

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPELLATE CASE No. 2022-001410
TRIAL COURT CASE No. 2012GS1002537

DAVID SMITH

RECEIVED

JUL 24 2023

v.
STATE OF SOUTH CAROLINA SC Court of Appeals


DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD OF
APPEAL

APPELLATE PROPOSES THE FOLLOWING BE INCLUDED
IN THE RECORD OF APPEAL

1. MOTION TO RECONSIDER SENTENCE JULY 18, 2014
2. ORDER DENYING SENTENCE RECONSIDERATION
JULY 27, 2022
3. ORDER FILED MAY 9, 2023
4. WARRANT 1-601373
5. ACCEPTANCE LETTER FROM STRONG PROGRAM
6. INDICTMENT
7. ATTORNEY A. PENN LETTER
8. BODY REQUEST (C. WOOLEY) ATT.
9. MEDICAL RECORD
10. APPELLATE'S AFFIDAVIT
11. LETTER AND PETITION FROM ATT. MALLOY
12. APPENDIX PAGES UTILIZED

I CERTIFY THAT THIS DESIGNATION CONTAINS NO MATTER
WHICH IS IRRELEVANT TO THE APPEAL.

JULY 12, 2022


WITHOUT PREJUDICE 06/28/2023

State of South Carolina
In the Court of Appeals

RECEIVED

Appellate Case No. 2022-001410
Trial Court Case No. 2012GS1002533

JUL 24 2023
SC Court of Appeals

DAVID SMITH

v.

STATE OF SOUTH CAROLINA

MEMORANDUM OF LAW
IN SUPPORT OF APPEAL OF
MOTION TO RECONSIDER SENTENCE

OVERVIEW

On October 18th 2011 Appellant was charged with CDV high aggravated nature.

On May 2nd 2012 Appellant was accepted into the STRONG (CDV) PROGRAM. On May 7th 2012 Appellant was Indicted for Attempted Murder. On October 18th Appellant arguably involuntarily entered a guilty plea for ABHAN and was sentenced to 20 years. On October 18th 2012 Counsel Luke Malloy files a Motion to reconsider Sentence. On July 27th 2022 Judge YOUNG signs order denying motion to reconsider sentence. We are now before the court on appeal of the denial of the motion to reconsider sentence.

ARGUMENT

Issue 1: Timelines of Appeal of Motion to reconsider sentence

A written order was required to appeal the denial of the October 18th 2014 motion to reconsider sentence which was signed by the judge and dismissed on July 27th 2022.

The Appellant is entitled to appeal that ruling therefore the July 27th 2022 ruling would not be “nullity” as the state suggests although the courts written order is “eight years” overdue and untimely.

The un-timelines of the courts order is through no action or inaction of the appellant.

Accordingly, the Appellant should not be penalized by the dismissal of his appeal based upon the un-timelines of the courts ruling and un-timeliness of the filing of the courts written order.

Issue 2: Failure to Order Transcripts

Additionally, no “new information” would be presented to the court by the ordering of transcripts. Also, the reasons for all of the Appellants claims in regards to all issues presented to this court in this appeal and request to “RECONSIDER SENTENCE” can be found in the motion to RETURN TO REMAND AND RECONSTRUCT and also in the APPENDIX and included Exhibits.

Furthermore, the court and the respondent both already possess copies of the RETURN TO REMAND AND RECONSTRUCT and also of the APPENDIX and Exhibits. Therefore Appellants case should not be dismissed for failing to order the unnecessary transcripts as Appellant already stated on April 4th 2023 and as it states in letter from the Court of Appeals (See, Exhibit #3 Letter

dated May 9th 2023) and therefore “the transcript Rule 207 should not apply due to the extraordinary circumstances of the case.

Accordingly, the Appellants sentence should be reconsidered based upon the evidence of those claims individually and also the unconstitutionality of all the following circumstances and allegations when examined together.

Issue 3. Original charge/ CDV high aggravated nature unjustifiably enhanced

On October 18th 2011 Appellant was charged with CRIMINAL DOMESTIC VIOLENCE OF A HIGH AGGRAVATED NATURE (See, Exhibit #4 Arrest Warrant)

Statute 16-25-65 Criminal domestic violence of a high and aggravated nature; elements; penalty; conditional probation; statutory offense

(A) a person who violates is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs the person commits and assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim or

(1) A assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim or

(2) an assault with or without an accompanying battery which would reasonably cause a person to fear imminent serious bodily injuries or death

(B) A person who violates subsection (a) is guilty of a felony and upon conviction must be imprisoned not less than a mandatory minimum of one year and no more than 10 years. The severity of the consequences for CDV depends on the severity of the violence (i.e.)

1st degree Felony /maximum = 10 years

2nd degree Misdemeanor/ maximum = 3 years

3rd degree Misdemeanor/ maximum = 90 days

The record shows that the CDV high aggravated nature charge was the Appellants first CDV charge. Also, the established factual basis shows that the victim left the hospital in under 24 hours and in less than a week returned to work.

Therefore Appellant was entitled to CDV treatment (i.e.) "The Strong Program" which Appellant had already been accepted into 1 year and 5 days after being indicted for attempted murder.

(See, Exhibit #5 letter of acceptance dated May 2nd 2013).

Furthermore completion of the Strong Program would have ensured the Appellant a possibly lesser sentence than the maximum penalty for the CDV high aggravated nature charge.

Issue 4: Att. Murder Indictment

On May 7th 2012 the Appellant was indicted for Attempted Murder. See, (Exhibit #6 Attempted Murder Indictment) Appellants previous defense counsel Mrs. Alecia Penn did not think Appellant was guilty of Attempted Murder. (See, Exhibit #7 letter dated 10/18/2013)

Therefore the record creates an inference that prior attorney Mrs. Alecia Penn was in preparation for a jury trial. (See, also, Exhibit #8 BRADY REQUEST/ EDWARDS NOTICE dated December 28th 2011 which shows that prior Attorney Mrs. Cassandra Woosley was also in preparation for a jury trial.

Additionally, plea counsel Malloy also says himself he “did not think if this were to go to trial that “attempted murder” would be the foregone conclusion.

(See, Appendix page 20 Lines 13-16) Furthermore, based upon the established factual basis and or the victims medical record the injuries that the victim sustained were non life threatening creating a inference that the Appellant actually lacked the specific intent to kill necessary to convict for attempted murder. (See, Exhibit #9 victims medical records)

The fact that Mr. Malloy says himself that he doesn’t think a jury would convict for attempted murder creates a inference in the record that he did not believe that the Appellant possessed the necessary elements of malice or intent to kill which in most jurisdictions, is necessary just to enhance a charge from domestic violence to attempted murder.

In most jurisdictions these requisite elements would need to be established beyond a reasonable doubt. The victim and Appellant were clearly in a domestic relationship proven by the record and the elements of Attempted Murder were arguably not present in the Appellants case due to letters which show affection to the victim and the very opposite of malice also due to the degree of the victims injuries which as stated earlier shows a lack of Specific Intent to kill. (See, Appendix Page 27 L. 5-23)

Accordingly, plea counsel was ineffective assistance and his performance was defecient for having advised Appellant to plea guilty to ABHAN, which is the greatest of the lesser included offenses of attempted murder and the victims injuries were inconsistent with the potential sentencing of ABHAN.

Plea Counsel Arguably should have suggested that Appellant attempt to prove the case to be a CDV high aggravated nature case or in the alternative a lesser degree of assault than ABHAN (i.e.) Assault and Battery (1st degree)

Therefore Appellant was misadvised to plea to ABHAN due to the 10 year disparity in the potential sentence which the Appellant could receive for the guilty plea to Assault and Battery high Aggravated nature versus the potential sentence for a guilty plea to Criminal Domestic Violence high Aggravated nature charge.

Issue 5: Coercion/ ABHAN guilty plea

The record shows that for three years Appellant had prepared for trial. (See, Exhibit #7) Letter from Mrs. Alecia Penn dated Oct. 18th 2013 which shows, Appellant still preparing for trial over a year after being indicted for the alleged murder attempt.

The record shows that counsel knowingly gave appellant bad advice to plea guilty to ABHAN and that he was aware that the case was without any justified reason enhanced from CDV high aggravated nature and that the Appellants actions in assaulting the victim his girlfriend or ex-girlfriend did not amount to a murder attempt based upon the factual basis which the court failed to establish at the time of the plea on Oct. 18th 2014.

Plea counsel arguably should have proceeded with the prior two attorneys three year plan to challenge the attempted murder indictment with a jury trial due to the lacking evidence of malice and specific Intent to kill in regards to attempted Murder.

Simply put, there was no benefit to the Appellant to plea guilty to ABHAN instead of proceeding to trial to prove his innocence of the alleged murder attempt, and also that his case was no

more than a CDV high aggravated nature case or in the alternative a Assault and Battery (1st degree) case deserving no more than a ten year sentence. (See, 16-3-600 (C)(1))

The Appellant was prejudiced by counsel's by pressuring him and by his bad advice to plea guilty to ABHAN and Appellant arguably should have proceeded with the jury trial to potentially receive a benefit in regards to sentencing for his testimony which would have exposed the domestic characteristics of his case (i.e.) that he cared for the victim which could be proven by (A) letters from himself to victim and (B) by their sharing a residence for more than a year, which could be also be proven.

The love letters showed affection towards the victim and the opposite of malice Also, the victims medical report in regards to the seriousness of her injuries created a inference that that appellant did not have the Specific Intent to kill the victim.

Issue 6: Abuse of discretion/ Prosecutorial misconduct

Additionally, Judge Young abused his discretion in (A) accepting the ABHAN guilty plea without establishing a factual basis for the plea by at least inquiring as to what happened, and the seriousness of the victims injuries which were according to the medical report moderate, and not life threatening at all. Furthermore the medical report showed victim was not stabbed in the back as maliciously stated by solicitor Jessica Baldwin which could have earned him a benefit in regards to a lesser sentence than the maximum in exchange for his guilty plea. Judge Young also abused his discretion in

(B) sentencing the Appellant to 20 years while having knowledge that Appellant was originally charged with and perhaps guilty of the lesser crime CDV high aggravated nature.

Judge Young was aware that a guilty plea to the CDV high aggravated nature charge would expose appellant to a maximum 10 year sentence at that time in 2014 which was 10 years less than the 20 year sentence which the guilty plea to a Assault and Battery high aggravated nature exposed him to.

Therefore Judge Young abused his discretion in sentencing Appellant to the maximum 20 years for the “high aggravated nature” Assault and Battery/ CDV charge while being aware that Appellants alleged Attempted Murder case possessed domestic characteristics and also in failing to establish a factual basis for the ABHAN plea (i.e.) by inquiring as to the seriousness of the victims injuries or in the very least what happened?

Furthermore, Judge Young abused his discretion for (C) denying the Motion to reconsider sentence while being aware of all the aforementioned facts and Lastly, Judge Young abused his discretion for (D) failing to file a written order denying the appellants October 18th 2014 motion to reconsider until July 27th 2022 eight years later. Furthermore, Judge Young also abused his discretion in allowing Solicitor Jessica Baldwin to

(E) make malicious statements which were not corroborated by the record. (i.e.)

1. She said Appellant jumped out of the bushes

See, Appendix Page 22 Lines 17-18

2. She said Appellant stabbed victim in the back

See, Appendix Page 23 Line 9

The record shows Appellant always stated that he was in his car in the driveway and did not jump out of the bushes, or attack the victim from behind or stab her in the back as Solicitor Baldwin stated. (See, Appendix Page 27 Lines 10-19) (See, also Exhibit #10 Affidavit of David Israel dated January 18th 2019)

Additionally, the record shows that based upon the "moderate" injuries of the victim, Appellants case is not a attempted murder case at all. (See, Exhibit #9 MUSC medical report) victim received "a one time treatment" at the hospital and returned to work within 3 days.

Accordingly, the victim sustained only moderate injuries all non life threatening and none which were to her back.

Furthermore, the courts failure to the establish the factual basis was abuse of discretion under the present circumstance and further evidence of this abuse is that the courts motion to relieve Appellants trial counsel was only just recently granted on July 17th 2023 and according to Plea Counsel himself Appellant has had no counsel in this matter since Oct. 18th 2014 in violation of his 6th amendment rights to counsel.

(See, Exhibit #11) A Letter and Petition to be Relieved as Counsel from Attorney Luke Malloy where he states that he left the employ of the South Carolina Public Defenders Office in 2017 and is now practicing law in Virginia.

Simply put, Appellants 6th Amendment right to counsel has been violatêd in him unjustifiably having no counsel in this matter for eight years.

Issue 7: Fifth & Sixth Amendment Violation

The right to effective assistance of counsel is guaranteed by the Sixth Amendment of the United States Constitution. It means that defendants have the right to "*competent and diligent*" representation from their defense attorney throughout the criminal proceedings, which the Appellant did not receive for the following reasons.

The state disclosed to the appellants attorneys letters from the appellant to the victim which were not disclosed to appellant and eventually became missing prior to the "ambush" Plea hearing arranged by Plea Counsel Luke Malloy.

Prior Attorney Mrs. Alecia Penn and Plea counsel Malloy were both aware that the letters were not threatening in nature and showed affection and the very opposite of Malice. See, Appendix Page 21 lines 6-21.

Therefore, the letters themselves were in fact exculpatory evidence and Appellant was entitled to know that these letters could be used to show that he cared for the victim and also to show that he did not have malice toward the victim or a intent to kill the victim.

Accordingly, the Appellants "BRADY" or 5th amendment rights were violated due to the non disclosure of the letters and therefore he did not make and could not have made a voluntary guilty plea without being informed as to all exculpatory evidence. Accordingly Appellants guilty plea should be set aside due to the aforementioned reasons. Additionally, Mrs. Penn and Mr. Malloy were both aware that there was a domestic characteristic present in the Appellants case possibly entitling him to the CDV high aggravated nature charge which he originally received prior to the attempted murder indictment.

Additionally, defense counselors were aware that Appellant was prejudiced by (1) the unjustifiable enhancement from the CDV high aggravated nature charge to the Attempted Murder charge and also by (2) defense counsels refusal to challenge the unjustified enhancement. Additionally, both of appellants prior attorneys Mrs. Penn and Mrs. Woosley stated that they did not believe that the appellant was guilty of Attempted Murder or that Appellant could be convicted for it.

Therefore Mr. Malloy's opinion in regards to suggesting a guilty plea for ABHAN versus a jury trial to disprove the Attempted Murder indictment and prove his case to be a CDV high aggravated nature case was a dissenting and contrary opinion to both prior defense attorneys and the appellant creating an inference that appellant was indeed coerced and pressured which Appellant has always claimed.

Arguably plea counsel should have suggested the same thing that the Appellants Prior Attorneys suggested (i.e.) to challenge the Attempted Murder Indictment due to the lacking requisite elements of Specific Intent to kill and Malice. Furthermore, plea counsel was also arguably ineffective for failing to file a notice of appeal while knowing Appellant received the maximum sentence of 20 years in exchange for the guilty plea that he suggested. Counsel Malloy was aware appellant was dissatisfied with the outcome of the plea hearing and it is the criminal defense attorney's responsibility to perfect an appeal. (See, Baker v. Kaiser 929 F.2d 1495 (10th Cir. 1991) Accordingly, Plea counsels performance was deficient and prejudicial also Prosecutor Jessica Baldwin maliciously made false allegations. Furthermore Judge Young also abused his discretion in violation of Appellants 5th 6th and 14th Amendment Rights.

CONCLUSION

For all of the aforementioned reasons Appellants appeal of the denial of his Motion to reconsider should be granted and his 20 year sentence modified to a 10 year maximum sentence consistent with the maximum potential sentence of his original CDV high aggravated nature charge and the moderate degree of the injuries the victim sustained.

Or in the alternative modify the Appellant sentence to reflect a sentence consistent with the lesser included offense of Assault and Battery (in the first degree) which would expose Appellant to the equivalent and maximum potential sentence of 10 years as did the CDV high aggravated nature charge at the time of his 2014 involuntary ABHAN Plea. This request to reconsider sentence is in order to afford Appellant the benefit of the domestic characteristics which are clearly present in his Assault and Battery/ CDV high aggravated nature case based upon the recorded account of the incident and the factual basis which is now established and which should have been established prior to the ABHAN guilty plea in the interest of justice and equal protection of the law.

Respectfully submitted,

David Israel Smith

July 12th 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No(s):
Warrant No(s): I601373; W10110325
Charge(s): Attempted Murder, Probation
Violation

STATE OF SOUTH CAROLINA

vs.

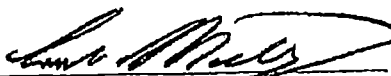
DAVID ISRAEL SMITH,

Defendant

MOTION TO RECONSIDER SENTENCE

PLEASE TAKE NOTICE THAT the Defendant, David Israel Smith, through his undersigned attorney, will move this Honorable Court for a reconsideration of the sentence imposed on July 10, 2014. The grounds for the motion will be presented at the hearing on July 29, 2014.

Respectfully submitted,



Luke J. Malloy
Attorney for the Defendant

Charleston, South Carolina

Dated: July 18, 2014

BY _____
JULIE Y. ANSTRONG
CLERK OF COURT

2014 JUL 18 AM 11:28

FILED



FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

2022 AUG -3 AM 9:54

NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

JULIE J. ARMSTRONG
CLERK OF COURT
BY *pe*

**ORDER DENYING SENTENCE
RECONSIDERATION**

vs.

Arrest Warrant #I601373

DAVID ISRAEL SMITH,

Indictment #2012GS1002533

DEFENDANT.

Defendant in the above-captioned case pleaded guilty to Assault and Battery of a High and Aggravated Nature on July 10, 2014. He received an active sentence of 20 years. On November 17, 2014, Defendant appeared before the court on a motion to reconsider his sentence. After hearing arguments from both parties:

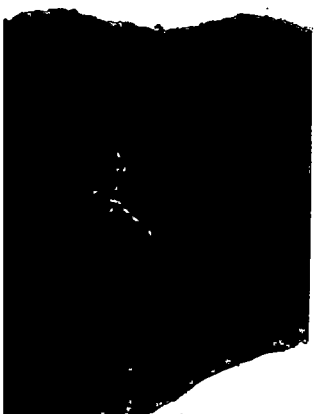
IT IS HEREBY ORDERED that the Defendant's motion is DENIED.

[Handwritten Signature]

The Honorable Roger M. Young, Sr.
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina
Dated: 7/27, 2022

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
BY *[Handwritten Signature]*
DEPUTY CLERK



The South Carolina Court of Appeals

The State, Respondent,

v.

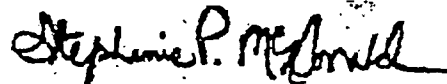
David Israel Smith, Appellant.

Appellate Case No. 2022-001410

ORDER

On February 8, 2023, Appellant requested that this court remand his case to the circuit court. This court construed Appellant's request as a motion to remand for reconstruction of the record of the hearing on his motion for reconsideration of his sentence. Respondent filed a return opposing the request because a transcript of the proceeding was available, and on April 4, 2023, Appellant responded that reconstruction was not required because a transcript was available. Accordingly, Appellant's request to remand his case to the circuit court is denied.

In its return opposing the request to remand, Respondent moved to dismiss the appeal as untimely. Respondent argued the order issued by the circuit court on July 27, 2022, is a nullity because the circuit court issued an oral ruling during the November 2014 hearing on Appellant's motion for reconsideration; Respondent further asserts the 2014 decision should be considered a final ruling due to Appellant's filing of an application for post-conviction relief and then appealing the denial of his application. We decline to dismiss the appeal. Respondent may raise the question of the timeliness of this appeal as an issue in its appellate brief should it so choose.



FOR THE COURT

Columbia, South Carolina

FILED
May 09 2023

ARREST WARRANT

I-601373

STATE OF SOUTH CAROLINA

County/ Municipality of

City of Charleston

117122 THE STATE against

David Israel Smith

Address: 23 Sothel Avenue Charleston, SC 29407-

Phone: SSN: 251-37-0702 Sex: M Race: B Height: 6 1 Weight: 180 L State: SC DL #: 007836877 OB: 12/22/1977 Agency ORI #:

Prosecuting Agency: Charleston Police Department Prosecuting Officer: Micheal A Lyczany

Offense: Criminal Domestic Violence of a High and Aggravated

Offense Code: 02988

Code/Ordinance Sec: 16-25-65 GS

This warrant is CERTIFIED FOR SERVICE in the County/ Municipality of

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

(L.S.)

Signature of Judge

Date:

RETURN

copy of this arrest warrant was delivered to defendant

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

City of Charleston Municipal Court 180 Lockwood Boulevard Charleston, SC 29403

STATE OF SOUTH CAROLINA

County/ Municipality of

City of Charleston

Personally appeared before me the affiant Det. Michael Lyczany who

being duly sworn deposes and says that defendant David Israel Smith

did within this county and state on 10/18/2011 violate the criminal laws of the

State of South Carolina (or ordinance of County/ Municipality of City of Charleston)

in the following particulars:

DESCRIPTION OF OFFENSE: Criminal Domestic Violence of a High and Aggravated Nature

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

SEE ATTACHED AFFIDAVIT

Signature of Affiant

DET. Michael Lyczany

STATE OF SOUTH CAROLINA

County/ Municipality of

City of Charleston

Affiant's Address 180 Lockwood Blvd Charleston, SC 29403-

Affiant's Telephone (843)577-7434

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 10/18/2011 defendant David Israel Smith

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

County/ Municipality of City of Charleston as set forth below:

DESCRIPTION OF OFFENSE: Criminal Domestic Violence of a High and Aggravated Nature

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

Sworn to and subscribed before me on 10/19/2011

Signature of Issuing Judge (L.S.)

Judge Code:

Judge's Address

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

RULE 5

2

STRONG

SUSTAINING, TEACHING, REBUILDING OUR NEW GENERATION
2510 N. Hobson Avenue, North Charleston, South Carolina 29405
843.554.5179 (P) 843.554.5182 (FAX)
southcarolinastrong.org

May 2, 2013

Mr. David Smith
Charleston County Detention Center
3841 Leeds Avenue
North Charleston, SC 29405

RE: David Smith · DOB: 12/22/1977

To Whom It May Concern:

This letter is to confirm we have interviewed David Smith for acceptance into South Carolina STRONG. SC STRONG is a residential educational organization for former alcoholics, drug addicts and convicts. We are located in North Charleston and require a two-year commitment.

After speaking with David, we have decided we could help him turn his life around and become a productive and responsible citizen. We realize this is a risk and offer no guarantees. However, he did express a sincere desire to make some changes and we are willing to help. SC STRONG tentatively accepts David, pending any unknowns found during the final interview at our facility the day of entry.

In addition, David must have all medical clearances and legal matters cleared before entering SC STRONG.

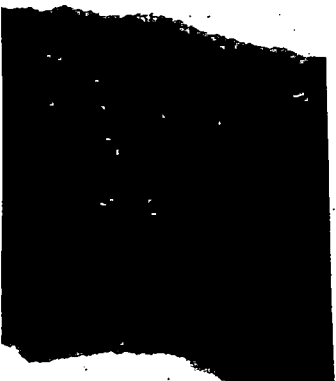
If you have any questions, please feel free to give me a call. We look forward to a difficult but exciting process of change with David Smith.

Sincerely,


Jeff Ballard

Facility Director

(843) 554-5179 (no collect calls, please)



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

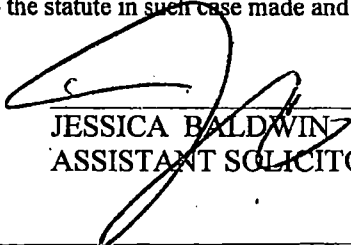
INDICTMENT

At a Court of General Sessions, convened on May 7, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about October 18, 2011, the Defendant, DAVID ISRAEL SMITH, did, with intent to kill and malice aforethought, attempt to kill Maudell Grayson. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JESSICA BALDWIN
ASSISTANT SOLICITOR



ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By 
DEPUTY CLERK

Exhibit A

NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTY

O.T. WALLACE COUNTY OFFICE BUILDING
101 MEETING STREET, 5th FLOOR
CHARLESTON, SC 29401-2214
(843) 958-1850

(843) 958-1860 (fax)

publicdefender@charlestoncounty.org

BY HAND DELIVERY

October 18, 2013

David Israel Smith, Inmate #61870
Charleston County Detention Center

More proof that I
was prepared for trial
NOT TO PLEA

RE: State of South Carolina vs. David Israel Smith
Warrant(s): I601373; W10110325

Dear Mr. Smith:

This letter is in response to your letters and motion. As the Judge stated last Thursday October 10th, South Carolina does not recognize hybrid representation. This means that you cannot both have a lawyer (me), who files motions for you, and represent yourself and file your motions on your own behalf. Until you hire another lawyer, I am your lawyer. If you wish to fire me and represent yourself, that is also an option, but I do not think it is a wise one. I cannot control your actions, but I urge you to stop trying to communicate with the court and Ms. Grayson. As you saw on Thursday, anything you send to Ms. Grayson, she gives to the solicitor, and those communications can be used against you. Similiarly, anything you send to the court is not protected by attorney-client privilege and can also be used against you by the solicitor.

I apologize for not seeing you as quickly and as often as you would like. I wish I could see all my clients as quickly and as often as they would like. However, when I am not in the jail speaking to you, I am working on your case and others. This includes responding to your grievance to the disciplinary counsel, investigating cases, speaking to clients and their family members on the phone, writing letters to clients in the jail, researching case law, writing motions and briefs, negotiating with solicitors, preparing cases for pleas or for trials, petitioning for funds to conduct forensic testing, attending and preparing for evaluations, attending and preparing for court hearings, entering pleas, and trying cases.

I am on your side. I don't think you are guilty of attempted murder. I believe I have sent you all of your discovery, but I will double check and send it again if need be. You asked me to tell you what you can and can't do. You can write to me and tell me what you think you need, and I appreciate you doing so, but you cannot act as your own lawyer, or force me to file motions or get records I think are frivolous. If I think a motion needs to be filed, or a record needs to be obtained, I will do so.

When we are on a trial docket, I will come see you and go over your case in detail with

D. Ashley Pennington, Esquire
Ninth Circuit Public Defender

Lorelle D. Proctor, Esquire
Deputy Public Defender



NINTH CIRCUIT PUBLIC DEFENDER
BERKELEY & CHARLESTON COUNTY

O.T. WALLACE COUNTY OFFICE BUILDING

101 MEETING STREET, 5th FLOOR

CHARLESTON, SC 29401-2214

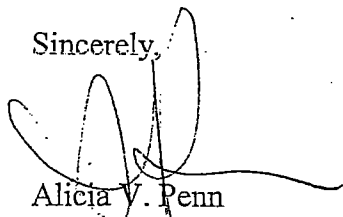
(843) 958-1850

(843) 958-1860 (fax)

publicdefender@charlestoncounty.org

you, and I will try to explain our strategy, how trial procedure works, and what to expect. We will also go over courtroom behavior. You did not do yourself any favors on Thursday when you appeared agitated, kept shaking your chains in front of the judge, interrupted her and kept speaking when she told you to stop. These things made you either look crazy, or like a very rude person. Neither is something we want the jury thinking about you, so I suggest you practice controlling your actions and words while you are in the jail.

Sincerely,



Alicia V. Penn

Assistant Public Defender

FILED

STATE OF SOUTH CAROLINA)
IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)
2012 JAN 18 PM 2:06
Warrant No(s): F601373

JULIE J. ARMSTRONG
CLERK OF COURT

Charge: CDUHAN

STATE OF SOUTH CAROLINA)
-v-)
REQUEST PURSUANT TO SC RULES
OF CRIMINAL PROCEDURE- RULE 5 & 6

David Estael Smith

BRADY REQUEST

EDWARDS NOTICE

Defendant.

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense all documents, tangible objects, reports of examinations and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests the Solicitor to produce all evidence favorable to the Defendant, subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

This request is a continuing request for all such discoverable information as it becomes known to the Solicitor or any Prosecution Agents.

The Defendant hereby asserts his Fifth and Sixth Amendment rights to remain silent and does not wish to be questioned in the absence of counsel, pursuant to Montejo v. Louisiana, 129 S.Ct. 2079(2009), and Edwards v. Arizona, 451 U.S. 477 (1981).

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of persons within the chain of custody of all physical evidence.

Defendant,

Respectfully Submitted,

X David Estael Smith

Cassandra Worsley

Attorney for Defendant
Charleston County Public Defender's Office

Charleston, South Carolina
Dated. 12/28/11

CERTIFICATE OF SERVICE

I hereby certify that this Rule 5 Motion was served on the Solicitor for the Ninth Judicial Circuit on 1-4-2012

DAL

Charleston County Public Defender's Office





TRIAGE
Team Triage
Adult Emergency Services Nursing Assessment
Page 1 of 1

Form Origination Date: 1/11
Version: 1

Version Date: 1/11



P846385342
GRAYSON
MAUDELL
Adm: 10/27/11 M2598267

Patient Name Grayson
MRN _____
PATIENT IDENTIFICATION LABEL

DATE: 12/27/11 TIME: 12:15 Acuity 1 2 3 4 5
 TRIAGE: Age M F Pain Scale 4/10 GCS 15
 Temp 36.3 Pulse 70 BP 103/63 RR 12 O2 Sat 99%
 Visual Acuity R 1 L 1 Both 1
 Chief Complaint and Assessment Recheck of sutures from multiple stab wounds - 10/19/11
Severe fever.

PMH Immunizations UTD Tetanus > 5 yrs Ht _____ in Wt _____ kg
 Medication Reconciliation Initiated: Y N If no, why _____
Denies

DRUG ALLERGY: NSA
 Drug Allergy Wrist Band Applied Y N, note reason below
 LMP _____ Hysterectomy Post-menopausal
 G _____ P _____ Ab _____

Mode of Arrival POY EMS Helicopter
 Trauma Alert Y N Time called _____ Level _____
 Pre-hospital interventions N/A Oxygen IV IVs
 C-collar Splint Immobilization CPR Intubation
 Other _____
 Accompanied by Self Spouse Family Friend

SH Tobacco Y N H/O _____ PPD Alcohol Y N H/O _____
 Illicit Drugs Y N H/O _____ Suicidal Homicidal
 Language Spoken English Other _____ Interpreter Needed Y N
 Special Assessment TB Exposure Y N Domestic Violence Y N
 Fall Precautions Y N Use of cane, walker or other assist device Y N
 Fall Wrist Band Applied Y N

Triage Nurse Signature Patricia Turner RN Room # assigned 85 Report to Primary RN Shirley
 Time _____ Time 12:00

Start Time	Stop Time	Medication / IVF	Dose	Route / Site	Initials	High Alert Verification	Response to Meds / Fluids Pain Scale / Vital Signs	Time	Initials

1st EKG @ _____ O2 NC NRB% _____
 Old EKG Y N EKG Strips attached Y N Time _____ Size _____ Location _____ by _____ # of Attempts _____

Time	Temp	Pulse	RR	BP	O2 Sat	Pain	Time	PO	IV	Other	Time	Void	Emesis	Other

Time _____ Nurse's Progress Notes _____ Total Intake: _____ Total Output: _____
12:15 Shirley in (R) arm, @ hand. @ hand removed w sign/symptoms of infection. Strip strip to @ index finger. Advise to d/c pt home. Instructions reviewed- d/c'd home w friend @

See attached Nurse's Notes / Addendum(s)

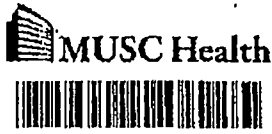
Signature Patricia Turner RN Initials PT Signature _____ Initials _____

DISPOSITION Home Admit LWT AMA Expired
 Condition at disposition _____
 Accompanied by _____
 Discharge Vital signs: BP _____ HR _____ Resp _____ O2 Sat _____ Pain 1/10
 Ambulatory Wheelchair Stretcher Transport Service
 Teaching Instructions Written Oral
 Language English Other _____
 Patient teaching Verbalized Return Demonstration
 Sent with patient Prescriptions Excuse
 IV discontinued upon D/C

No valuables taken from patient
 All valuables transferred with patient
 Discharge RN P. Turner RN
 Date / Time 12/27/11 12:15
 Narcotic precautions given

ah_1W_adultEDteamtriageassessment

UP 600013 1/11



Adult ED - Rapid Medical Evaluation
Page 1 of 1

Form Origination Date: 10/07
Version: 3

Version Date: 4/08



P846385342
GRAYSON
MAUDELL

Adm: 10/27/11 M2598267

Patient Name
MRN

PATIENT IDENTIFICATION LABEL

Time _____ Date 10/27/11 Walk Wheelchair EMS Treating MD _____ Nurses Notes Reviewed

CC _____ NKA Allergies _____

Meds See Nurses Notes _____ Pain 0/10 Location: _____

Fam Hx _____ Social Hx Tobacco ETOH Illegal Drugs

Immunization Status UTD UNK Suspected abuse Y N

History of Present Illness: Age _____ Sex M F

Suture removed

PMH:

Physical Exam:
*V.S.R.
Multiple healed stab wounds
Sutures removed & incident*

ROS: All other systems reviewed and negative unless noted

<input type="checkbox"/> Eyes	<input type="checkbox"/> Resp	<input type="checkbox"/> Skin	<input type="checkbox"/> Heme / Lymph
<input type="checkbox"/> Const	<input type="checkbox"/> GI	<input type="checkbox"/> Neuro	<input type="checkbox"/> Other
<input type="checkbox"/> Ent	<input type="checkbox"/> GU	<input type="checkbox"/> Psych	
<input type="checkbox"/> CV	<input type="checkbox"/> MS	<input type="checkbox"/> Endo	

Time Ordered	Time Done	Initials	Order

Results / Medical Decision Making

POCT _____

LAB _____

X-RAY _____

DIAGNOSIS *suture removal*

See After Care Instructions Prescriptions given Work / School Excuse Followup: Primary MD Other _____

Discharge Time _____ Transfer To: _____

RN Signature/Initials _____ Date _____ Time _____ AM/PM

PA Signature/Initials _____ Pager ID _____ Date _____ Time _____ AM/PM

Physician Signature/Initials *[Signature]* Pager ID *1940* Date *10/27/11* Time *12:40* AM/PM

ah_ed_orders_edraplmedeval

Name: _____ Age: _____ Sex: M F
MRN: _____ Acct #: _____
Temp: _____ Pulse: _____ BP: _____ RR: _____ Pulse Ox: _____ Wt: _____
Provider: _____ Prov #: _____ Time Seen: _____

Chief Complaint: ① hand laceration

HISTORY:

SEEN INITIALLY: 1 2 3 4 5 ⑥ 7 8 9 10 11 12 13 14 days ago

LOCATION: R L hand

ASSOC. SIGNS & SYMPTOMS: Redness Swelling Fever Drainage Pain

42yo F had 38 sutures placed by ER 6 days ago to Multiple lacerations by knife etc. I pain + d/c from ① hand

PHYSICAL EXAM:

APPEARANCE: Well-healed Well-approximated Dehiscence (Length: 0.3 cm)

Erythema Scabs Packing Present Exudate: (Serous / Serosanguinous / Sanguinous / Purulent)

PALPATION: Normal Warmth Tenderness Fluctuance

Discharge: (Serous / Serosanguinous / Sanguinous / Purulent)

MEDICAL DECISION MAKING:

The Sutures / Staples Were Removed: With ease With mild difficulty With difficulty

Wound Remained Intact After Suture / Staple Removal (+ -) Dehiscence Length: key had never

Steri-Strips Applied ① FB / long in wound

PACKING: N/A Normal Packing Removed with Ease Purulent Discharge

ADD'L. PACKING REQUIRED: N/A No Yes (1/4 in. 1/2 in. 1 in.)

Type: Plain Gauze Iodofoam Gauze NS Wet to Dry

Placed on Brextran, removed stitches to allow healing by 2nd attack

IMPRESSION(S):

Disrupted ① hand laceration

Plu 3 days.

DISPOSITION:

Wound Care Instructions Given and Understanding Verbalized by patient family member friend

Advised to Recheck: PRN 24 hours with (PMD / ED / UC) Other: _____

PRESCRIPTIONS: _____

PA / ARNP: _____ DATE/TIME: _____

MD'S SIGNATURE: _____ DATE/TIME: _____

I certify that I was present at the bedside, immediately available, and supervised the entire procedure (required for Medicare patients).

I certify that I was present for the entire procedure (required for all other patients).

ATTENDING'S SIGNATURE: _____ DATE/TIME: 10-24-11

NAVIGATOR PC

ED RECORD
SUTURE REMOVAL - WOUND RECHECK





TRIAGE

Adult Emergency Services Nursing Assessment
Page 1 of 2

Form Origination Date: 9/03
Version: 8

Version Date: 8/09



P846380574
GRAYSON
MAUDELL
Adm:10/24/11 M2598267

Patient Name _____
MRN _____

PATIENT IDENTIFICATION LABEL

DATE: 10/24 TIME: 2114 Acuity: 1 2 3 4 5
TRIAGE: Age 30 M F Pain Scale 2/10 GCS 15
Temp 36.0 Pulse 75 BP 109/59 RR 15 O2 Sat 97
Visual Acuity R L Both
Chief Complaint: swelling around stitches
to (L) hand "pulses has been
returning out"

PMH Immunizations UTD Tetanus > 5 yrs Ht. ___ in Wt. ___ kg
Medication Reconciliation Initiated: Y N If no, why: _____
Illnesses / Surgical Procedures _____
none

Objective: _____

DRUG ALLERGY: fish
Wrist Band Applied: Y N
LMP _____ Hysterectomy Post-menopausal
G: _____ P: _____ Ab _____

Mode of Arrival POV EMS Helicopter
Trauma Alert Y N Time called: _____ Level: _____
Pre-hospital interventions N/A Oxygen IV IVFs
 C-collar Splint Immobilization CPR Intubation
Other _____
Accompanied by: Self Spouse Family Friend
 Parent Police EMS Other _____
Name of officer: _____ Badge #: _____
AGENCY: _____

SH Tobacco Y N H/O _____ PPD Alcohol: Y N H/O
Illicit Drugs Y N H/O _____ Suicidal Homicidal
If yes, complete ED Psych Assessment Tool
Language Spoken English Spanish Interpreter Needed Y N
Special Assessment TB Exposure: Y N Domestic Violence Y N
Fall Precautions Y N Use of cane, walker or other assist device Y N
Wrist Band Applied Y N

Sepsis / Pneumonia Screen HR > 90 bpm RR > 20/minute
 Temp > 100.4°F or < 98.6°F SBP < 90 mmHg Cough for > 14 days
 Productive cough Suspected / known infection

STEMI Y N Time _____ SWAT Y N Time _____
BAT Y N Time _____ Swallow Screen Pass Fail RTA
Patient having Chest Pain Y, do EKG STAT Denies

Triage Nurse Signature: *D. Prodylen*
Room # assigned: 11
Time: _____ Report to Primary RN: _____
Time: _____

Primary Nursing Assessment

Psych NA WNL Appropriate for Age Anxious Sad Agitated Confused Disoriented Suicidal Homicidal
Skin NA WNL Palpation Warm Dry Cool Diaphoretic Pale Cyanotic
Eyes NA WNL Pupils R Dilated Pinpoint _____ L Dilated Pinpoint _____
ENT NA WNL Mucous Membranes Moist Dry Hearing Normal Impaired Hearing Aid _____
CV NA WNL Heart Regular Rate Tachycardic Bradycardic Irregular Rhythm _____
Cap Refill Normal > 2 sec. Carotid _____ Radial _____ D/PT _____
Pulses Right Present Absent Present Absent Present Absent
Left Present Absent Present Absent Present Absent
Resp NA WNL Inspection Normal Insp. Effort Tachypneic Bradypneic Agonal Nasal Flaring Visible Difficulty Breathing Stridor
 Accessory Muscle Use Coughing Non-productive or Producing Clear White Yellow Green Blood-tinged Sputum
Auscultation: Clear Bilateral Breath Sound Diminished R L Absent R L Crackles R L Wheezes R L
GI NA WNL Distended Last Meal: _____ Last BM: _____ Nausea Y N Vomiting Y N Diarrhea Y N
 Non-tender Tender RUQ RLQ LUQ LLQ Epigastric Periumbilical Suprapubic
GU NA WNL Straining Discharge Frequency Urgency Retention
MS NA WNL Swelling Deformity Pain Ecchymoses Limited ROM Laceration(s) Abrasion(s)
R Shoulder Upper Arm Elbow Forearm Wrist Hand Neck Back Hip/Pelvis Thigh Knee Lower Leg Ankle Foot
L Shoulder Upper Arm Elbow Forearm Wrist Hand Neck Back Hip/Pelvis Thigh Knee Lower Leg Ankle Foot
Neuro NA WNL Alert to Person Place Time Eye Contact: Y N Facial Droop: R L None
Speech Normal Dysarthric/Aphasic
Motor Normal Decreased Inability to move RUE LUE RLE LLE Sensory Normal Decreased
Gait Unable to Assess Steady Unsteady Requiring Physical Assistance Walker / Cane GCS: _____

Primary Nurse Signature: *Erin Niles*
Date / Time: 10/24/11 2245

ah_1W_adultEDnursingassessment

UP 500068 Rev. 8/09

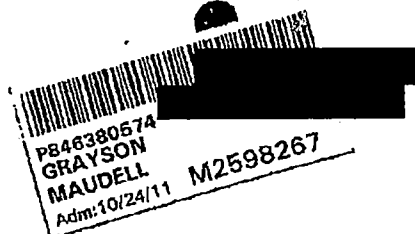


TRIAGE Adult Emergency Services Nursing Assessment

Form Origination Date: 8/03
Version: 6

Version Date: 8/09

Patient Name
MRN



PATIENT IDENTIFICATION LABEL

Start Time	Stop Time	Medication / IVF	Dose	Route / Site	Initials	High Alert Verification	Response to Meds/Fluids Pain Scale * Vital Signs	Time	Initials
2245		Dactin	2 tabs	PO	EM				

1st EKG @ Y N
 O/d EKG Y N
 Troponin NC NRBN
 PCXR @ Y N

Cardiac Monitor Y N
 Rhythm _____
 EKG Strips attached Y N

IV Access
 Time _____ R Hand Forearm AC Size 24 22 20 18 16 14 X-____ attempts
 Time _____ L Hand Forearm AC Size 24 22 20 18 16 14 X-____ attempts
 Time _____ Site: _____ Other _____ by _____ US guided Y N

Time	Temp	Pulse	RR	BP	O ₂ Sat	Pain	Time	PO	IV	Other	Time	Void	Emesis	Other
						/								
						/								
						/								

Time	Nurse's Progress Notes	Total Intake:	Total Output:
2245	pt remains comfortably in bed. NAD noted. EKG (2342) pt D/C home. pt verbalizes understanding of all D/C instructions.		

See attached Nurse's Notes / Addendum(s)

Signature _____ Initials _____ Signature *Evelyn Miller* Initials *EM*

DISPOSITION Home Admit LMT AMA Expired

Admit Room # _____
 Transfer to _____
 Verbal Report to _____ @ _____
 Faxed Report Y N
 Verified with _____ @ _____
 Transfer form completed Y N
 Personal Effects Inventory Form Y N
 Condition at disposition: *Stable*
 Accompanied by: *Friend*

Ambulatory Wheelchair Stretcher Transport Service
 Teaching Instructions Written Oral
 Language English Other _____
 Patient teaching Verbalized Return Demonstration
 Sent with patient Prescriptions Excuse
 IV discontinued upon D/C
 Discharge Vital Signs: BP _____ HR _____ RR _____
 O₂ Sat _____ % Temp _____
 Discharge Pain Score *0* / 10

No valuables taken from patient
 All valuables transferred with patient
 Discharge RN *Evelyn Miller*
 Date / Time *10-20-11 2342*
 Vital signs printed before discharge and attached

ah_1W_adultEDnursingassessment UP 500068 Rev. 8/09

Name: Maudeley Grayson Age: 43 Sex: M
MRN: 2663302 Acct #: _____ RR: 17 Pulse Ox: 98 Wt: _____
Temp: _____ Pulse: 61 BP: _____ Time Seen: 12:00am
Provider: _____ Prov #: _____

P496149675
TRAUMA
VICTIM PT
EAdm:12/31/12 M2663302

Chief Complaint: multiple laceration slip stablance

LOCATION: MULTIPLE (L) ARM & (L) HAND

ANESTHESIA: Local Digital Other: _____
 1% Lidocaine 0.25% Marcaine 1% Lidocaine w/ Epinephrine Other: _____
 2% Lidocaine 0.50% Marcaine 2% Lidocaine w/ Epinephrine
 FINGER 0.75% Marcaine 1% Lidocaine w/ Bicarb
 HAND _____
TIME OUT: _____
 Correct patient Correct procedure
NURSE/TECH WITNESS: _____
20 ml used
15

PREPARATION: _____
The wound was prepped with Betadine Hibiclens Stericlen Other: _____
The wound was draped in a sterile fashion. _____
The wound was irrigated with Normal Saline Sterile Water
Foreign body present N Y

REPAIR: _____
The Muscle Tendon Fascia Subcutaneous Tissue Skin was repaired with
 Sutures / Staples / Tissue Adhesive List: _____
Suture Type:
Vicryl (0-0 1-0 2-0 3-0 4-0 5-0 6-0) Nylon (0-0 1-0 2-0 3-0 4-0 5-0 6-0)
Chronic Gut (0-0 1-0 2-0 3-0 4-0 5-0 6-0) Prolene (0-0 1-0 2-0 3-0 4-0 5-0 6-0)
Other: _____
In a Simple Interrupted Running Vertical Mattress Horizontal Mattress Other: _____
of Est. Sutures / Staples: 35 MULTIPLE LACERATIONS (8) 1.0-1.5
*Length: 2.0 cm
The closed wound had Good / Adequate / Poor Approximation.
(Good / Adequate / Poor) Hemostasis.

POST-REPAIR: _____
Topical antibiotic ointment was applied. Y N
Sterile dressing was applied. Y N
Wound care instructions given to patient Verbally and in writing.
Sutures / Staples removal in 3 4 5 7 10 14 days.

LACERATION TYPE: _____
 Simple: non-layered, no dirt in wound
 Intermediate: layered or non-layered, with dirt or foreign body
 Complex: extensive debridement, plastic surgery closure

COMPLICATIONS: _____
 None
PA / ARNP: _____ DATE/TIME: _____
MD'S SIGNATURE: [Signature] DATE/TIME: 10/19/11 3am
 I certify that I was present at the bedside, immediately available, and supervised the entire procedure (required for Medicare patients).
 I certify that I was present for the entire procedure (required for all other patients).
ATTENDING'S SIGNATURE: [Signature] DATE/TIME: 10/19/11

NAVIGATOR PC
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ED RECORD
LACERATION REPAIR



Name: _____ Acct #: _____ Age: 46 Sex: M
MRN: _____ Acct #: _____
Temp: 37.2 Pulse: 86 BP: 24/70 RR: 16 Pulse Ox: _____ Wt: _____
Provider: _____ Prov #: _____ Time Seen: 7:305

49614967
TRAUMA
VICTIM PT
EAdm: 12/31/12 M2663302

Chief Complaint:

HPI: _____

MODE OF ARRIVAL: POV Ambulance Immobilized _____ PREHOSPITAL ORDERS: _____

SOURCE: Patient Family Member Friend _____ NURSE'S NOTES REVIEWED:

TIMING: Began Occurred PTA _____ hrs ago this morning this afternoon this evening during the night

last night yesterday Gradual / Sudden Onset

LOCATION OF INJURY: None Head Face Mouth Neck Chest Back Abdomen Pelvis

Right: Shoulder Humerus Elbow Forearm Wrist Hand Hip Thigh Knee Lower Leg Ankle Foot

Left: Shoulder Humerus Elbow Forearm Wrist Hand Hip Thigh Knee Lower Leg Ankle Foot

CONTEXT: None Recent; Alcohol Use / Illicit Drug Use

TYPE OF ACCIDENT: MVC MCA Peds vs. Auto Assault Other

MVC: Unrestrained Restrained: (Airbag / Shoulder Strap / Lap Belt) Driver / Passenger

Single Vehicle / Multi Vehicle Head-On Side Impact: (Driver Side / Passenger Side) Rear Impact / Roll-Over

Ambulatory At The Scene / Non-Ambulatory / Ejected

ASSAULT: Alleged Assailant's Name: Unknown Dawn Teresa Smith

Method of Assault: Punched Kicked Struck with Object stabbed

PRE-HOSPITAL: GCS: 15 At Scene: 15 During Transport: _____

INTERVENTION PRIOR TO ED: None IV Splint Intubation _____ Immobilization with: C-Collar / Backboard

SEVERITY: Mild Moderate Severe Pain Free 1 2 3 4 5 6 7 8 9 10 Unable to quantify

DURATION OF SYMPTOMS: _____ Mins / _____ Hrs _____ Days _____ Wks Intermittent / Continuous in Nature Currently Present / Absent

MODIFYING FACTORS: A = Aggravated by R = Relieved by N = No change with (A R N) Nothing (A R N) C-Collar (A R N) Icepack

(A R N) Lifting (A R N) Activity (A R N) Weight-bearing (A R N) Backboard (A R N) Immobilization

(A R N) Movement (A R N) Splint (A R N) Medication(s): _____

ASSOCIATED SIGNS & SYMPTOMS: (+) = Report (-) = Denies None (+) LOC (+) SOB (+) Bleeding (+) H/A

(+) Abdominal Pain (+) Back Pain (+) Neck Pain (+) Laceration (+) Chest Pain PT is a 46-year-old male

healthy AAF who incurred multiple stab wounds to R arm, R hand & R hand

pt denies weakness, numbness, CP, SOB, full range of motion of arms & hands

Unable to obtain additional information from patient. Reason: _____ PCPE: None

ROS: _____

CONST: Wt. Loss _____ Night Sweats _____ GI: abdominal pain U/U/O PSYCH: _____

EYES: _____ GU: _____ ENDO: _____

ENT: _____ MS: _____ HEMA/LYMPH: _____

CV: chest pain SKIN: _____ ALL/IMMUN: _____

RESP: SOB NEURO: _____ OTHER: _____

PAST MEDICAL/FAMILY/SOCIAL HISTORY: _____

PMH ALLERGIES: NKDA PCN Sulfa Codeine Iodine / IVP Dye

MEDICATIONS: See Nurse's Note none

PAST/CURRENT ILLNESSES: None major medical conditions

SURGERIES/PROCEDURES: None Appy laparoscopic surgery unknown

IMMUNIZATIONS: TTD Tetanus >5yrs Tetanus >10yrs up to date

IH: Negative

SH: OCCUPATION: works in shop LIVING SITUATION: Chattelton

HABITS: Alcohol Y H/O Tobacco Y H/O Drugs Y H/O Counseling Given

PHYSICAL EXAM: _____

CONSTITUTIONAL: VITAL SIGNS: Normal Abnormal Orthostatic APPEARANCE: Well Ill Poor Hygiene / Grooming

Airways: Normal Intubated Obstructed

Breathing: Normal Bagged Agonal

Circulation: Carotid Pulse Present Pulseless

PSYCHIATRIC: Normal

SKIN: Normal multiple lacerations on R hand & R arm

EYES: Normal Raccoon's Eye _____ mm _____ mm

H/P/ENT: Normal Memotympany Midface Instability Malocclusion

Shirley M. Smith

NAVIGATOR PC

ED RECORD
MULTI-TRAUMA - MALE



EDVISIT

EVALUATE FOREIGN BODY-MULTIPLE STABBINGS

\
\
Technologist: LAKEISHA WILLIAMS
Radiologist 1: WILLIAM CONWAY
Radiologist 2: ALEX LEWIS
Radiologist 3:

Transcribed by: Tech IntTalk
Date Dictated:
Proxy Signer:
Authenticating Radiologist: WILLIAM CONWAY
Date Authenticated: 10/19/2011 08:21

EXAMINATION: HAND X-RAY 10/18/11 23:31:00

ACCESSION NUMBER: 6477937

INDICATION: EVALUATE FOREIGN BODY-MULTIPLE STABBINGS

COMPARISON: None

FINDINGS: AP, and lateral views of the bilateral hands reveal no bony, soft tissue, or alignment abnormality.

IMPRESSION:

No evidence of radiopaque foreign bodies or fracture in the hands.

VOICE DICTATED BY: Dr. Alex Lewis

I have reviewed the images and agree with the findings in this report.

EVALUATE FOREIGN BODY-MULTIPLE STABBINGS

Technologist: LAKEISHA WILLIAMS
Radiologist 1: WILLIAM CONWAY
Radiologist 2: ALEX LEWIS
Radiologist 3:

Transcribed by: Tech IntTalk
Date Dictated:
Proxy Signer:
Authenticating Radiologist: WILLIAM CONWAY
Date Authenticated: 10/19/2011 08:23

EXAMINATION: HUMERUS X-RAY 10/18/11 23:30:00

ACCESSION NUMBER: 6477935

INDICATION: EVALUATE FOREIGN BODY-MULTIPLE STABBINGS

COMPARISON: None

FINDINGS: AP, lateral, and oblique views of the humerus labelled right reveal no bony, soft tissue, or alignment abnormality.

IMPRESSION:

No evidence of fracture or radiopaque foreign body in the right humerus.

VOICE DICTATED BY: Dr. ALEX LEWIS, MD

I have reviewed the images and agree with the findings in this report.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Appeal from Charleston County
Honorable Judge Paige J. Gossett

David Israel Smith,
Petitioner,

vs

Warden, Lee Correctional Institution,
Respondent.

C/A No. 0:18-1442-R

Affidavit of David Israel Smith

After being duly sworn DAVID ISRAEL SMITH says:

1. I am David I. Smith , serving a twenty year sentence in the South Carolina department of corrections.
2. I called Mrs. Grayson at 6:30 pm and we agreed to meet at 9:00 pm.
3. I arrived a few minutes before Mrs. Grayson and parked in the driveway.
4. I waited for Mrs. Grayson in my car.
5. When Mrs. Grayson arrived, we talked for a few minutes. I Stood leaning with my back against her car as she sat in the car.
6. The talk quickly became a argument, she struck me with her Coach bag, and I slapped her.

7. Mrs. Grayson retrieved a small knife from her Coach bag and cut both my arms and also my left thumb (which is why my blood was found in the car and on the turn signal).
8. I took the knife from Ms. Grayson.
9. In a brief moment of anger, I retaliated and cut Mrs. Grayson on her arms and hand.
10. Ms. Kirkwood came out threatening to call 911 then returned inside.
11. I got in my car and drove away.

FURTHER AFFIANT SAITH NOT AT THIS TIME.



DAVID ISRAEL SMITH

SCDC No. 360603


L.C.I. (F3-1212)

990 Wisacky Highway

Bishopville South Carolina



SWORN to and subscribed before
me this 18 day of ~~November, 2018.~~ ^{Jan. 2019}


NOTARY PUBLIC OF SOUTH CAROLINA

My Commission Expires: 3/3/2020



Petty, Livingston, Dawson & Richards

LUKE J. MALLOY
lmalloy@pldr.com
434-846-2768 telephone
434-847-0141 facsimile

www.pldr.com

November 29, 2022

David Israel Smith, 00360603
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

Mailing Address:
P.O. Box 1080
Lynchburg, VA 24505

Street Address:
925 Main Street
Suite 300
Lynchburg, VA 24504

Re: **Appellate Case No. 2022-001410**
Trial Court Case No. 2012GS1002533

Dear Mr. Smith:

It has come to my attention that on October 4, 2022 you filed an appeal of the denial of your motion to reconsider sentence in the above-referenced matter, which was dismissed on November 16, 2022.

Please be advised that my representation of you concluded in 2014. Further, I am no longer employed with the Charleston County Public Defender's Office, and therefore cannot continue to represent you in this matter. I have notified the Court of Appeals that I no longer represent you.

You may wish to file an application for post-conviction relief within one year of the dismissal of your appeal, asking for a belated appeal of Judge Young's denial of your motion to reconsider pursuant to White v. State 262 S.C. 110, 208 S.E.2d 35 (1974). Through an application for post-conviction relief, you may seek to vacate your guilty plea on the grounds that it was involuntary and unknowingly entered, or upon the grounds of ineffective assistance of counsel or both. I wish you the best of luck.

Best Regards,

Luke J. Malloy,
Attorney

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appellate Case No. 2022-001410

Honorable Roger M. Young, Sr.
Circuit Court Judge
Charleston County
Trial Court Case No. 2012GS1002533

DAVID ISRAEL SMITH,

APPELLANT

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

COMES NOW, Luke J. Malloy, Esq. ("Counsel"), who states the following in support of his petition to be relieved as counsel for David Israel Smith pursuant to Rule 264 of the South Carolina Appellate Court Rules:

1. In 2014 Counsel was appointed to represent the Appellant in Case No. 2012GS1002533 as a staff attorney with the Charleston County Public Defender's Office;
2. On July 10, 2014, the Appellant pled guilty in the above-referenced case, and was sentenced to 20 years by the Honorable Roger M. Young, Sr.;
3. On July 18, 2014, Counsel filed a motion to reconsider sentence on behalf of the Appellant. Counsel believes that he represented Appellant at a hearing on the motion to reconsider sometime in 2014, which the trial court orally denied. However, Counsel has reviewed the Charleston County Clerk of Court filings and cannot find a record of a hearing on Counsel's motion to reconsider. The Charleston County Public Defender's Office is retrieving Appellant's file from storage, and Counsel will supplement this motion if necessary after reviewing the file;
4. Counsel's representation of the Appellant concluded in 2014, and Counsel took no further action on his behalf;

5. Counsel left the employ of the Charleston County Public Defender's Office in September of 2017, and is currently practicing law in Virginia;

6. Appellant subsequently filed several *pro se* motions with the Charleston County Clerk of Court;

8. Apparently, in response to Appellant's *pro se* filings, the trial court issued a written order denying Appellant's motion to reconsider on August 3, 2022. Counsel did not receive notice of entry of this Order;

9. Unbeknownst to Counsel, Appellant filed this appeal of the trial court's order denying his motion to reconsider on October 4, 2022;

10. Justifiable cause exists for the withdrawal of Counsel, as Counsel's representation of Appellant concluded in 2014, and Counsel is no longer employed with the Charleston County Public Defender's Office;

11. Appellant has been functioning *pro se* since 2014, and has diligently attempted to preserve his appellate rights, therefore his appeal should be reinstated and he should be allowed to proceed *pro se* or have Appellate Defense appointed to represent him. In the alternative, Counsel has advised Appellant that he has a right to file an application for post-conviction relief within one year of the dismissal of his appeal, and may seek a belated appeal of the trial court's denial of the motion to reconsider sentence. See White v. State, 262 S.C. 110, 208 S.E.2d 35 (1974).

Therefore, Counsel requests that the Court relieve him as counsel for Appellant pursuant to South Carolina Appellate Court Rule 264 (b).

Respectfully Submitted,



Luke J. Malloy, Esq.

This 29th day of November 2022.

CERTIFICATE OF SERVICE

I, Luke J. Malloy, Esq., certify that on this 29th day of November, 2022 a copy of this Petition was served on the persons listed below by regular US mail.

David Israel Smith, 00360603
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

Alan McCrory Wilson, Esq.
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549

Jessica Ashley Baldwin, Esq.
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South Carolina Commission on Indigent Defense
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Columbia, SC 29201

Cameron Blazer
Charleston County Public Defender's Office
101 Meeting Street, 5th Floor
Charleston, SC 29401-2214



Luke J. Malloy, Esq.

1 of the solicitor, are several letters, two letters, that
2 were sent from Mr. Smith to the victim in this case,
3 Ms. Grayson, from the detention center. Those letters
4 were turned over to the previous attorney who had the
5 case.

6 Unfortunately, one of the unfortunate
7 consequences of switching representations is things get
8 lost in the mix, and those did not stay with the file
9 which the State presented, those files with their request
10 for a maximum sentence, arguing that Mr. Smith would be a
11 danger to go back to the victim in this case and harm
12 Ms. Grayson.

13 After reviewing those letters, Your Honor, I
14 did not perceive them to be threatening in nature. I
15 don't believe they are intended to be threatening. I
16 think they may have been perceived in that way by
17 Ms. Grayson, but I would characterize them as more
18 consistent with a love letter. He talks about the good
19 times that they shared in their relationship, Your Honor.

20 There was a relationship between he and
21 Ms. Grayson before this incident occurred. Through my
22 experience representing Mr. Smith, it does not appear to
23 me he has any intention of going back to Ms. Grayson at
24 all, and I think it's been made abundantly clear to him
25 that she does not want him in her life and that he is not

1 to have any contact with her, Your Honor, but I would ask
2 you to consider imposing a sentence less than 20 years,
3 or perhaps suspending a portion of that 20-year sentence.
4 Thank you.

5 And, Your Honor, Mr. Smith is joined today by
6 his two aunts, Sharon and Jennifer, and his brother Seth.

7 THE COURT: All right. What would the State
8 like to say?

9 MS. BALDWIN: Do you need a refresher on the
10 facts at all?

11 THE COURT: I do. I don't recall.

12 MS. BALDWIN: As Mr. Malloy said, the
13 defendant and victim did date prior to the incident.
14 Just prior to the incident, they had broken up, and as to
15 the incident itself, the victim came to her house. She
16 got home. It was nighttime. She got out of her car.
17 She heard a rustling in the bushes, and the defendant
18 jumped out of the bushes at her.

19 He then jumped on the victim's back and began
20 trying to stab her. She fought back, trying to grab the
21 knife from him. He then punched her in the face, knocked
22 her to the ground. He continued slashing at her, tried
23 to stab her. She continued to fight him off while
24 yelling for help.

25 The victim's sister, who is also present with

1 you and kill myself, because that's how strong he thinks
2 their love was. So I think that if it can't be longer,
3 his sentence should stay exactly where it is.

4 THE COURT: All right.

5 MS. BALDWIN: Nothing further, Your Honor.

6 THE COURT: All right. Did you want to reply
7 to anything? You look like --

8 MR. MALLOY: Your Honor, I would. I would
9 like to briefly reply.

10 I mentioned there are several facts that
11 Mr. Smith does dispute regarding her -- in regards to how
12 the State presented what occurred at this incident. Your
13 Honor, he denies the statement saying that, I'm going to
14 kill you; I'm going to kill you.

15 He's always said he was parked in a vehicle.
16 He wanted to have a conversation regarding the nature of
17 their relationship. He did not jump out of the bushes
18 and charge her from behind, but this thing started off as
19 sort of an argument and then escalated from there.

20 And, Your Honor, when I say this, I'm not
21 trying to downplay the significance of what occurred
22 during this incident, but I would not characterize the
23 wounds as life threatening in nature. We're dealing with
24 lacerations to the hands and arms, no body wounds, no
25 damage to organs. All X-rays came back negative.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPELLATE CASE No. 2022-001410
TRIAL COURT CASE No. 2012GS1002533

DAVID I. SMITH

APPELLANT RECEIVED

JUL 24 2023

v

STATE OF SOUTH CAROLINA

SC Court of Appeals

RESPONDENT

Proof of SERVICE

I, David Smith, CERTIFY THAT I HAVE SERVED
THE MEMORANDUM OF LAW AND DESIGNATION
OF MATTER IN SUPPORT OF MOTION TO
RECONSIDER SENTENCE UPON RESPONDENT BY
MAILING A COPY PROPERLY ADDRESSED, VIA 1ST CLASS
US MAIL, WITH SUFFICIENT POSTAGE AFFIXED THERE TO
THIS 12th DAY OF JULY, 2023, TO:

SOUTH CAROLINA COURT OF APPEALS
JENNY ABBOTT KITCHENS, Clerk
POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211

David I. Smith

WITHOUT PREJUDICE U&C 1.308

DAVID J. Smith 360603
LEE CORRECTIONS INST.
990 WISACK HWY. (4B-2220-T)
Bishopville, SC 29010



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