

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 11 2014

Appeal from Georgetown County

SC Court of Appeals

Michael J. Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERNEST SMALLS,

APPELLANT

APPELLATE CASE NO. 2014-000572

PETITION FOR ORDER
TO RECONSTRUCT THE RECORD OF
APPELLANT'S CRIMINAL TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, the undersigned counsel requests an order requiring the parties to reconstruct the record of the trial of Appellant Ernest Smalls, Jr. on November 18, 2004 before the Honorable J. Michael Baxley.

STATEMENT OF THE CASE

On November 10, 2004, the Georgetown County Grand Jury indicted Appellant for possession of crack cocaine with intent to distribute within close proximity to a school or park; trafficking crack cocaine more than 28 grams but less than 100 grams; possession of marijuana with intent to distribute; and possession of marijuana with intent to distribute in close proximity to a school or park. Exhibit A. On November 17, 2004, Appellant was tried-in-absence before The

Honorable J. Michael Baxley. As to the charge of trafficking crack cocaine more than 28 grams but less than 100 grams, Appellant was found guilty of the lesser-included offense of possession with intent to distribute crack cocaine. He was found guilty of the remaining original charges, and Judge Baxley entered sealed sentences. Exhibit B.

On February 24, 2014, Appellant appeared at a sentencing hearing before The Honorable Michael G. Nettles. M. Gregory McCollum represented Appellant and Alicia A. Richardson represented the State. Exhibit C, p. 1. The court unsealed a sentence of thirteen years for the trafficking charge and ten years' concurrent for each of the remaining three charges. Exhibit C, p. 4, line 20—p. 5, line 13.

On February 28, 2014, Appellant again appeared before Judge Nettles for motions regarding the sentences. Exhibit C, p. 6, line 25—p. 7, line 6. The court declined to alter Appellant's sentences. Exhibit C, p. 17, line 15—p. 18, line 12.


In representing Appellant for the current appeal, the undersigned counsel has discovered that a transcript from Appellant's original trial cannot be produced. Exhibit D; Exhibit E.

DISCUSSION

This Court should order a hearing to reconstruct the record of Appellant's criminal trial because an examination of the record is necessary to review Appellant's conviction. When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. See Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); see also Deaton v. Leath, 279 S.C. 82; 302 S.E.2d 335 (1983) (granting the appellant's motion to set aside convictions and remand for a new trial where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal).

WHEREFORE, Appellant requests an order for the reconstruction of the record from Appellant's criminal trial in order to perfect Appellant's direct appeal in the case. In addition, Appellant requests that the time periods for filing Appellant's initial brief and designation of matter be held in abeyance pending this Court's decision on this petition.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

September 11, 2014

EXHIBIT A

WITNESSES:

SHERIFF'S OFFICE

ARREST WARRANT NUMBER:

H-695465

0108 44-53-0445(B)(2)

~L#:

DOI: 6-16-04

SID: SC01278052

ACTION OF GRAND JURY

true bill

11-10-04

Date

Joseph B. [Signature]

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 04 GS22 1016
The State of South Carolina,

County of Georgetown

20108

TWA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

THE STATE

vs.

ERNEST SMALLS, JR.

71 Julian Rutledge Road
Pawleys Island, SC 29585

DOB: 5-3-82

SS#: 601-09-2693

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

**POSSESSION WITH INTENT
TO DISTRIBUTE CRACK
COCAINE IN CLOSE
PROXIMITY TO SCHOOL
OR PARK**

BW issued 11-15-04

[Handwritten signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT FOR:

POSSESSION WITH INTENT TO DISTRIBUTE
CRACK COCAINE IN CLOSE PROXIMITY TO
SCHOOL OR PARK

At the Court of General Sessions, Convened on November 10, 2004, the Grand Jurors of Georgetown County present upon their oath:

That Ernest Smalls, Jr. did in Georgetown County on or about June 16, 2004, unlawfully possess with intent to distribute a quantity of Crack Cocaine, a controlled substance under provisions of §44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, while in, on, or within a one-half mile radius of the grounds of a public playground or park, to wit: Parkersville Park, in violation of §44-53-0445(B)(2), 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.


SOLICITOR

WITNESSES:

SHERIFF'S OFFICE

ARREST WARRANT NUMBER:

H-695466

0349 44-53-375(c)(2)(c)

D/L#:

DOI: 6-16-04

SID: SC01278052

ACTION OF GRAND JURY

True Bill

11-10-04

Date

John B. Jora

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 04 GS22 1017

The State of South Carolina,

County of Georgetown

20108

TWA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

THE STATE

vs.

ERNEST SMALLS, JR.

71 Julian Rutledge Road
Pawleys Island, SC 29585

DOB: 5-3-82

SS#: 601-09-2693

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

**TRAFFICKING CRACK
COCAINE - MORE THAN 28
GRAMS, LESS THAN 100
GRAMS**

BW issued 11-15-04

TWA

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT FOR:
TRAFFICKING CRACK COCAINE
MORE THAN 28 GRAMS, LESS THAN 100 GRAMS

At the Court of General Sessions, Convened on November 10, 2004, the Grand Jurors of Georgetown County present upon their oath:

That Ernest Smalls, Jr. did in Georgetown County on or about June 16, 2004, knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Crack Cocaine in an amount of more than twenty-eight grams but less than one-hundred grams, same being a controlled substance under provisions of §44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of §44-53-375(c)(2), South Carolina Code of Laws 1976, as amended, for the crime of trafficking.

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


SOLICITOR

WITNESSES:

SHERIFF'S OFFICE

ARREST WARRANT NUMBER:

H-695467

0188 44-53-370(b)(2)

/L#:

DOI: 6-16-04

SID: SC01278052

ACTION OF GRAND JURY

true bill

11-10-04

Date

Joseph B. [Signature]

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 04 GS22 1018

The State of South Carolina,

County of Georgetown

20108

TWA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

THE STATE

vs.

ERNEST SMALLS, JR.

71 Julian Rutledge Road
Pawleys Island, SC 29585

DOB: 5-3-82

SS#: 601-09-2693

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

**POSSESSION OF
MARIJUANA WITH INTENT
TO DISTRIBUTE**

Bw issued 11-15-04

[Handwritten signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT FOR:
POSSESSION OF MARIJUANA WITH INTENT
TO DISTRIBUTE

At the Court of General Sessions, Convened on November 10, 2004, the Grand Jurors of Georgetown County present upon their oath:

That Ernest Smalls, Jr. did in Georgetown County on or June 16, 2004, possess with intent to distribute, dispense or deliver a quantity of Marijuana, a controlled substance all within the meaning of §44-53-110, et. seq., S. C. Code of Laws (1976), as amended, such possession not having been authorized by law, in violation of §44-53-370(b)(2), 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.


SOLICITOR

WITNESSES:

SHERIFF'S OFFICE

ARREST WARRANT NUMBER:

H-695468

0107 44-53-0445(B)(1)

7/L#:

DOI: 6-16-04

SID: SC01278052

ACTION OF GRAND JURY

true true

11-10-04

Date

Frank B. [unclear]

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

DOCKET NO. 04 GS22 1019

The State of South Carolina,

County of Georgetown

20108

TWA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2004

THE STATE

vs.

ERNEST SMALLS, JR.

71 Julian Rutledge Road
Pawleys Island, SC 29585

DOB: 5-3-82

SS#: 601-09-2693

J. GREGORY HEMBREE, SOLICITOR

INDICTMENT FOR

POSSESSION WITH INTENT
TO DISTRIBUTE
MARIJUANA IN CLOSE
PROXIMITY TO SCHOOL
OR PARK

Bw issued 11-15-04

RECEIVED

MAR 31 2005

SC OFFICE OF
APPELLATE DISSENT

[Handwritten signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF GEORGETOWN)

INDICTMENT FOR:

POSSESSION WITH INTENT TO DISTRIBUTE
MARIJUANA IN CLOSE PROXIMITY TO
SCHOOL OR PARK

At the Court of General Sessions, Convened on November 10, 2004, the Grand Jurors of Georgetown County present upon their oath:

That Ernest Smalls, Jr. did in Georgetown County on or June 16, 2004, unlawfully possess with intent to distribute a quantity of Marijuana, a controlled substance under provisions of §44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, within a one-half mile radius of the grounds of a public or private school, college or university, a public playground or park, or a public vocational or trade school or technical education center, to wit: Parkersville Park, in violation of §44-53-0445(B)(1), 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.


SOLICITOR

EXHIBIT B

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
STATE VS.

AKA: Ernest Smalls, Jr.
Race: B Sex: M Age: 22
DOB: 01-09-2693 SS#: 601-09-2693
Address: 71 Julian Rutledge Rd.
City, State, Zip: Pawleys Island, SC 29585
DL#: SC01278052 SID# SC01278052

INDICTMENT/CASE#:

04 -GS- 22 - 1016
A/W#: H-695465
Date of Offense: 06/16/04
S.C. Code §: 44-53-445(B)(2)
CDR Code #: 011018
 CASE RESTORED
SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Poss. With Int. to Dist. Crack Cocaine in Close Prox. to Schod/Park
In violation of 44-53-445(B)(2) of the S.C. Code of Laws, bearing CDR Code # 011018
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: T. Will Solicitor _____ Defendant _____ Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$10,000; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 04-65-22-1017
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 100.00 beginning 1mo. after release
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____
*Fine: _____

\$14-1-206 (Assessments 107.5%)		\$10,000.00
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$10,050.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$ 35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$100.00
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$609.25
TOTAL		\$20,909.00

21,604.25

Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Heath A. Moore Clerk of Court Deputy Clerk
Court Reporter: Dixie Eubank

PRESIDING JUDGE [Signature]
Judge Code: 0111211
Sentence Date: 11/18/04

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
STATE

VS. Ernest Smalls, Jr.

INDICTMENT/CASE#:

04 -GS- 22 - 1017

AKA: B. Butler
Race: B Sex: M Age: 22
DOB: 5-3-82 SS#: 601-09-2493
Address: 11 Julian Rutledge Rd. Pawleys Island, SC 29585
City, State, Zip
DL# _____ SID# _____

AW#: H-695466
Date of Offense: 6-16-04
S.C. Code §: 44-53-375(c)(2)(c)
CDR Code #: 0131419
 CASE RESTORED
SENTENCE
 PLEA TRIAL

In disposition of the said indictment, comes now the Defendant who was CONVICTED OF or PLEADS TO: Poss. With Int. to Dist. Crack Cocaine (2nd offense)

in violation of 44-53-375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 011113

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

T. Will

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 13 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$10,000; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment:

Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 100.00 beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

Recipient:	
*Fine:	\$50,00.00
§14-1-206 (Assessments 107.5%)	\$53,750.00
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§56-5-2995 (DUI Assessment)	\$12 \$
§ 35.13 (Public Def/Prob)	\$500 \$
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$100.00
§50-21-114(BUI Breath Test Fee)	\$50 \$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$319.25
TOTAL	\$107,074.25

[Signature]
Clerk of Court/Deputy Clerk
Court Reporter: Dixie Clark

PRESIDING JUDGE [Signature]
Judge Code: 011113
Sentence Date: 6/18/04

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
STATE vs.
Ernest Smalls, Jr.
AKA: Butter
Race: B Sex: M Age: 22
DOB: 5-3-82 SS#: 601-09-2693
Address: 71 Julian Rutledge Rd.
City, State, Zip Pawleys Island, SC
DL# SID# SC01278052

INDICTMENT/CASE#: 2004 -GS- 22 - 1018
AW#: H-695407
Date of Offense: 6-16-04
S.C. Code §: 44-53-370(b)(2)
CDR Code #: 011818
 CASE RESTORED
SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant, who was CONVICTED OF or PLEADS TO: pos. of Marijuana with Intent to Dist. (2nd offense)
In violation of § 44-53-370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 011818
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature]
Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: 04-65-22-1017
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 10.00 beginning 1/15/05 paid to Public Defender Fund
Other: _____

Recipient: _____
*Fine: _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
§ 35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 6.75
TOTAL \$ 231.75

Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

[Signature]
Clerk of Court Deputy Clerk
Court Reporter: Dixie Eubank

PRESIDING JUDGE [Signature]
Judge Code: 0112110
Sentence Date: 11/15/04

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN
STATE VS.

AKA: Butler
Race: B Sex: M Age: 22
DOB: 5-3-82 SS#: 001-09-2693
Address: 71 Julian Rutledge Rd,
City, State, Zip: Pawleys Island, SC 29585
DL#: SID# SC.01278052

INDICTMENT/CASE#: 04 -GS- 22 - 1019
AW#: H-1095468
Date of Offense: 06/16/04
S.C. Code §: 44-53-445 (B)(1)
CDR Code #: 0111017
 CASE RESTORED
SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Poss. With Int. to Dist. Grand Marij. in Close Prox. to School/Park
in violation of § 44-53-445(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0111017
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature]
Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ 10,000; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: 04-65-22-1017
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms:
 set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 100.00 beginning inc. after release
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____
*Fine: _____
\$14-1-206 (Assessments 107.5%) 10,750.00 \$ 10,000.00
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
§ 35.13 (Public Def/Prob) \$500 \$ _____
\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100.00
\$50-21-114(BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 629.25
TOTAL \$ 20,979.25
21,604.25

Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 to be paid to Clerk during probation.

Clerk of Court/Deputy Clerk
Court Reporter: Dixie Eubank

PRESIDING JUDGE [Signature]
Judge Code: 01110211
Sentence Date: 11/18/04

EXHIBIT C

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GEORGETOWN) 2004-GS-22-01016 through 01019

The State,)
)
Plaintiff,) Transcript of Record
)
vs.) February 24, 2014
)
Ernest Smalls, Jr.,) and
)
Defendant.) February 28, 2014

B E F O R E :

Honorable Michael G. Nettles
Georgetown County Courthouse
Georgetown, South Carolina

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

Alicia A. Richardson, Esquire
Attorney for Plaintiff

M. Gregory McCollum, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

E X H I B I T S

(There were no exhibits marked during the hearing.)

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1 (On the record, February 24, 2014. Defendant is sworn by
2 clerk.)

3 THE COURT: Yes, ma'am.

4 MS. RICHARDSON: Your Honor, this is the State versus
5 Ernest Smalls, Jr. It's indictment 2004-GS-22-1016, 1017,
6 1018 and 1019. The original charges were possession with
7 intent to distribute crack cocaine in proximity to a school,
8 trafficking, looks like crack cocaine, possession with intent
9 to distribute marijuana and possession with intent to
10 distribute marijuana near a school.

11 He was tried in his absence November 17th, 2004, and the
12 sentences were sealed. He is now represented by Mr. McCollum
13 and we are here for the sealed sentences to be opened.

14 THE COURT: Very good. Do you have those? Very,
15 very good.

16 MS. RICHARDSON: And Your Honor, I neglected to
17 mention in addition probation has an issue.

18 THE COURT: Be glad to hear from probation at
19 this time.

20 PROBATION OFFICER: Thank you, Your Honor, if it pleases
21 the Court, at the time of the incident to which he was found
22 guilty of, Your Honor, he was on probation. He had pled
23 guilty here in Georgetown County to trafficking cocaine and
24 received a sentence of ten years provided upon the service of
25 four years and three years probation, so a total exposure on

1 that, of course, would be six years. At that same time, Your
2 Honor, he also pled to a possession with intent to distribute
3 marijuana, got a straight three-year sentence and a possession
4 with intent to distribute cocaine and received a straight
5 four-year sentence.

6 THE COURT: Mr. McCollum, be glad to - would you
7 like to say anything before I publish the, the sentences?

8 MR. MCCOLLUM: No, Your Honor.

9 THE COURT: All right, as we have discussed in
10 chambers I'm going to publish the sentencing sheets. However,
11 I'm going to give Defense counsel an opportunity to discuss
12 this matter with his client and to prepare his mitigation to
13 be submitted on Friday of this week, and as I understand the
14 state of the law is that I can depart from this - these
15 sentences if I elect to do so. So I'm going to give you the
16 opportunity to prepare your mitigation and we'll proceed
17 forward on Friday morning. Anything further?

18 MR. MCCOLLUM: No, Your Honor, that's my
19 understanding as well.

20 THE COURT: All right. Mr. Smalls, on indictment
21 2004-GS-22-1019, possession with intent to distribute
22 marijuana in close proximity of a school or park the sentence
23 of the Court is you be committed to the State Department of
24 Corrections for a period of ten years and pay a \$10,000 fine,
25 the sentence to run concurrent and credit for time served.

1 With regard to indictment 2004-GS-22-1016, possession with
2 intent to distribute crack cocaine in close proximity of a
3 school, the sentence of the Court is that you be committed to
4 the State Department of Corrections for a period of ten years
5 and the payment of a \$10,000 fine, sentence to run concurrent
6 and credit for time served. With regard to indictment 2004-
7 GS-22-01018, possession of marijuana with intent to distribute
8 the sentence of the Court is you be committed to the State
9 Department of Corrections for a period of ten years, sentence
10 to run concurrent, credit for time served. With regard to
11 indictment 2004-GS-22-1017, the Defendant is committed to the
12 State Department of Corrections for a period of 13 years and
13 the payment of a \$50,000 fine, given credit for time served.

14 There were some - he was tried for a number of offenses
15 and he was found not guilty on at least one of them and I'll
16 allow Defense counsel and the State the opportunity to review
17 the indictments, the verdict form and the sentencing sheets
18 and ---

19 MR. MCCOLLUM: Your Honor ---

20 THE COURT: --- but I'm going to ask that you
21 leave those with the clerk. Do not take them out of the
22 court.

23 MR. MCCOLLUM: Your Honor, the last indictment, 1017
24 where he received 13 years ---

25 THE COURT: That's correct.

1 MR. MCCOLLUM: --- and what ---
2 THE COURT: And a \$50,000 fine.
3 MR. MCCOLLUM: --- what was the offense that he was
4 found guilty of?
5 THE COURT: Possession with intent to distribute
6 crack cocaine second offense.
7 MR. MCCOLLUM: Thank you, Your Honor.
8 THE COURT: And I'm going to give you an
9 opportunity and the State an opportunity to review the verdict
10 form and the sentencing sheets. I'll - you all can confer
11 with the clerk in that regard.
12 MR. MCCOLLUM: Thank you, Your Honor.
13 PROBATION OFFICER: Your Honor, as to the probation
14 matter?
15 THE COURT: We aren't dealing - we're going to do
16 the sentencing on Friday.
17 PROBATION OFFICER: Thank you, Your Honor. /
18 THE COURT: So, we aren't - I'm just publishing
19 it. We're going to sentence him on Friday.
20 PROBATION OFFICER: I understand, Judge.
21 THE COURT: Very good.
22 PROBATION OFFICER: Thank you.
23 OFF THE RECORD
24 (On the record, February 28, 2014.)
25 MS. RICHARDSON: Your Honor, this is the State versus

1 Ernest Smalls. He was before you earlier this week. He's
2 represented by Mr. McCollum and a - sealed sentences were
3 published where he had been tried in his absence. We are back
4 before the Court for Mr. McCollum to make any motions
5 regarding those sentences and the State would like to be heard
6 at the appropriate time once those motions are made.

7 THE COURT: Mr. McCollum, be glad to hear from
8 you.

9 MR. MCCOLLUM: Your Honor, would you like to hear
10 the mitigation or, or the legal issues regarding sentencing?

11 THE COURT: I think if you could address the
12 legal issues, then mitigation would probably be logically
13 better.

14 MR. MCCOLLUM: I'm sorry?

15 THE COURT: I think the legal issue and then
16 mitigation would probably be the best way to do it.

17 MR. MCCOLLUM: Your Honor, if I have this correct,
18 Mr. Smalls was indicted and then convicted of possession with
19 intent to distribute marijuana, possession with intent to
20 distribute marijuana within close proximity of a school or a
21 park, trafficking, trafficking cocaine, I think, under 28
22 grams. I can't remember if it's under or over. He was
23 charged with a greater one.

24 MS. RICHARDSON: I believe that what you announced and
25 we were unclear from our records because the sentence was

1 sealed, but I believe what you announced that he was actually
2 found guilty, tried for trafficking and found guilty of the
3 lesser included offense of possession with intent to
4 distribute and I believe that was cocaine base. Is that ---

5 MR. MCCOLLUM: The, the verdict sheet indicates,
6 let's see, not guilty of trafficking crack cocaine, as to
7 possession with intent to distribute guilty.

8 MS. RICHARDSON: And I'm not sure - I believe those
9 were second offenses.

10 MR. MCCOLLUM: Okay, so, the penalty for possession
11 with intent to distribute, what's the penalty for possession
12 with intent to distribute?

13 MS. RICHARDSON: Second offense now is five years to
14 30 years. I, you know, in 2004, I've looked through and tried
15 to find what the penalty was then. There was a major revision
16 in 2010, but I'm not sure of the specific penalty.

17 MR. MCCOLLUM: Now, I was looking at the -
18 inadvertently looking at the trafficking. In terms of that,
19 Your Honor, you know, there's, there's some, there's some law
20 out there that says the Defendant should get the benefit of a
21 change in sentencing under common law, yet at the same time
22 there's also law that says if there's a specific sentencing
23 provision statutorily that they may not be entitled to it. I
24 personally believe that they should be entitled to it and it
25 pretty much is within the discretion of the Solicitor because

1 she's the party opponent, and so however sentence is imposed
2 the sentence is lawful and the Department of Corrections has
3 been told by the Supreme Court that they don't have
4 jurisdiction to even bring it up. On the other hand if we, if
5 we make a mistake here and the Solicitor files an appeal or
6 challenges it through, through their office and the Attorney
7 General's Office it could later become an issue, okay. So
8 from my perspective and this is, this is not really that
9 settled in my mind as to what the correct course is. I tell
10 Your Honor candidly there's some case law I can provide your
11 clerk that, that deals with this issue and it's, I don't know,
12 perhaps it's settled but it doesn't seem completely settled in
13 my mind.

14 Add to that when my office did the research, I mean, I,
15 I, I know what the law was in 2006, and I think it was the
16 same in 2004, but for whatever reason when I go onto the
17 website with the Casemaker I don't get - I can't go past 2006.
18 I don't know why. I've not run into that before. Prior to
19 that, you know, there was a, there was a close proximity had a
20 minimum mandatory if it involved crack which was ten to 15.
21 Now, and marijuana was different, which is zero to ten. Now
22 all of it is zero to ten close proximity regardless of what
23 the controlled substance is. So it seems like the only really
24 issue then is the possession with intent to distribute and
25 what that mandatory minimum is and were you able to locate it?

1 MS. RICHARDSON: I did the same thing and had trouble
2 tracking what it was, but the penalty now, if it is a second
3 offense is five to 30. I can't imagine 13, I think 13 years
4 was the sentence on that, that that would have been - it's
5 just such an odd number that it wouldn't have been the
6 maximum. I just - I can't imagine that was a prescribed
7 number by the legislature at any time just because it's such
8 an odd number, but the State's position is if you can go down
9 you can go up and my position is is none of us were there,
10 none of us heard the facts that were presented. The trial
11 judge who heard the case was in the best position to hear and
12 make a determination of all the facts, including hearing
13 evidence as to why he wasn't there.

14 Certainly I can understand, you know, wanting to present
15 mitigation but also if that's the case then there's the
16 aggravation of how long he was gone and what he's done since
17 then. So it cuts both ways, but my position would be I would
18 ask that the Court decline to exercise any discretion in
19 modifying the sentence and determine that the trial judge was
20 in the best position to make a sentence after hearing all the
21 testimony and evidence, and obviously with the 13 years did
22 exercise some sort of discretion and didn't just pop the
23 maximum or anything like that for his failure to appear. So
24 I'd ask that you leave that to the trial judge.

25 THE COURT: All right, what was his record prior

1 to this event?

2 MS. RICHARDSON: He had a 2002 conviction for drug
3 charges. It looks like one of those was also a trafficking
4 charge, but I believe he was on probation at the time, so, or
5 parole. So probation and parole may have those exact charges.

6 PROBATION OFFICER: That's correct, Your Honor. At the
7 time of this offense he was on probation for trafficking
8 cocaine. He received a split sentence back on March 21st of
9 2002 here in Georgetown County, ten years provided upon the
10 service of four years and three years probation. He also pled
11 guilty at that same time to a possession with intent to
12 distribute marijuana and got a straight three-year sentence.
13 So his total exposure, therefore, would be six years.

14 THE COURT: All right, well, I'm just going to go
15 ahead and terminate all of his probation, any financial
16 obligation has not been met reduced to a civil judgment.

17 PROBATION OFFICER: Thank you, Your Honor.

18 THE COURT: Very good.

19 MR. MCCOLLUM: Your Honor, just along sentencing I
20 would - I do have the statute here from '04 and I agree with
21 the Solicitor that the possession with intent to distribute
22 crack is five to 30 second offense. That seems pretty clear.
23 So in that regard the only, the only legal issue then is and
24 it's not, it's not even relevant, you know, if Your Honor
25 doesn't change the sentence, none of this even matters; okay,

1 but I will advise the Court that as to the possession with
2 intent to distribute crack, in 2006, you know, it carried a
3 mandatory minimum as I understand it of 10 to 15 and now it's
4 zero to ten and I don't know what it was in 2004 and I don't
5 know why I can find the law on the other drug sections in 2000
6 - 2006 or 2004, any year I pick, it only goes back about ten
7 years and this one isn't there. Now, clearly, you know, way
8 back, you know, in the, in the eighties, late eighties and
9 nineties that close proximity, you know, was there. That law
10 was, was in existence. So it's not - I'm certain it wasn't
11 just passed in 2006, perhaps it was amended.

12 THE COURT: That's always been zero to ten;
13 hasn't it?

14 MS. RICHARDSON: Your Honor, I focused on the most
15 serious charge, the possession with intent to distribute
16 because I knew that carried the most.

17 THE COURT: I always thought that the proximity
18 has always been, even the eighties when I was practicing, I
19 believe it was, always been zero to ten, there's no minimum
20 mandatory. That's kind of how they got around the minimum
21 mandatory 15 year on the distribution.

22 MR. MCCOLLUM: Well, if that's the Court's
23 interpretation of that, I don't have anything further on that
24 issue.

25 THE COURT: Okay, all right.

1 MR. MCCOLLUM: Your Honor ---

2 THE COURT: Did he have any, did he have any
3 other record other than the one he was on probation for?

4 PROBATION OFFICER: Begging the Court's indulgence, Your
5 Honor.

6 MS. RICHARDSON: I do have his NCIC.

7 PROBATION OFFICER: Okay, yours is probably more recent
8 than mine.

9 MS. RICHARDSON: We, we ran another one this morning,
10 just showing a driving under suspension, petit larceny, then
11 the 2002 convictions that, that she spoke of, then these
12 convictions and then he's had some driving offenses since
13 then, a giving false information to the police that he was
14 convicted of last year and simple possession of marijuana and
15 that was in conjunction with some pending charges in Horry
16 County.

17 THE COURT: Mr. Smalls, do you want to say
18 anything?

19 MR. SMALLS: Yes, sir.

20 THE COURT: Be glad to hear from you.

21 MR. MCCOLLUM: Your Honor, is it okay if I provide
22 the mitigation at this time?

23 THE COURT: Certainly, I thought you - I thought
24 that's what you had done, but go ahead.

25 MR. MCCOLLUM: No, I was just stopping on the legal

1 issue.

2 THE COURT: Very good.

3 MR. MCCOLLUM: I'm sorry.

4 THE COURT: I'll be glad to hear anything you've
5 got to say as far as mitigation goes.

6 MR. MCCOLLUM: As Your Honor knows this was ten
7 years ago. Mr. Pino [spelled phonetically] had written a
8 letter which I can summarize which is that since this time he
9 says that he's grown up and matured and changed and said he
10 was naïve and did things that he shouldn't have done which he
11 regrets. Now, he was living in South Florida at the time and
12 he came back up here to see some family members and meet with
13 some people and that led to him being arrested and being here
14 in front of Your Honor, but he was working at this car wash in
15 Florida. He was also working for this power washing company
16 and I think he was, he had some other job as well.

17 Now, he's got some children. He had a daughter who was
18 up here. I think she's, she's 13?

19 MR. SMALLS: Yes, sir.

20 MR. MCCOLLUM: She's 13 years old. She lived here I
21 think - well, I say here, but in Horry County in this area and
22 she would go stay with him in the summer and he would watch
23 her and have visitation with her. I talked to the mother,
24 Tamika Pino [spelled phonetically], and he was providing
25 financial support for that daughter. In addition he got into

1 a relationship in South Florida and has a six year old child
2 with whom he's been supporting since that time. It's a, it's
3 a strange, you know, situation because obviously he had
4 established this life. Clearly he's a fugitive. All right,
5 he knows that he - about that, and so but he's living this
6 life in a positive way. He had even joined or not - maybe not
7 joined but was going to this Sixth Street Baptist Church and
8 attending there and beginning to start to evolve even more in
9 terms of being a productive citizen. Now, I don't know how he
10 would ever deal with that ultimately because, you know, this
11 was, this - what happened was bound to happen, but he asks,
12 obviously asks for mercy. He wants to continue to make
13 changes in his life. He doesn't assert that he's finished
14 making those changes. He understands he's made some mistakes.
15 He'd like to take responsibility for his actions, which he
16 obviously has no choice to do that sentence-wise, but in terms
17 of him expressing that to the Court he's acknowledging that
18 and pointing out that he believes that he was, he was - he's
19 naïve and he was young. Clearly he made some serious mistakes
20 here. He knows that.

21 As to the Solicitor's point, you know, it's - he didn't
22 have any other problems. He, he - I don't think there's any
23 situation where he was charged with crimes or was even
24 committing crimes other than living under the cloud of this
25 charge.

1 Now his mother here is in the audience. She doesn't want
2 to say anything to the Court. I've spoken to her. His aunt
3 is here. Obviously they care about him and they're here to
4 support him and I, Your Honor, started to talk to him about
5 this, but I would let him say anything else at this time if he
6 would like to add something.

7 THE COURT: Mr. Smalls, would you like to say
8 anything?

9 MR. SMALLS: Yes, and another thing when they,
10 when they was coming looking for me whatever, on, on my wanted
11 sheet ---

12 MR. MCCOLLUM: You don't need to bring that up.

13 MR. SMALLS: No?

14 MR. MCCOLLUM: There was - they, they had - there
15 was a separate side issue which might have been libelous to
16 him or slanderous in terms of what the sheet said that he -
17 but that's - that, that - there's nothing that this Court
18 would have jurisdiction or it wouldn't affect the sentencing
19 if they put the wrong thing on the wanted poster.

20 THE COURT: Very good. Anything else, Mr.
21 Smalls?

22 MR. SMALLS: No, sir.

23 THE COURT: All right, anything from anybody?

24 MS. RICHARDSON: Your Honor, just to clear up, he does
25 - I didn't want to penalize him or mention that he had

1 something he had not been convicted of, but based on what Mr.
2 McCollum said, he does have pending charges, drug charges in
3 Horry County.

4 THE COURT: Okay, very good.

5 MS. RICHARDSON: Has not been convicted of them.

6 MR. MCCOLLUM: Well ---

7 MS. RICHARDSON: He may have valid defenses. I will
8 put that but he had said he had not been arrested. He has
9 been.

10 MR. MCCOLLUM: Well, I'm sorry.

11 MS. RICHARDSON: But he's not been convicted on that.

12 MR. MCCOLLUM: That's - she's right.

13 THE COURT: Right, in the whole scheme of things
14 probably makes very little difference.

15 You know, I do acknowledge that under certain
16 circumstances I could depart downward, but under these
17 circumstances I don't really think that I should or ought to.

18 On indictment 2004-GS-22-1017, possession with intent to
19 distribute crack cocaine, the sentence of the Court is that
20 you be committed to the State Department of Corrections for a
21 period of 13 years, payment of a \$50,000 fine, sentence to run
22 concurrent, any credit for time served.

23 With regard to indictment 2004-GS-22-1016, possession
24 with intent to distribute crack cocaine the sentence of the
25 Court is you be committed to the State Department of

1 Corrections for a period of ten years, payment of a \$10,000
2 fine, sentence to run concurrent, credit for time served.

3 With regard to indictment 2004-GS-22-1019, the sentence
4 of the Court is you be committed to the State Department of
5 Corrections for a period of ten years and the payment of a
6 \$10,00 fine, sentence to run concurrent, credit for time
7 served.

8 With regard to indictment 2004-GS-22-1018, possession of
9 marijuana with intent to distribute, second offense, the
10 sentence of the Court is that you be committed to the State
11 Department of Corrections for a period of ten years, sentence
12 to run concurrent, credit for time served.

13 On the indictment 2004-GS-22-1017, I think that -- who is
14 the judge who tried this? I can't read his name.

15 MR. MCCOLLUM: Judge Baxley, Your Honor.

16 MS. RICHARDSON: Judge Baxley.

17 THE COURT: Judge Baxley, certainly doesn't look
18 like Baxley but maybe it was. That looks like Lockemy to me
19 but you all are sure it was Baxley?

20 MR. MCCOLLUM: I'm not certain, no, Your Honor.

21 MS. RICHARDSON: That's what my records say that it
22 was Judge Baxley, but ---

23 THE COURT: Whoever the Judge was on indictment
24 2004-GS-22-1017, possession with intent to distribute crack
25 cocaine he inadvertently, I think inadvertently didn't mark

1 concurrent and to the extent that, that that could pose a
2 problem I have marked concurrent and put my initials beside it
3 because I think that's what he meant and good luck to you.

4 MR. MCCOLLUM: Your Honor, I think at this time I'd
5 like to make a couple of motions just on the record.

6 THE COURT: Certainly.

7 MR. MCCOLLUM: If I might be heard on behalf of Mr.
8 Smalls.

9 THE COURT: Certainly.

10 MR. MCCOLLUM: Your Honor, at this time given the
11 verdict and his, his appearance here before the Court, at this
12 time I would renew all motions previously made in his trial by
13 his other attorney. At this time I'd also renew the motion
14 for a directed verdict that was made at the directed verdict
15 stage of the case at the close of the State's case.

16 In addition to that, Your Honor, since the - he's here
17 for sentencing and he's - the verdict has, has been entered I
18 would move, make a motion here on the record for a new trial
19 and ask Your Honor to set aside the convictions and grant his
20 motion for a new trial.

21 THE COURT: All right, your motions are noted and
22 you're protected on the record, but they're denied. Thank
23 you.

24 MR. MCCOLLUM: Thank you, Your Honor.

25 MS. RICHARDSON: Your Honor, he had a bench warrant

1 that was issued. I'm going to present an order to lift that
2 bench warrant so this hold will be taken off of him.

3 THE COURT: Bench warrant is lifted.

4 (Adjourned.)

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of The State versus Ernest Smalls, Jr., held in the Court of General Sessions for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on February 24, 2014 and February 28, 2014.

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

Grace L. Hurley
Grace L. Hurley, CVR-CM-M
Official Reporter

April 24, 2014.

STANDARD RECEIPT

DATE	AMOUNT	REMARKS

EXHIBIT D



Alma Y. White
Georgetown County Clerk of Court

P.O. Box 479 ■ 401 Cleland St.
Georgetown, SC 29442

May 20, 2014

SC Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

Re: Transcript of Hearing in Absentia 12-17-04
State of South Carolina vs. Ernest Smalls, Jr.
Case No(s): 2004GS2201016 to 1019

Dear Sir or Madame:

A copy of the above referenced hearing is unavailable from the Clerk's Office. Please contact the assigned court reporter, Ms. Dixie C. Eubank, to facilitate your request. Additionally, our records reflect the sentence date as November 18, 2014.

If you have any questions, please feel free to contact me at 843-545-3110. Thank you.

Sincerely,



Jessica M. Smith
General Sessions Court Coordinator

EXHIBIT E



RECEIVED

SEP 11 2014

SC Court of Appeals

State of South Carolina
The Circuit Court of the Fifteenth Judicial Circuit

Dixie Cox Eubank
Circuit Court Reporter
Certified Court Reporter

April 1, 2014

P O Box 2194
Murrells Inlet, South Carolina
29576-2194
deubank@sccourts.org

Ms. Kimberly McCall
Administrative Coordinator
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P O Box 11589
Columbia, SC 29211-1589

In re: State v. Ernest Smalls, Jr.

RE: Indictment Numbers: (2004-GS-22-01016) through (01019)
Disposition Date: November 17-18-2004

Dear Kimberly,

I have received your request for the Transcript of Record in the above-reference case in which you state the disposition date was November 17-18, 2004, and was heard before the Honorable J. Michael Baxley.

In accordance with your request, I quote the following from the Court Reporters Manual:

"Rule 607(i), SCACR governs the retention of tapes. It provides that a court reporter shall retain the primary and back-up tapes of a proceeding that has not been transcribed for a period of at least five years after the date of the proceeding. Only after the expiration of that period may the court reporter reuse or destroy the tapes."

As the transcript you have requested is past the five-year limit, these records are no longer in existence, and therefore I am unable to comply with your request for the transcript.

Sincerely,

Dixie Cox Eubank
Official Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

SEP 11 2014

SC Court of Appeals

Appeal from Georgetown County
Michael J. Baxley, Circuit Court Judge

THE STATE,

RESPONDENT,

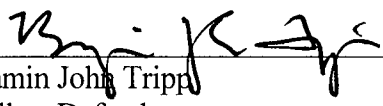
V.

ERNEST SMALLS,

APPELLANT

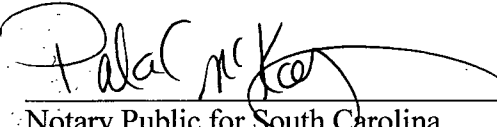
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Order to Reconstruct the Record of Appellant's Criminal Trial in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of September, 2014.


Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of September, 2014.


(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.