

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

J. Mark Hayes, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

DONALD LAMON YOUNG,

APPELLANT.

APPELLATE CASE NO. 2014-002655

MOTION FOR A NEW TRIAL
OR, IN THE ALTERNATIVE, AN ORDER TO
RECONSTRUCT THE RECORD OF APPELLANT'S TRIAL

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order setting aside his convictions and ordering a new trial. In the alternative, Appellant requests an order requiring the parties to reconstruct Appellant's trial transcript.

In support of this motion, Appellant is providing the following documents, which are attached as exhibits: indictment 2014-GS-23-412 (Exhibit #1), indictment 2014-GS-23-415

(Exhibit #2), page 1 of trial transcript¹ (Exhibit #3), criminal sexual conduct verdict form (Exhibit #4), kidnapping verdict form (Exhibit #5), redacted criminal sexual conduct sentence sheet (Exhibit #6), redacted kidnapping sentence sheet (Exhibit #7), trial transcript page 97 (Exhibit #8), July 11, 2016 letter from Hiskell (Exhibit #9), July 25, 2016 letter to Clerk of Court (Exhibit #10), Exhibit Inventory Listing (Exhibit #11), redacted Jackson's email dated July 29, 2016 (Exhibit #12), Exhibits Receipt (Exhibit #13), Eppes' affidavit (Exhibit #14), transcript index (Exhibit #15).

During its August 2014 term, a Greenville County grand jury indicted Appellant for criminal sexual conduct in the first degree (2014-GS-23-412) and kidnapping (2014-GS-23-0415). See Exhibits #1 & #2. The state, represented by Austin Watts, called the case to trial before the Honorable J. Mark Hayes on December 3, 2014. See Exhibit #3. Frank Eppes represented Appellant. See Exhibit #3. The trial continued through December 5, 2014. See Notice of Appeal. On December 5, 2014, the jury returned guilty verdicts on both charges. See Exhibits #4 & #5. Judge Hayes sentenced Appellant to concurrent terms of twenty-five years' imprisonment. See Exhibit #6 & #7.

On December 11, 2014, Appellant filed and served a notice of appeal. After communicating with trial counsel, the Office of Appellate Defense (ADO) ordered the trial transcript from Caroline Hiskell, Circuit Court reporter on March 11, 2015. Ms. Hiskell provided ADO with a partial transcript. On the last page of the transcript, she typed, "Due to a theft as reported to court administration, the remainder of this transcript cannot be produced."

¹ Undersigned counsel will be happy to provide the entirety of the partial transcript provided by the court reporter should this Court wish to see it in ruling upon this motion. To the extent it is helpful to disposition of this motion, undersigned counsel is providing a copy of the index page provided by the court reporter. See Exhibit #15.

See Exhibit #8. On July 11, 2016, Ms. Hiskell wrote to ADO attesting to the theft and her inability to produce the transcript. See Exhibit #9.

The case was assigned to undersigned counsel on July 19, 2016. At that time, undersigned counsel wrote to Appellant to explain representation. On July 25, 2016, undersigned counsel wrote to Appellant to explain the course of action in light of the partial transcript. On that same date, undersigned counsel wrote to the Clerk of Court requesting a complete copy of the pleadings and exhibits files. See Exhibit #10. Additionally, undersigned counsel wrote to trial counsel to advise him that the entire transcript was not available and to request a complete copy of his file.

On July 28, 2016, Mary Troup with the Greenville County Clerk of Court's Office contacted undersigned counsel via email. Ms. Troup provided undersigned counsel with electronic copies of the pleadings file. When undersigned counsel inquired about the exhibits, Ms. Troup advised that the request must be made to Mary Ann Young, and that the request must be specific. Undersigned counsel explained that specificity was impossible in light of the court reporter's inability to produce an exhibit list with the transcript. In response, Ms. Troup provided undersigned counsel with an "exhibit inventory listing." See Exhibit #11. Using this document, undersigned counsel asked Angela Jackson, the Document Specialist at ADO, to request the exhibits. Ms. Jackson sent the request on July 29, 2016. See Exhibit #12. Our office has been unable to find a response to the request. Additionally, our office failed to follow up on the request due to internal oversight. Recently, undersigned counsel learned of this oversight and asked Ms. Jackson to follow up on the request for the exhibits using the exhibit inventory listing. When Ms. Jackson made the request on September 29, 2016, she was provided a two-page exhibits receipt, which differed significantly from the exhibit inventory listing. See Exhibit #13.

This caused some confusion, but on October 13, 2016, the request was made for copies of all paper exhibits and digital exhibits. As of this writing, undersigned counsel is waiting for copies of the available exhibits.

In response to undersigned counsel's letter of July 25, 2016, trial counsel contacted undersigned counsel by phone on August 2, 2016. During the telephone conversation, undersigned counsel revealed she had a vacation starting August 8, 2016, and would not return until August 15, 2016. Trial counsel revealed he also had a vacation planned in August and would not return until August 22, 2016. The two agreed to touch base again on that date. Due to her oral argument and briefing schedule, undersigned counsel was unable to contact trial counsel until September 13, 2016 to set up a telephone conference. On September 22, 2016, the two discussed the case again by telephone. On October 17, 2016, trial counsel provided an electronic version of an affidavit regarding his recollection of the trial, and the difficulties he foresees with any attempt at reconstruction. See Exhibit #14.

When a trial transcript has been lost or destroyed, the Court may vacate the conviction and sentence and remand for a new trial if meaningful appellate review is not possible. See Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). In Deaton, supra, the defendant's convictions were set aside and a new trial had 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. Citing Deaton, this Court denied a request for reconstruction in State v. Serrette, 375 S.C. 650, 652-653, 654 S.E.2d 554,

555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant's absence for a ten-year period, which this Court explained was "not a situation where the court reporter's equipment malfunctioned at trial leading to a loss of the trial transcript."

Appellant was not at fault for the absence of the vast majority of his transcript; rather, the transcript is not available due to a theft of the court reporter's equipment. In light of the court reporter's inability to produce a transcript of Appellant's trial, Appellant requests this Court order a new trial in his case. Appellant cannot obtain meaningful appellate review based upon the very small portion of the transcript available. Based upon the information undersigned counsel has received it appears it will be very difficult, if not impossible, to reconstruct Appellant's trial. The partial transcript provided does not appear to provide the entirety of the first day. Thus, missing from the transcript is a portion of December 3, and the entirety of December 4 and December 5. The ability to reconstruct over two days of testimony, objections, motions, instructions, and argument is almost non-existent. The affidavit provided by trial counsel details the numerous problems with trying to reconstruct this transcript. See Exhibit #14. Therefore, Appellant respectfully requests this Court order a new trial in his case.

In the alternative, when a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. Whitehead, supra; China, supra; Koon, supra; Dolive, supra; Ladson, supra. The vast majority of Appellant's trial transcript cannot be produced and is no longer available through no fault of Appellant based on the theft of court reporter's machinery. Therefore, meaningful review of the record below is not possible with the current transcript. In the event this Court denies Appellant's motion for a new trial, Appellant seeks reconstruction of the record to permit meaningful appellate review of his trial.

WHEREFORE, the undersigned counsel requests this Court set aside his convictions and remand for a new trial. In the alternative, Appellant requests an order for the reconstruction of Appellant's trial transcript in order to perfect Appellant's direct appeal in the case. While this petition is pending, Appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.

Respectfully submitted,

_____

Susan B. Hackett
Appellate Defender

Attorney for Appellant

This 18th day of October, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

J. Mark Hayes, Circuit Court Judge

STATE OF SOUTH CAROLINA,

RESPONDENT,

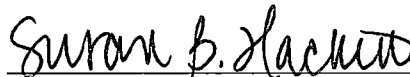
V.

DONALD LAMON YOUNG,

APPELLANT.

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the motion for a new trial, or in the alternative, an order to reconstruct the record of appellant's trial in the above referenced case has been served upon opposing counsel, J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Donald Lamon Young #339194, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 18th day of October, 2016.



Susan B. Hackett
Appellate Defender

Attorney for Appellant

SUBSCRIBED AND SWORN TO before me
this 18th day of October, 2016.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.

EXHIBIT # 1

WITNESSES

Robert Joseph Perry

Greenville County Sheriffs Office

11/13/2013

ARREST WARRANT NUMBER

2013A2330209703

ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

Sierra Moody 12-5-14

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-23-
AFW

000412

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2014

THE STATE

vs.

DONALD LAMON YOUNG

Indictment for

0160

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

VIOLATION § 16-03-0652

FILED

JAN 24 2014

Clerk of Court
Greenville County

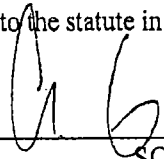
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT FIRST DEGREE

At a Court of General Sessions, convened on **AUG 19 2014** the Grand Jurors of Greenville
County present upon their oath:

That DONALD LAMON YOUNG did in Greenville County, on or about the 10th day of November, 2013,
engage in sexual battery, with TAMMY BALLARD, and used aggravated force to accomplish this sexual battery.
This is in violation of South Carolina Code of Laws Section 16-03-0652 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.



SOLICITOR

EXHIBIT # 2

WITNESSES

Robert Joseph Perry

RJP

Greenville County Sheriffs Office

11/13/2013

ARREST WARRANT NUMBER

2013A2330209707

ACTION OF GRAND JURY

TRUE BILL

Ricky T. Hall

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

GUILTY

Vince Moore

12-5-14

Foreperson of Petit Jury
Date:

DOCKET NO. 2014-GS-23-^{AFW} 000415

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

August TERM 2014

THE STATE

vs.

DONALD LAMON YOUNG

Indictment for

0095

KIDNAPPING

VIOLATION § 16-03-0910

[Signature]
ENTERED
ACCT.

FILED

JAN 24 2014

Clerk of Court
Greenville County

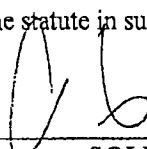
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on **AUG 19 2014** the Grand Jurors of Greenville
County present upon their oath:

That DONALD LAMON YOUNG did in Greenville County, on or about the 10th day of November, 2013,
unlawfully seize, abduct, confine, inveigle, decoy or carry away TAMMY BALLARD, without the authority of
law. This is in violation of §16-3-910 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.



SOLICITOR

EXHIBIT # 3

1 STATE OF SOUTH CAROLINA : COURT OF GENERAL SESSIONS
2 : 2014-GS-23-0412

3 State of SC : TRANSCRIPT RECORD

4 vs :

5 Donald Young :
6 :
7 :

December 3, 2014
Greenville, South Carolina

9 -----
10 BEFORE: The Honorable Mark Hayes, Judge

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

12 Austin Watts, Esquire
13 Assistant Solicitor

14 Frank Epps, Esquire
15 Attorney for the Defendant

16
17
18
19
20 Caroline Hiskell
21 Thirteenth Circuit Court Reporter
22
23
24
25

EXHIBIT # 4

EXHIBIT # 5

EXHIBIT # 6

STATE OF SOUTH CAROLINA

0-30
IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Donald Lamon Young
AKA:
Race: BLACK Sex: M Age: 28
DOB: SS#:
Address:
City, State, Zip: Greenville, SC 29607
DL#: SID#:

INDICTMENT/CASE#: 2014GS2300412
A/W#: 2013A2330209703
Date of Offense: 11/10/2013
S.C. Code § : 16-03-0652
CDR Code #: 0160

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Sex, Crim Sex Conduct, First Degree

CONVICTED OF or PLEADS

in violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Ab 78848 Frank Egan 7839
Watts, Austin SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 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:
 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. Since November 13, 2013
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$
Payment Terms:
 Set by SCDPPPS

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	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

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 \$ beginning
\$ paid to Public Defender Fund

Other: Mandatory Sex Offender Registration
No contact with the victims

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul Buh
Court Reporter: W.S. 2014 Hiskell
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2132
Sentence Date: 12-9-2014

EXHIBIT # 7

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

0-30

1219738

COUNTY OF Greenville
STATE VS.
Donald Lamon Young
AKA:
Race: BLACK Sex: M Age: 28
DOB:
Address:
City, State, Zip: Greenville, SC 29607
DL#:
SID#:

INDICTMENT/CASE#: 2014GS2300415
A/W#: 2013A2330209707
Date of Offense: 11/10/2013
S.C. Code §: 16-03-0910
CDR Code #: 0095

RECEIVED

JAN 02 2015

SC Court of Appeals

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Kidnapping (gs)

CONVICTED OF or PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Watts, Austin SC Bar# 78848 Defendant
Attorney for Defendant SC Bar# 7839

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 25 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:
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. Since November 15, 2013
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$13390.

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 \$ beginning
\$ paid to Public Defender Fund
Other: Sex offender Registration, No contact with victims

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wick
Court Reporter: 12-5-2014 Nishell
SCCA/217 (03/2011)

Presiding Judge
Judge Code: 2132
Sentence Date: 12-5-2014

EXHIBIT # 8

Cheri Lyda - Direct

1 THE COURT: Alright. Ladies and gentlemen,
2 this is one of those times when we have to have a
3 discussion outside of your presence. I need to remind you
4 not to have any discussion about anything involving the
5 case, but you may retire back to the jury deliberation
6 room and we'll get back to you shortly.

7 (Jury exits the courtroom.)

8 **(DUE TO A THEFT AS REPORTED TO COURT**
9 **ADMINISTRATION, THE REMAINDER OF THIS TRANSCRIPT CAN NOT**
10 **BE PRODUCED.)**

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EXHIBIT # 9

Young - July 11, 2016

SCCID
P.O. Box 11589
Columbia, SC 29211

Caroline Hiskell
32 Duxbury Lane
Easley, SC 29642

RE: State vs. Donald Young
2014-002655

AFFIDAVIT

In response to the request I received regarding this case, I Caroline Hiskell, am attesting to the fact that I can not produce the remainder of this transcript.

In an effort to transfer this transcript to another court reporter for production, I had my notes and audio with me, and unfortunately, they were stolen out of my car along with my wallet and my other personal items.

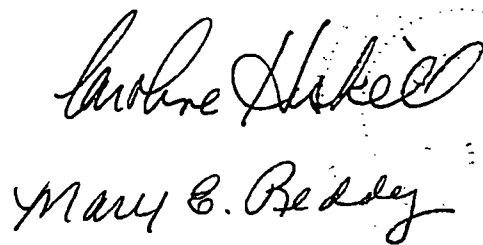
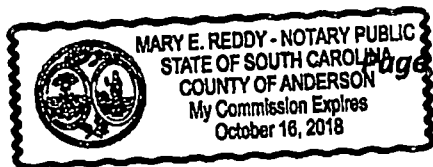
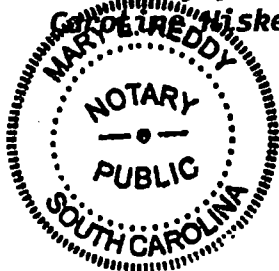
In the past if there was any kind of technical difficulty or mechanical difficulty, I would go to great length to fix the problem, but this time I can not.

I do sincerely apologize for the inconvenience and I am saddened and embarrassed at the difficulty situations like this will cause.

Thank you,



Sincerely yours,
Caroline Hiskell



Mary E. Reddy

EXHIBIT # 10



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

July 25, 2016

Honorable Paul B. Wickensimer
Clerk, Greenville County
305 E. North Street
Greenville, S.C. 29601-2121

Re: State v. Donald Lamon Young, 2014-GS-23-0412

Dear Mr. Wickensimer:

I am representing Mr. Young in his direct appeal. In order to complete his appeal, I need certain documents. Please provide me with a complete copy of the pleadings file and exhibits file. If you have it in electronic format, please feel free to send it to me that way. My email address is shackett@sccid.sc.gov. If the file is too large for email, we have a file sharing system, and I can provide you with that information. If that is your preference, simply email me at the address above, and I will provide it.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/

EXHIBIT # 11

**Greenville General Sessions
EXHIBIT INVENTORY LISTING**

CASE NUMBER	INV. CNTRL #	EXHIBIT ID	DESCRIPTION	LOCATION	DESTROY AFTER	DESTROYED ON	BY	CASE STATUS
-------------	-----------------	------------	-------------	----------	------------------	-----------------	----	----------------

EXHIBIT STATUS : Admitted

2013A2330209703	726	1	CD	crv				Disposed
2013A2330209703	726	10	chain of custody report	crv				Disposed
2013A2330209703	726	11	DNA Report	crv	12/5/2014			Disposed
2013A2330209703	726	12	statement	crv				Disposed
2013A2330209703	726	13	photo	crv				Disposed
2013A2330209703	726	14	CD	crv				Disposed
2013A2330209703	726	15	charge request	crv				Disposed
2013A2330209703	726	16	question	crv				Disposed
2013A2330209703	726	2	map	crv				Disposed
2013A2330209703	726	3	photo	crv				Disposed
2013A2330209703	726	4	SLED KIT	crv				Disposed
2013A2330209703	726	5	all phone	crv				Disposed
2013A2330209703	726	6	envelope	crv				Disposed
2013A2330209703	726	7	bullets	crv				Disposed
2013A2330209703	726	8	swabs	crv				Disposed
2013A2330209703	726	9	shoes	crv				Disposed

EXHIBIT # 12

From: Angela S. Jackson
Sent: Friday, July 29, 2016 4:04 PM
To: [REDACTED]
Subject: Exhibits Request - Donald Young - 2014-GS-23-00412+

Dear Mary Ann:

Our office is representing the above individual in their appeal to the Court of Appeals. In order to properly prepare the appeal, we are asking you for copies of the following document(s) and/or exhibit(s):

- 1) State's Exhibit #1 – CD (link will be provided)
- 2) State's Exhibit #10 – Chain of Custody Report
- 3) State's Exhibit #11 – DNA Report
- 4) State's Exhibit #12 – Statement
- 5) State's Exhibit #13 – photo
- 6) State's Exhibit #14 – CD (link will be provided)
- 7) State's Exhibit #15 – Charge request
- 8) State's Exhibit #16 – Question
- 9) State's Exhibit #2 – map
- 10) State's Exhibit #3 – photo
- 11) State's Exhibit #6 – envelope

Feel free to send the requested documents via email to [REDACTED]. If you have any questions, please do not hesitate to contact me. Thank you in advance for your kind assistance in this matter.

Sincerely,

Angela Jackson
Administrative Specialist
South Carolina Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, SC 29201
(803) 734-1330
(803) 734-1397 fax
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT # 13

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE General Sessions COURT
CASE NO(S) 2014-0442

201302300209703-9705,9706
9708

EXHIBITS RECEIPT

PLAINTIFF	<u>State of SC</u>	PLAINTIFF'S ATTORNEY	<u>Cynthia Walker</u>
DEFENDANT	<u>Donald Young</u>	DEFENDANT'S ATTORNEY	<u>Frank Epps</u>
JUDGE	<u>Shupe</u>	DATE OF HEARING	<u>12-3-14 - 12-5-14</u>

The following exhibits were received by me from Caroline Haskell Teresa B. Johnson, Court Reporter for the Thirteenth Judicial Circuit, on the 5 day of December 2014.
They are, as follows: Caroline Haskell

Plaintiff / Petitioner / State Exhibits	Defendant / Respondent Exhibits	Court Exhibits
1 <u>CO</u> ID / EV	1 <u>Statement</u> ID / EV	1 <u>CO</u>
2 <u>Map</u> ID / EV	2 <u>Photograph</u> ID / EV	2 <u>CO</u>
3 <u>Photograph</u> ID / EV	3 ID / EV	3 <u>Charge Request</u>
4 <u>Photograph</u> ID / EV	4 ID / EV	4 <u>Question</u>
5 <u>Photograph</u> ID / EV	5 ID / EV	5 <u>Question</u>
6 <u>Photo</u> ID / EV	6 ID / EV	6 <u>Question</u>
7 <u>Photo</u> ID / EV	7 ID / EV	7 <u>Questions</u>
8 <u>Photo</u> ID / EV	8 ID / EV	8
9 <u>Sled Kit</u> ID / EV	9 ID / EV	9
10 <u>Photo</u> ID / EV	10 ID / EV	10
11 <u>Photo</u> ID / EV	11 ID / EV	
12 <u>Photo</u> ID / EV	12 ID / EV	
13 <u>Photo</u> ID / EV	13 ID / EV	
14 ID / EV	14 ID / EV	
15 ID / EV	15 ID / EV	
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22 ID / EV	22 ID / EV	
23 ID / EV	23 ID / EV	
24 ID / EV	24 ID / EV	
25 ID / EV	25 ID / EV	

Jelle Sampson
Clerk of Court

12-5-2014
Date Received

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

IN THE General Sessions COURT
 CASE NO(s) 2014-0412

EXHIBITS RECEIPT

PLAINTIFF	<u>State of SC</u>	PLAINTIFF'S ATTORNEY	<u>Austin Watts</u>
DEFENDANT	<u>Donald Young</u>	DEFENDANT'S ATTORNEY	<u>Frank Epps</u>
JUDGE	<u>Days</u>	DATE OF HEARING	<u>12-3-14-12514</u>

The following exhibits were received by me from Caroline Haskell ^{Caroline Haskell} ~~Teresa B. Johnson~~, Court Reporter for the Thirteenth Judicial Circuit, on the 5 day of December, 2014.

They are, as follows:

Plaintiff / Petitioner / State Exhibits	Defendant / Respondent Exhibits	Court Exhibits
<u>26 Photo</u> (ID) (EV)	1 ID / EV	1
<u>27 Photo</u> (ID) (EV)	2 ID / EV	2
<u>28 Photo</u> (ID) (EV)	3 ID / EV	3
<u>29 All phone</u> (ID) (EV)	4 ID / EV	4
<u>30 Envelope</u> (ID) (EV)	5 ID / EV	5
<u>31 CD</u> (ID) (EV)	6 ID / EV	6
<u>32 Bullets</u> (ID) (EV)	7 ID / EV	7
<u>33 Swabs</u> (ID) (EV)	8 ID / EV	8
<u>34 CD</u> (ID) (EV)	9 ID / EV	9
<u>35 Shoes</u> (ID) (EV)	10 ID / EV	10
<u>36 Chain of custody</u> (ID) (EV)	11 ID / EV	
<u>37 DNA Rep</u> (ID) (EV)	12 ID / EV	
<u>38 DNA Rep</u> (ID) (EV)	13 ID / EV	
14 ID / EV	14 ID / EV	
15 ID / EV	15 ID / EV	
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23 ID / EV	23 ID / EV	
24 ID / EV	24 ID / EV	
25 ID / EV	25 ID / EV	

April Sanger
 Clerk of Court

Page 2 of 2

12-5-2014
 Date Received

EXHIBIT # 14

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE SOUTH CAROLINA SUPREME COURT
APPELLATE CASE No. 2016-02655

STATE OF SOUTH CAROLINA,)

Respondent,)

v.)

DONALD LAMON YOUNG,))

Appellant.)

AFFIDAVIT OF FRANK L. EPPES

PERSONALLY appeared before me, Frank L. Eppes, who being duly sworn, deposes and says:

1. I am licensed to practice law in South Carolina. I graduated from the University of South Carolina School of Law in 1986. I became a member of the South Carolina Bar on November 14, 1986. I currently practice law with the firm of Eppes & Plumblee, PA.
2. I represented Donald Lamon Young, the appellant in this action, at his trial, which began on December 3, 2014. He was charged with burglary 1st degree, two counts of kidnapping, criminal sexual conduct in the first degree, and attempted murder. At the conclusion of the trial, after the jury stayed out well into the evening, Mr. Young was found guilty of one count of kidnapping and criminal sexual conduct in the first degree. He was acquitted of burglary 1st degree, attempted murder and the other count of kidnapping. On December 5, 2014, the Honorable Mark Hayes sentenced him to twenty five years' imprisonment on each count, which he ordered to be served concurrently.
3. I believe the argument and charge began before lunch, but I am not 100% sure. Nonetheless, the jury stayed out until late in the evening and only came back with those guilty verdicts after an Allen charge AND after asking the Court to give them a copy of the charge on criminal sexual conduct. The Court, after discussions with counsel, read that charge to the jury. I objected that the Court had not included the fact that consent was an absolute defense to that charge, and the Court overruled my objection.
4. On December 11, 2014, I filed and served a notice of appeal on behalf of Mr. Young. Thereafter, the Office of Appellate Defense took over representation of Mr. Young. I later learned that the court reporter was unable to produce a full transcript. Based on my conversations with Susan B. Hackett, Mr. Young's current attorney

with the Office of Appellate Defense, it is my understanding that a petition for an order granting a new trial or, in the alternative, petition for an order remanding the case for reconstruction will be filed due to the court reporter's inability to produce a full transcript.

5. Based upon my memory of the case and the potential issues preserved by Mr. Young, I do not believe that a recreation of the transcript will adequately preserve Mr. Young's rights.

6. Several appellate issues immediately jump to my mind.

A. The Allen charge mentioned above – I objected to this charge strenuously, and today, I am not sure exactly what charge the Court gave on this point. There were some appellate cases that came out very near the time of the trial, and I am not sure what charge was used.

B. The re-reading of the Criminal Sexual Conduct charge – I objected strenuously to this. In addition, the Court refused to state that consent was an absolute defense (or any defense) to the charge. The Court told me that it had not been part of the original charge. At the time of the charge, the prosecution had just argued that the jury “must find the defendant guilty of all the charges, or none of the charges.” In retrospect, my failure to request a consent charge in the original jury charge was likely a material mistake that falls below the standard of care and would have had an effect on the outcome of the case, entitling Mr. Young to post conviction relief, but with no transcript, I am not 100% sure what I did concerning that issue after the initial charge.

C. I asked Judge Hayes for the circumstantial evidence charge required in *State v. Logan*, 405 S.C. 83, 747 S.E. 2d 444 (2013). This request was denied, and I believe I preserved it on the record, but again, I am not 100% sure. In addition, this case requires a “facts and circumstances” evaluation that I do not believe a recreated transcript will allow.

D. There were two taped conversations with officers, one on the telephone and one in person. The in person interview was excluded from evidence, but the telephone call was not. I objected to this tape being played for the jury, and the analysis of it by the judge, both before and during the trial is lost.

E. Mr. Young did testify and made a very compelling witness. His testimony should be part of the appellate court's consideration.

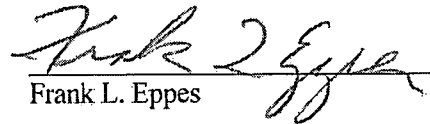
7. The trial itself had certain complexities that will make recreation of it virtually impossible:

A. Assistant Solicitor, Austin Watts, is no longer with the Solicitor's Office. He tried the case by himself, and I believe there is no other institutional memory within that

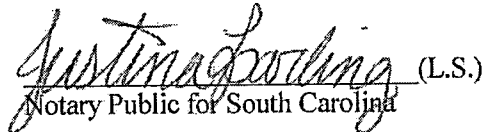
office of that case.

B. The fact witnesses, and the alleged victims, were all extremely difficult witnesses, and in my opinion, their testimony varied every time they told the story. I am informed, although I have not verified it, that one of the alleged victims, a young man, is dead. The CSC and kidnapping convictions concerned a young woman.

8. This was a difficult case. There were very difficult issues as to the veracity of all the witnesses, and clearly the jury did not believe some critical parts of the State's case. It is my belief that without a transcript, Mr. Young's due process rights have been violated.


Frank L. Eppes

SWORN TO before me this 17th
day of October, 2016.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: 11-18-2024

EXHIBIT # 15

State versus Young

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I N D E X

WITNESSES	DR	CR	RED	REC
Investigator Bob Perry	21	34	39	
Seth Author	54	59		
Tirissa Johnson	82	85		
Chris McCalmont	87	82		
Cheri Lyda	94			

Court's Exhibit
1 Audio tape



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Acting Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender
Joseph L. Savitz, III, Senior Appellate Defender

October 18, 2016

RECEIVED
OCT 18 2016
SC Court of Appeals

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, S.C. 29211

Re: State v. Donald Lamon Young, Appellate Case No. 2014-002655

Dear Ms. Kitchings,

Please find enclosed the original and six copies of appellant's motion for a new trial, or in the alternative, an order to reconstruct the record of appellant's trial in the above-captioned case.

Thank you for your assistance in this matter.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/smf

Enclosure

cc: J. Benjamin Aplin, Esquire
Donald Lamon Young #339194