

**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
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November 5, 2013

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

NOV 05 2013

SC Court of Appeals

Re: State of South Carolina v. Hascale Simmons
Appellate Case No. 2011-189906

Dear Ms. Kitchings:

Enclosed is a copy of the order from the trial court recommending that Mr. Simmons' case be remanded for a new trial due to the inability to reconstruct the record. Please forward this order to the panel assigned to this case.

Please let me know if you have any questions.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/kam

Enclosure

cc: Cary Goings, Esquire
Steven Plexico, Esquire
Susan Hackett, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
State of South Carolina,)
v.)
Hascale Simmons,)
Defendant.)
_____)

IN THE COURT OF GENERAL SESSIONS **FILED**
FOURTEENTH JUDICIAL CIRCUIT

No.: 2010-GS-47-005

OCT 31 2013

JAMES H. PARKS
CLERK, STATE GRAND JURY

ORDER FROM THE TRIAL COURT
ON REMAND FROM APPELLATE COURT
TO RECONSTRUCT THE RECORD

Pursuant to the Order remanding the case to reconstruct the record, a hearing was held on August 20, 2013 in Beaufort County. Present were Robert Dudek, Susan Hackett, and Steven Plexico (Counsel for the Appellant), and Cary Goings and Curtis Pauling (Counsel for the Respondent).

Counsel for the Appellant and Counsel for the Respondent agreed on the record that due to the amount of missing transcripts from the trial of the defendant that the record could not adequately be reconstructed for an effective appeal. This Court agrees. At least two days of trial testimony is missing from the record. In addition, the sentencing and motions phases and this Court's ruling on those motions are not a part of the existing record. Furthermore, the case which brought this defendant to trial was a part of a larger State Grand Jury investigation with numerous other Codefendants. This defendant was not the first defendant tried by the State. There were numerous joint motions heard by this court for codefendants in this case, of which, the defendant had joined several of those motions. It does not appear from the record this Court received and it is agreed by all counsel, that transcripts of these numerous motion hearings are needed for an effective appeal. The existence of those transcripts are not known at this time and based on what is known, it is doubtful that the transcripts of those hearings can be produced. Therefore, with agreement of counsel for all parties, this Court believes that the Record cannot

adequately be reconstructed and recommends that Court of Appeals remand the entire case for a new trial.



Carmen T. Mullen
Fourteenth Judicial Circuit

October 24, 2013
Beaufort, South Carolina