be able to serve as a juror in this case? Does anyone
22 know anything about this case whatsoever? (No response.)
23 Last chance. If I was an auctioneer, I'd hit the thing.
24 Okay.

25 All right. Any other questions by the State that

1 you want me to ask the jury panel?

2 MS. ADAMS: No, sir, Your Honor.

3 THE COURT: Mr. Temple?

4 THE DEFENDANT: No, sir.

5 THE COURT: I find that you are all qualified to
6 serve.

7 And I think the best thing to do, let's go ahead and
8 select the jury now. How much time do you need to pull
9 that list?

10 THE CLERK: Five minutes, maybe.

11 THE COURT: All right. We'll just stay in here
12 while you do it. Is that okay with you?

13 THE CLERK: Yes, sir, absolutely.

14 (The Clerk conferred with the Court off the
15 record.)

16 THE COURT: So we have five strikes and ten, right?
17 Everybody agree on that?

18 MS. ADAMS: Yes, sir.

19 THE COURT: Mr. Temple, do you understand you have
20 ten strikes?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Ladies and gentlemen, I need to ask you
23 one other question. Hold on just a minute, Lisa. I just
24 realized that I didn't introduce Mr. Tavernier.

25 Mr. Temple in this case is representing himself.

1 What I have done is I have appointed Kurt Tavernier, who
2 is a defense lawyer in Anderson who does work up here,
3 too, to be his advisory counsel. And I've issued an
4 Order requiring Mr. Tavernier to sit here and answer any
5 questions that Mr. Temple might have. And that's a
6 normal circumstance in a case where you have someone
7 representing themselves in a case such as this.

8 Mr. Tavernier, how about standing up and introducing
9 yourself to everybody?

10 Mr. TAVERNIER: I'm Kurt Tavernier. I'm in private
11 practice in Anderson.

12 THE COURT: Okay. Has anyone ever been represented
13 or are you currently represented by Mr. Tavernier? (No
14 response.)

15 Does anyone have any close personal or business
16 relationship with Mr. Tavernier? (No response.)

17 All right. Mr. Tavernier, quite frankly, is gonna
18 be seated at the table the whole time and he will be
19 available for Mr. Temple, but he is not going to
20 participate in the trial unless Mr. Temple asks him to.
21 I just need to make sure.

22 Okay. You can go ahead and draw the list.

23 I'm gonna pick, ladies and gentlemen, two alternates
24 for this case. This case is not gonna go past this week.
25 Don't be too worried about it. We'll be finished this

1 week one way or the other.

2 When your name is called bring all your personal
3 items and personal belongings, come up, stand and turn
4 around, as Mr. Bibb is doing, and face both the parties.

5 Let me just tell you that in South Carolina each
6 side gets a certain number of strikes. They can strike
7 you for any reason whatsoever except for certain
8 criteria, like race, gender, religious beliefs, that type
9 of thing. But other than some very isolated pockets of
10 restrictions, you can be stricken. Don't be insulted.
11 Trust me. I've seen ministers stricken, so don't worry
12 about it.

13 Yes. Do you want to present the case?

14 MS. ADAMS: Thank you, Your Honor, may it please the
15 Court.

16 This is *State versus Dennis Temple*. He's been
17 charged on Indictment 2010-GS-37-886 for grand larceny
18 over five thousand; '887, criminal sexual conduct first
19 degree; '888, kidnapping; and '889, criminal sexual
20 conduct, first degree.

21 THE DEFENDANT: Your Honor --

22 THE COURT: Yes, sir.

23 THE DEFENDANT: I would like, I would like to object
24 to those indictments. Can I?

25 THE COURT: Yeah. Hold on just a second. What I'm

1 gonna do is -- well, I need to do it before the jury is
2 selected.

3 Ladies and gentlemen, I have to send you out of the
4 courtroom. I'll tell you, if you are selected as a
5 juror, normally I tell jurors you're gonna have to leave
6 the courtroom a good bit, we'll get you plenty of
7 exercise. I need for you to go outside the courtroom for
8 about ten minutes and then we'll bring you back in.
9 Please don't discuss this case with anyone, including
10 yourselves.

11 (Whereupon, the jury panel left the courtroom
12 at approximately 12:15 P.M.)

13 THE COURT: Yes, sir, what's your objection?

14 THE DEFENDANT: Yes, Your Honor. My objection, my
15 grounds for my objection is that those indictments are,
16 are untimely. They were served not within 90 days as
17 required by the South Carolina Rules of Criminal
18 Procedure. Rule 3(c) states specifically that they shall
19 be presented to any defendant within 90 days.

20 Also, those indictments are a product of vindictive
21 prosecution. They are in violation of the Exclusionary
22 Rule, the Sixth Amendment, and the Speedy Trial Act of
23 1974.

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

25 MS. SIMMONS: Your Honor, we addressed this last

1 week. *State versus Edwards*, 364 S.C. 343 deals with the
2 timeliness of indictments, and the rule is purely
3 administrative. Mr. Temple was served with copies of all
4 of his indictments during discovery and certainly they
5 are not the result of vindictive prosecution. Seeking
6 indictments of the grand jury is part of our job.

7 THE COURT: All right. Yes, sir.

8 THE DEFENDANT: Your Honor, well, the State had a
9 remedy if, if, if they did not serve them within 90 days,
10 they had a remedy. They could have squashed [sic] --
11 well, they could have immediately indicted or got an
12 order from the Court for an extension of time, which the
13 rule clearly states. But the State didn't do neither
14 one.

15 THE COURT: All right. Wasn't your position last
16 week that since it was forwarded to the grand jury, that
17 the issue was not -- re-argue just for the record. I
18 can't remember exactly what you argued last week.

19 MS. SIMMONS: Yes, sir. The rule is administrative,
20 it is not jurisdictional. There's a long line of case
21 law, *State versus Edwards* and other South Carolina cases,
22 stating that a mere delay by the Solicitor presenting it
23 to the grand jury. In some of those cases, there's
24 actually one case where it was 800 days. And we're
25 looking at approximately 110. And quite frankly, Judge,

1 we only have grand juries here once a month. There was
2 not an undue or malicious delay in this matter.

3 THE COURT: And again, you are protected. Anything
4 else you want to say?

5 THE DEFENDANT: *United States versus Kennedy*, 372
6 F.3D 2004 Fourth Circuit clearly states that (reading):

7 In criminal procedures, the Rules of Criminal
8 Procedures under which crimes are investigated,
9 prosecuted, adjudicated and punished also encompass
10 Constitutional rights for the defendant.

11 So, I mean, it's clearly, that's no way to do it.

12 THE COURT: All right. You are protected for the
13 record. I'm gonna use the same reasoning I used last
14 week. I'll deny those. I think that it is
15 administrative. And I don't find any evidence of
16 vindictive prosecution at this point, but again, you are
17 protected for the record.

18 All right. Anything else that we need to take up
19 before we select a jury?

20 THE DEFENDANT: Pretrial motions.

21 MS. SIMMONS: Judge, we heard those in Anderson.

22 THE COURT: What other motions do you have?

23 THE DEFENDANT: Well, Your Honor, there's several
24 issues. A motion to suppress D.N.A. tests pursuant to
25 *Schmerber versus California*. I think they are in

1 violation of the South Carolina Rules 5 and 6.

2 Motion to change the venue. As you know, Your
3 Honor, this case has been exposed to prejudicial
4 publicity, sometimes three or four newspapers are
5 reporting the outcomes of certain hearings every month,
6 every week. There's been publicity on the TV nonstop for
7 like eight months.

8 I think that to continue with this trial in this
9 jurisdiction, I think it would be prejudicial to me. I
10 think it would.

11 THE COURT: All right. We took up -- you are
12 talking about a *Schmerber* motion, right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: We took that up last week. But you are
15 basically re-raising the objection you made last week,
16 all right? And again, I'm trying to make sure you are
17 protected for the record.

18 THE DEFENDANT: Yes, Your Honor. I think the D.N.A.
19 tests were dismissed in reference to *Schmerber versus*
20 *California* because these D.N.A. tests that we have now
21 that was, they are purported new D.N.A. tests that was
22 issued on November the 8th. But it clearly states on the
23 front of it it's a supplement, but this is a new D.N.A.
24 test by itself. So if it's a supplement, then it's
25 obviously connected to something else. That's my

1 argument there.

2 THE COURT: All right. Yes, ma'am. Let's talk
3 about that and then we'll talk about Rule 5 and 6.

4 MS. SIMMONS: Judge, when S.L.E.D. issues an initial
5 report, it's called a report. Anything they subsequently
6 issue they write "supplemental" on. It's S.L.E.D.
7 procedure. I've asked about that. And the September
8 22nd D.N.A. samples, the ones that Judge Macaulay ordered
9 pursuant to a *Schmerber* Order after a hearing with him,
10 are samples that are analyzed and reflected in the
11 November 8th report.

12 THE COURT: All right. That's pretty much the same
13 argument as we had last week. And as I said, you can ask
14 the S.L.E.D. agent, if they testify, why it's called
15 supplemental. I'm not gonna limit your cross-examination
16 of it. But I'll deny that motion at the present time.

17 Now, Rule 5, what do you think you are still
18 entitled to? Rule 5 requires them to give you all the
19 evidence. Is there something?

20 THE DEFENDANT: Well, Your Honor, on their Rule 5, I
21 think that, well, Rule 5 was in reference to the other
22 D.N.A. tests that were issued. They were not disclosed
23 within the time that was required by the D.N.A. test
24 itself under Statute 6-23-740, Statute 13, 1713 AND 140.
25 But those are irrelevant statutes for D.N.A. tests as of

1 now. So that's about it, Your Honor.

2 THE COURT: Okay. And then the motion for change of
3 venue, obviously if I can't select a jury today, that's a
4 motion you can take up. But so far it looks like we've
5 got enough who are uninfluenced by any of the publicity.
6 And I understand you are protected for the record on that
7 motion, but I'm gonna deny the motion for change of
8 venue.

9 THE DEFENDANT: Can I proceed?

10 THE COURT: Yes. How many more do you have?

11 THE DEFENDANT: A motion for independent testing
12 that was never done.

13 THE COURT: Of the D.N.A.?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay.

16 MS. SIMMONS: He never filed for a motion for
17 independent testing.

18 THE COURT: Okay. Did you ever file a motion for
19 independent testing?

20 THE DEFENDANT: I was gonna leave that up to my
21 attorney. Never could get the attorney situation worked
22 out. Never could.

23 THE COURT: Okay. All right. Well, for the record
24 I'm gonna deny that motion as not timely filed. But go
25 ahead. Again, you are protected for the record, that's

1 why I want to make sure everything is on the record.

2 **THE DEFENDANT:** Okay. Discovery. I believe there
3 was a discovery violation. Certain information that I
4 requested was never produced.

5 **THE COURT:** Like what?

6 **THE DEFENDANT:** Like, like information in reference
7 to the officers that ruled, did the investigation or
8 police officers or witnesses that was unidentified at the
9 time, which are still unidentified at the time, right
10 now, that had written like statements on me or, you know,
11 and other information as well.

12 **THE COURT:** Okay. Yes, ma'am.

13 **MS. SIMMONS:** Judge, I think he's referring to there
14 were jailhouse snitches in this case. We provided them
15 the contents of their statements. They are not on our
16 witness list. We do not intend to use those folks in our
17 prosecution.

18 **THE COURT:** Is that who you are talking about?

19 **THE DEFENDANT:** Yeah. But also in reference to
20 police officers, past problems come up, you know,
21 citations, or disciplinary offenses or, you know, stuff
22 like that, too.

23 **THE COURT:** All right. Yes, ma'am.

24 **MS. SIMMONS:** Judge, he did send me a letter asking
25 for the personnel files of the law enforcement officers

1 in this case, every ticket they had ever written, or
2 every warrant they had ever written and he wanted to know
3 what medications they were on, on or about May 9th of
4 2010. I did respond to him in a timely manner in less
5 than ten days and told him that those items pursuant to
6 the Rules of Discovery are not within the care, custody
7 and control of the 10th Circuit Solicitor. I even went
8 as far as explaining to him in my correspondence with him
9 where he could subpoena those documents and files if he
10 chose to do so.

11 THE COURT: All right.

12 THE DEFENDANT: She did, Your Honor. But I thought
13 that it still was a discovery violation because of the
14 fact the information was not disclosed.

15 THE COURT: Okay. All right. Well, since there was
16 no subpoena sent, I'll deny it. But again, you are
17 protected for the record.

18 THE DEFENDANT: Motion to exclude undisclosed
19 witnesses. Your Honor, I just received the witness list
20 just now. I think that according to the South Carolina
21 Rules of Criminal Procedures that I should have received
22 the witness list ten days before trial.

23 THE COURT: Yes, ma'am.

24 MS. SIMMONS: Judge, he called us last week. We
25 explained to him that any name which was referenced in

1 discovery materials, which were voluminous and have been
2 provided to him, were subject to being called as a
3 witness in this case. I believe he's probably reading
4 Rule 5(d)(2) -- I mean 5(e)(2) on Notice of Alibi. If he
5 had noticed us of alibi, we would have had to give him a
6 witness list of names and addresses of witnesses that we
7 intend to rely on. He had the names of everybody who's
8 on that witness list in discovery materials.

9 THE COURT: All right. Is that what you are talking
10 about?

11 THE DEFENDANT: Yes, sir, that's what I'm talking
12 about. Just that rule and -- yes, sir.

13 THE COURT: Okay. All right. Again, you are
14 protected for the record. I'm gonna deny that motion
15 since alibi is not an issue at the current time.

16 THE DEFENDANT: Okay. My last motion, Your Honor,
17 would be motion to offer proof regarding South Carolina
18 Code of Laws Statute 16-3-659 in which the State has
19 previously requested that certain entities that would
20 prove my innocence be disclosed. Well, they're not to be
21 disclosed to the jury or -- I think that this evidence,
22 Your Honor, if I may please state briefly the primary
23 purpose of the State's motion is to prohibit the
24 Defendant, me, from introducing evidence of the alleged
25 victim's prior sexual activities and a third-party guilt

1 because the evidence would be inflammatory, prejudicial
2 or misleading. Further introduction of the said evidence
3 lacks probative value, lacks evidence of facts or
4 circumstances -- that was a reason.

5 However, I find that this -- Your Honor, the victim
6 says that she was taken to the hospital. They did what
7 you call a criminal sexual -- no -- it's called a sexual
8 assault examination on her which consists of asking the
9 alleged victim information and doing examinations on her.

10 Well, the examiner found out that she had had sex
11 that previous day, which was also, the rape, she alleges
12 later on she was raped. Okay? Now, from the examiner
13 came the criminal sexual conduct kit which they sent it
14 to the S.L.E.D. laboratory forensics.

15 The S.L.E.D. did an examination on this evidence,
16 and they concluded that there was more than two males'
17 semen identified. But her previous sexual act, she
18 stated that she used a condom, contraception. So I think
19 that this evidence right here would prove that the victim
20 is not only lying, but it would prove that, my innocence.
21 That's what I believe.

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

23 MS. SIMMONS: Judge, we are looking at 16-3-659
24 which would allow the Defendant to introduce evidence of
25 semen, pregnancy or disease at trial if there was another

1 source. The vaginal swabs were taken to S.L.E.D., and
2 that's item 1.3 from the S.L.E.D. report, from the
3 S.L.E.D. testing kit. There was no semen identified in
4 those vaginal swabs.

5 The victim alleges that she had consensual sex with
6 her boyfriend with a condom the day before.

7 The match on the rectal swabs ---

8 THE DEFENDANT: Same thing.

9 THE COURT: Let her finish. That's one thing we
10 were talking about. Don't interrupt.

11 MS. SIMMONS: The rectal swabs did indicate semen
12 consistent with the victim's story, and that semen,
13 S.L.E.D. only developed one profile from that semen.
14 There is only one semen sample collected from the rape
15 kit, that is the rectal swab, and the match on that is
16 one in 330 trillion, one profile was developed. Any
17 evidence of another party would be solely just to confuse
18 this jury and inflame and prejudice the jury.

19 THE DEFENDANT: Your Honor?

20 THE COURT: Yes, sir.

21 THE DEFENDANT: The alleged victim stated to the
22 police, to the officers, that the assailant raped her and
23 he released inside her. When he realized that he had
24 released inside her, he was like, oh, and cursed and he
25 grabbed a rag and tried to clean her out with the rag.

1 This is the rag. The forensic did an examination on the
2 rag and they said it was a mixture of two D.N.A.'s, two
3 D.N.A.'s, not just one.

4 THE COURT: All right. Hold on. What did they say
5 about that? See, I don't have the evidence yet. I'll
6 see it as it comes in.

7 MS. SIMMONS: Judge, quite frankly, because of the
8 condition of the storage unit, we don't even know if we
9 sent the right rag for testing, number one. We're not
10 planning on introducing this rag. And I think 16-659 is
11 source of semen, pregnancy or other disease. There is
12 D.N.A. on that rag, there is no indication that it's
13 semen. I think the rag is moot for this point. We're
14 talking about if a rape kit was conducted and more than
15 one semen profile was developed.

16 THE DEFENDANT: Your Honor?

17 THE COURT: Yes, sir.

18 THE DEFENDANT: Regardless of whether the State can
19 use the evidence or not, I mean, it should not be their
20 determination if we can use it or not, you know?

21 THE COURT: Well, they're telling me they're not
22 gonna introduce it.

23 MS. SIMMONS: And Judge, just for the record, the
24 washcloth is S.L.E.D. 7.2, and it was swabbed, and the
25 D.N.A. profile of the major contributor on that is the

1 Defendant.

2 THE COURT: Were there other contributors?

3 MS. SIMMONS: It said it's a mixture of at least two
4 individuals, and the major contributor is Dennis Temple.
5 And there are two swabs taken from that, and swab 7.3
6 also matched Dennis Temple.

7 THE DEFENDANT: Your Honor, I think that this shows
8 itself that the victim is lying, you know?

9 THE COURT: All right. What you can do, and we'll
10 have to decide this. If there is testimony from S.L.E.D.
11 or the D.N.A. expert, we'll have to decide at that time
12 whether you can ask them about other D.N.A. found on the
13 rag. But that's not something I'm gonna take care of
14 pretrial.

15 THE DEFENDANT: Okay. But what about the previous
16 sexual act? You know, the prosecution has to prove that
17 there was two elements in criminal sexual conduct:
18 Aggravated force and penetration. By the victim stating
19 that she had previous sex that same day, 5-9-2010, that
20 she was allegedly raped, penetration is visible, could be
21 visible. How do we know for sure that the penetration is
22 not from the previous sexual act instead of the rape?

23 THE COURT: All right. Again, from a pretrial
24 standpoint, I don't need to deal with that now. Once we
25 get to the point in the trial that that may come up, a

1 lot of what you are mentioning now is dependent upon what
2 the witnesses say. So we'll save that one until -- you
3 need to let me know, though, when you get to the point
4 where you are thinking you may need to ask that question
5 because then I'll send the jury out and we'll make this
6 objection then, okay?

7 THE DEFENDANT: Okay.

8 THE COURT: Is that all of them?

9 THE DEFENDANT: Yeah. But, Your Honor, one more
10 thing?

11 THE COURT: Sure.

12 THE DEFENDANT: I think that was, that was the
13 reason to try to get this evidence introduced as legal
14 evidence admissible in order to present it to the jury
15 because the jury is the one that's gonna to be making a
16 decision.

17 THE COURT: Well, the jury has to determine the
18 facts. They have to determine whether the requirements
19 of criminal sexual conduct first are met, and they have
20 to determine that based upon the totality of the
21 evidence. The question is gonna be, quite frankly,
22 whether I let you ask that question, which is ask the
23 question of the victim: Did you have intercourse the
24 night before? I don't know.

25 I mean, then the jury has to make a decision about

1 whether or not that affects their factual determination.
2 I mean, the fact that you may think that evidence is not,
3 or shouldn't come in is not proper now. That's something
4 we're gonna have to decide. And you need to understand
5 that just because a certain piece of evidence may affect
6 your case either in the positive or in the negative, both
7 sides get to put their case in. The jury has to
8 determine the facts based upon the totality of the
9 evidence. So we'll decide that at the time it comes in.

10 THE DEFENDANT: Okay. Thank you, Your Honor.

11 THE COURT: Okay.

12 MS. SIMMONS: Judge, just for clarification I wanted
13 to make sure that Mr. Temple understands that you're
14 gonna rule on that when it comes up, so it would not be
15 proper to argue that until any point in time as he asks
16 those questions of the witness.

17 THE COURT: Well, Mr. Temple, do you intend to bring
18 that up in your opening statement?

19 THE DEFENDANT: Your Honor, I think, like I was
20 telling you, I have prepared my opening statement about
21 four months ago. Well, I'm not gonna say four months
22 ago. But I had the D.N.A. test at the time. And
23 everything was included to give the jury a preview of
24 what's to come. And this was included in my opening
25 statement. Maybe not detailed as it is, but I think I --

1 THE COURT: Well, do you intend to bring up in your
2 opening statement the prior act of the victim?

3 THE DEFENDANT: No, sir, I don't.

4 THE COURT: All right. That's all I need to know.
5 I don't need to know what you're gonna say. But since
6 you are representing yourself, you need to understand,
7 and I need this on the record real clear, and I need to
8 make sure you understand, while you are representing
9 yourself, you are held to the standards of the Rules just
10 as if you were a lawyer and as if you knew the Rules. So
11 if at some point during the trial you do something and
12 say, Oh, Judge, I'm sorry I did that, I didn't know the
13 Rule, that ain't gonna be good enough.

14 So what you need to understand is that if you get to
15 a point at any point during this trial, and you are
16 afraid you are getting ready to step over the line with
17 the Rules, the proper thing to do would be to say, Judge,
18 we need to take this up outside of the jury, and I'll
19 send them out. And if you object to something, I'm gonna
20 send them out every time because I don't want them to
21 hear what may be objectionable testimony. So just make
22 sure that, if you think you are getting ready to do
23 something, the best thing to do is say, "Judge, I got to
24 talk to you outside the jury," I'll send them out, and
25 then put it on the record.

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 ***

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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

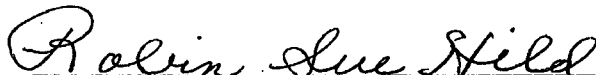
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Certificate of Court Reporter

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:

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17 10th Circuit Solicitor
Lindsey S. Simmons
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1	INDEX	
2		
3	WITNESSES	PAGE
4	Neill Burkett	
5	Direct Examination by Ms. Simmons	157
6	Cross-Examination by Mr. Temple	161
7	Britta Chapman	
8	Direct Examination by Ms. Simmons	163
9	Cross-examination by Mr. Temple	174
10	Gregory L. Cromer, M.D.	
11	Direct Examination by Ms. Adams	177
12	Cross-examination by Mr. Temple	198
13	Redirect examination by Ms. Adams	210
14	Recross-examination by Mr. Temple	212
15	Brian Danielson	
16	Direct examination by Ms. Simmons	213
17	Cross-examination by Mr. Temple	216
18	Kimberly Chewning	
19	Direct examination by Ms. Adams	218
20	Cross-examination by Mr. Temple	230
21	David Smith	
22	Direct examination by Ms. Simmons	235
23	Cross-examination by Mr. Temple	238
24	Derek Pace	
25	Direct Examination by Ms. Simmons	242
26	Cross-examination by Mr. Temple	253
27	Greg Reed	
28	Direct Examination by Ms Adams	257
29	Cross-examination by Mr. Temple	266
30	Redirect examination by Ms. Adams	276
31	Recross-examination by Mr. Temple	276
32	Doris Yarbrough	
33	Direct Examination by Ms. Simmons	277
34	Cross-examination by Mr. Temple	282
35		
36		
37		
38		
39		
40		
41		
42		
43		
44		
45		
46		
47		
48		
49		
50		

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		
	Patrick Merck	
11	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

-- /188 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

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 Ocone 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
a few minutes ago and he needs me. He's got another
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
three law enforcement witnesses and four S.L.E.D. chain
witnesses. They are quick witnesses on the chain.

20

THE COURT: Okay. All right. You can bring them
in.

22

(The jury entered the courtroom at

23

approximately 2:32 p.m.)

24

THE COURT: All right, ladies and gentlemen, I hope
you had a good lunch. Like I said, we're not gonna keep

25

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 Oconee 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?