

2287

1 STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ANDERS
RESPONDENT'S BRIEF
ORIGINAL
ANDERS RESPONSE BRIEF
RECEIVED

Appeal from Lexington County
Honorable , Circuit Court Judge

SEP 15 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

v.

MATTHEW IRVING SMOAK,

APPELLANT

APPELLATE CASE NO 2016-001383

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MATTHEW BUCHANAN
General Counsel
SCDPPP
PO Box 50666,
Columbia, SC 29250

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

PROBATION REVOCATION TRANSCRIPT DATED JUNE 24, 2016.....1

PROBATION CITATION AND AFFIDAVIT16

PROBATION ORDER.....18

INDICTMENT.....19

SENTENCE SHEET.....21

RULE 203 (B) EXPLANATION.....22

CERTIFICATE OF COUNSEL23

1 State of South Carolina

Court of General Sessions

2 County of Lexington

3

4

5 State)

6)

v.)

Transcript of Record
13-GS-32-3649

7)

Matthew Smoak)

8)

Defendant.)

9

10

June 24, 2016

11

Lexington, South Carolina

12

13

B E F O R E:

14

The Honorable Frank R. Addy, Jr., Judge.

15

16

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

17

Department of Probation, Pardon and Parole
For the State

18

David M. Mauldin, Assist. Public Defender
Attorney for the Defendant

19

20

21

22

23

24

Stacy L. Sheppard, RPR
Circuit Court Reporter

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

(There were no witnesses.)

E X H I B I T S

NO.

DESCRIPTION

ID.

EVD.

(There were no exhibits.)

1 (The following proceedings were held on June
2 24, 2016.)

3 MATTHEW SMOAK,

4 having been duly sworn, testified as follows:

5 **MR. MAULDIN:** Your Honor, this is a, I guess,
6 not similar, but, I mean, I am going to ask for a
7 continuance on this. He does have a pending charge.
8 His first appearance is not until August. In
9 addition, I received this probation file or at least
10 the notice that he was charged this week, and I
11 would have the file this week.

12 I've talked with Mr. Smoak. Apparently, over
13 the last year, some time in February or March of
14 last year, he was run over by a car. And he's had
15 about three or four surgeries over that period of
16 time. I asked to see if he could bring me the
17 discharge papers without me going through the
18 rigamarole of doing that, but he didn't have a lot
19 of the medical paperwork with him on that. And some
20 of that may -- if I can evaluate that and discuss
21 whether or not the financial or the substance abuse
22 counseling.

23 He said that he was not able to walk for about
24 a year. He had some kind of PICC line in him where
25 the doctor advised him not to be around a bunch of

1 people because of infection. And, of course, he
2 didn't have the money to attend the substance abuse,
3 as well as the -- the medical reasons. And so
4 that's a matter I wanted to look into as well to see
5 -- is viable.

6 **THE COURT:** All right. Well, I appreciate your
7 position. I feel like it's best if we go forward
8 here today.

9 Tell me about his case, if you would, Agent,
10 please.

11 **AGENT LUGOS:** Your Honor, if I may, he's on
12 probation for assault, beat or wound a police
13 officer serving process while resisting arrest. He
14 was convicted here in Lexington and Judge Keesley
15 gave him an eight-year suspended on 39 days sentence
16 and five years probation.

17 One of his special conditions of this case was
18 for him to successfully complete drug court. Your
19 Honor, he was terminated from drug court back in
20 September of 2014. He also was convicted of some
21 traffic offenses.

22 We issued a citation. We tried to address this
23 inhouse. Judge Russo signed the order continuing
24 the case back in January of 2015, exempt some of the
25 fees, reduce some of the future fees and ordered

1 that he attend substance abuse counseling as
2 approved by the agent, also to contact drug court to
3 see if he could be readmitted into the program and
4 impose zero tolerance for any future violations.

5 Your Honor, we're here today. We issued a
6 citation, charged Mr. Smoak with failure to refrain
7 from using alcohol to excess. He reported to the
8 probation office wreaking of alcohol. He also
9 failed to attend substance abuse counseling at
10 Insights as ordered. He was terminated from the
11 program. Also failed to pay on accounts.

12 Your Honor, he has been on probation before --
13 I'm sorry -- he's been on parole before under the
14 YOA twice. He was revoked for violating those cases
15 multiple times.

16 Back in 2013, looking at his rap sheet, he went
17 to Florida. He got picked up there on some charges.
18 He was placed on probation. He violated that case.
19 Florida has a warrant for his arrest, but they will
20 not extradite. We contacted them and they just
21 would not extradite.

22 Your Honor, as much as I would like to work
23 with his attorney, it's just very difficult for us
24 to work with Mr. Smoak. He has a bad attitude. He
25 has reported to the probation office and displayed a

1 hostile attitude at times, and that's the reason why
2 we're asking for a revocation. Also, like the
3 attorney mentioned, while on probation, he picked up
4 new drug related charges.

5 **THE COURT:** Which part of those violations does
6 he admit to?

7 **MR. MAULDIN:** Well, as I told Your Honor,
8 without evaluating his medical records, I can't
9 really say that we can admit to a willful
10 violation --

11 **THE COURT:** I understand --

12 **MR. MAULDIN:** -- on the substance abuse
13 counseling and the money. You know, the bad
14 attitude is not a --

15 **THE COURT:** I agree that maybe that's not a
16 reason to violate, but, I mean, it says that refrain
17 to -- from using alcohol to excess, showed up drunk
18 in April smelling of alcohol. After getting kicked
19 out of drug court, he failed to attend substance
20 abuse counseling, didn't pay on his accounts,
21 apparently got in trouble with the law again.

22 **MR. MAULDIN:** Well, I don't have any of the
23 discovery on that. I mean, I can explain the
24 situation and you can determine whether or not
25 there's a violation, but I don't think we're going

1 to admit to one here.

2 **THE COURT:** Very good. Then explain to me the
3 situation by all means, please.

4 **MR. MAULDIN:** Thank you.

5 Just to go into a little bit about Mr. Smoak
6 first: He's 27. He's from Pelion. He did graduate
7 high school. He attended Midlands Tech and Piedmont
8 Tech. Piedmont Tech was for welding and brick mason
9 work. He did get certificates on those.

10 After his violation in front of Judge Russo
11 last year, some time in February and March, he was
12 in an auto accident. He hadn't been working for
13 about a year. He said he had about three or four
14 surgeries on his knee. He showed me his knee.
15 There's a big long scar that goes from the middle of
16 his thigh all the way down to the middle of his
17 shin.

18 But recently, since he's been off the crutches,
19 I think in the past month or so, he had a friend get
20 him a job at Griffin Pools as a subcontractor. He's
21 only been working there fairly recently. Before
22 that, he's done odd jobs, construction here and
23 there. He is married, Your Honor, but he has no
24 children.

25 He did do the drug court program for six

1 months. He showed me some paperwork here where he
2 has always had negative drug tests while he was in
3 the drug court program.

4 He said he was terminated because they said he
5 wasn't changing as a person. It was kind of an odd
6 reason that they said that. And I think that was
7 one of the reasons why Judge Russo might have,
8 instead of sending him to prison, just -- it was
9 just kind of an odd thing. It wasn't not showing up
10 or not -- or testing positive or anything like that;
11 it was just that he wasn't changing as a person. I
12 don't know if that's a reflection of, you know,
13 their perception of his personality or something
14 like that.

15 More recently, he has applied to Insights.
16 He's waiting to see whether or not he can get into
17 there.

18 He says that he was on crutches for a year
19 after he was run over by a truck in his yard. He
20 had about three or four surgeries. The surgeries
21 would keep him out of commission for a period of
22 time. They did this thing called a PICC line. It's
23 a tube from the bicep to the heart. About the
24 infection from the surgeries, the doctor said that
25 he couldn't go to things with a lot of people or

1 whatever for the risk of infection. And he wasn't
2 working during that period of time so he couldn't
3 afford the Insights, and he didn't want to go for
4 the risk of infection.

5 He said that he's paid a little bit on his --

6 **DEFENDANT:** \$430.

7 **MR. MAULDIN:** \$430 this week toward the thing
8 since he's been able to work. And the -- at least
9 the -- and the agent says there's some issues where
10 he has to call and reschedule, but, I mean, the
11 paperwork reflects that he does report as
12 instructed.

13 The time before, you know, on the paperwork, it
14 says they were violating him for a seatbelt
15 violation, unregistered vehicle, and here we are for
16 smelling alcohol, Your Honor. My wife can smell it
17 if I've had one beer. I don't know if, you know,
18 they administered any kind of test or whatever to
19 say he's been drinking to excess. I don't know if
20 no alcohol was a provision of his sentence or not.
21 And that's all I have.

22 **THE COURT:** Mr. Smoak, anything that you would
23 like to say, sir?

24 **DEFENDANT:** Yes, sir. I've been trying real
25 hard since I've got on probation this time. I did

1 my best in drug court. I got kicked out. I'm not
2 sure why still, but I've always tested negative
3 every drug test I ever had from anybody. I did have
4 a brief relapse and did catch a new pending charge,
5 but I've been going to NA meetings because I really
6 can't afford Insights.

7 I've paid up all the money I owe on probation.
8 Everything I -- everything I got is, I mean, like, I
9 just -- I'm broke now, you know what I mean.

10 And I'm trying real hard to be able to be a
11 productive member of society, but I haven't been
12 able to walk, so I hadn't been able to work, so I
13 hadn't been able to pay. It's just the -- and Sal
14 said he was going to help me out with that by
15 talking with his supervisor, but he never got back
16 to me about paying my fees or anything about talking
17 to his supervisor. But I've always showed up on
18 time every time that I've ever had a report date,
19 showed up every time in drug court, showed up every
20 time. I'm doing the best I can.

21 **THE COURT:** Well, the injuries to your leg, why
22 weren't you able to get your medical records for
23 your attorney?

24 **DEFENDANT:** I got some of them here. I was in
25 a rush this morning. I thought I grabbed them. I

1 got a few of them, but -- but Sal knows I've been --
2 I've had four different surgeries. I've been on
3 crutches or a wheelchair, unable to walk at all. I
4 had to learn how to bend my leg again completely. I
5 tore my tendon off. I broke my leg. I had to have
6 21 screws to put my knee back together. Like, it's
7 just been battle after battle after battle.

8 As soon as I was able to walk, I got me a job.
9 I got a job immediately that week. I broke my knee
10 that week. I broke my kneecap in half from walking
11 on it too much. It was raining and I slipped. It
12 was back to surgery, back to being broke and back to
13 being in the same boat I was in.

14 But as soon as I was able to walk this time, I
15 got me another job. I've been trying to get a job
16 as soon as possible, been trying to work. I got my
17 license back now. I got my -- my dad bought me a
18 truck. You know, he's been helping me out a lot.
19 Without him, I wouldn't be able to do any of it.

20 I asked Sal if he could give me another -- one
21 more report date and I'd be able to catch up all my
22 money, but I got violated. But I was able to catch
23 up my money anyway.

24 **AGENT LUGOS:** Your Honor, if I may?

25 **THE COURT:** Sure.

1 **AGENT LUGOS:** We were aware of his car accident
2 that he's talking about. And as you can see, we
3 didn't violate his case for almost an entire year
4 and a half. It was not until we started seeing --
5 we actually were the ones that were involved with
6 the pending charges.

7 What happened, we made contact with him and his
8 wife out in the field. We found some items on him
9 consistent with the manufacture of methamphetamines.
10 Both him and his wife were charged. His wife, I
11 believe, you just sentenced her a few days ago to
12 four years. Your Honor, again, that right there,
13 that's the reason why we started bringing these
14 violations against him.

15 **THE COURT:** Sure. I understand your position.
16 Anything else, Mr. Smoak, that you need to tell
17 me?

18 **DEFENDANT:** No, sir.

19 **THE COURT:** Here's where we are, Mr. Smoak,
20 okay: First of all, you get a break in that you hit
21 a cop and you find yourself on probation, all right.
22 So that's break number one.

23 Break number two is drug court. I don't know
24 what that means either, Counselor. I mean, I don't
25 know what that means. But I do know this, Judge

1 Keesley's not an unreasonable individual, and my
2 experience with him, both in practice and in this
3 current job, is that he bends over backwards and he
4 wants to see people succeed as much as anybody. So
5 if he was terminated from the drug court program,
6 there had to be a legitimate reason.

7 Judge Russo gives him break number three and
8 then says, Zero tolerance for any future violations.
9 Part of break number three was substance abuse
10 counseling at Insight, okay.

11 He's been under supervision for three times.
12 He has issues in Florida.

13 I'm sorry he broke his leg, but the Court
14 concludes that Mr. Smoak is definitely in willful
15 violation of his probationary sentence. He has had
16 enough opportunities. And I don't know whether he's
17 defiant or not, I'm not sure that that's really to
18 the point, but three breaks is plenty. So the Court
19 will be revoking seven years of his probation and
20 terminating the case, give him credit for whatever
21 time he accrued prior to making bond.

22 Good luck to you, Mr. Smoak.

23 **DEFENDANT:** Seven years, sir?

24 **THE COURT:** Yes, sir. Good luck.

25 **DEFENDANT:** Honestly?

1 **THE COURT:** Honestly, yes, sir. Good luck.

2

3

END OF PROCEEDINGS

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2
3 STATE OF SOUTH CAROLINA
4 COUNTY OF LEXINGTON
5

6 I, the undersigned, Stacy L. Sheppard, Circuit
7 Court Reporter for the Eleventh Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the hearing of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Lexington County, South Carolina, on the
14 24th of June, 2016.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.
17

18 July 15, 2016
19

20 s/Stacy L. Sheppard
21

22 Stacy L. Sheppard, RPR
23 Circuit Court Reporter
24
25

PROBATION CITATION

No. C-32-16-0168

SOUTH CAROLINA V. MATTHEW IRVING SMOAK	COUNTY: LEXINGTON <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 2px;">SCDC # Y309929</td> <td style="width:50%; padding: 2px;">SID # 01682109</td> </tr> </table>	SCDC # Y309929	SID # 01682109		
SCDC # Y309929	SID # 01682109				
TO: MATTHEW IRVING SMOAK					
YOU ARE HEREBY NOTIFIED to appear in the above named case at the time, date and place specified below:					
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; padding: 2px;">Place</td> <td style="width:50%; padding: 2px;">Room</td> </tr> <tr> <td style="width:50%; padding: 2px;"></td> <td style="width:50%; padding: 2px;">Date and Time</td> </tr> </table>	Place	Room		Date and Time	
Place	Room				
	Date and Time				
YOU ARE HEREBY NOTIFIED that you are charged with violating the conditions of your supervision as stated below.					
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"> Violations Charged Violation of Probation pursuant to statute 24-21-430 in that the defendant has willfully violated the conditions of his probation sentence as imposed by Judge Keesley at the 4/3/14 term of General Sessions Court holden in Lexington County, Lexington, SC. </td> </tr> </table>		Violations Charged Violation of Probation pursuant to statute 24-21-430 in that the defendant has willfully violated the conditions of his probation sentence as imposed by Judge Keesley at the 4/3/14 term of General Sessions Court holden in Lexington County, Lexington, SC.			
Violations Charged Violation of Probation pursuant to statute 24-21-430 in that the defendant has willfully violated the conditions of his probation sentence as imposed by Judge Keesley at the 4/3/14 term of General Sessions Court holden in Lexington County, Lexington, SC.					
YOU ARE HEREBY NOTIFIED that you have the rights listed below.					
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"> List of Rights: You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear on your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing. </td> </tr> </table>		List of Rights: You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear on your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.			
List of Rights: You have the right at the hearing to question any person who appears as a witness against you and to have witnesses appear on your behalf. You may present evidence on your behalf. You may have an attorney represent you. If you cannot afford an attorney, an attorney will be appointed for you. You must advise the agent or the court in writing of your desire for an attorney. It is your responsibility to make arrangements for your witnesses and your attorney to appear at the hearing.					
IF YOU FAIL TO APPEAR AT THE TIME, DATE AND PLACE SHOWN ABOVE, THE HEARING WILL BE HELD IN YOUR ABSENCE AND YOU MAY BE INCARCERATED.					
LEXINGTON, South Carolina Date 6/1/2016	Probation and Parole Agent Sal Lugos Daza Agent # 1023				
A copy of the citation was served by the undersigned and given to the individual named therein at the time, date, and place indicated below.					
Place Lex PPP	Date and Time 6/1/16 @ 3:00 PM Serving Officer's Signature 				
Sworn to and subscribed before me this <u>1</u> day of <u>June</u> <u>2016</u>					
 Signature of Notary Public	My Commission Expires <u>11/3/25</u>				

STATE OF SOUTH CAROLINA

AFFIDAVIT

County of LEXINGTON

Personally appeared before me, Sal Lugos Daza, who first being duly sworn, deposes and says that MATTHEW IRVING SMOAK did within this county and State on the 1 day of June, 2016, violate certain conditions of release in the following particulars:

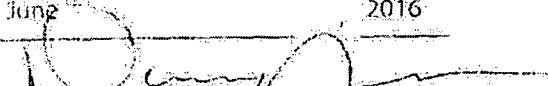
DESCRIPTION OF VIOLATION

Violation of Probation pursuant to statute 24-21 430 in that the defendant has willfully violated the conditions of his probation sentence as imposed by Judge Keesley at the 4/3/14 term of General Sessions Court holden in Lexington County, Lexington, SC

The Affiant states that there is probable cause to believe the defendant named committed the violations set forth and that such probable cause is based on the following facts:

Matthew Irving Smoak failed to refrain from using alcohol to excess. He reported to the Lexington Probation Office on 4/20/16 smelling strongly of alcohol. He has failed to attend Substance Abuse Counseling at Insights Educational Service as ordered. He has failed to pay on schedule by being in arrears \$400.00 on supervision fees. These actions constitute a willful failure to follow the advice and instructions of his Agent. Subject is in violation of conditions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 of the Original Probation Order, as signed by the defendant and 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 of the Continuation Order dated 1/7/15.

Sworn to and subscribed
before me this 1 day of
June 2016


Signature of Notary Public

My Commission Expires: 8/19/20


Affiant

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

County of LEXINGTON
STATE VS.

Indictment Number: 13 GS 72 7649
Probation C/W #s: C-32-16-0168

AKA: MATTHEW IRVING SMOAK
Race: W Sex: M
DOB: [REDACTED]
SSN: [REDACTED]
SID#: 1682109

Name of Original Offense: RESISTING ARREST BY OR MOUTH
Original A/W #: 2013A721060046
Date of Original Offense: 8/12/13
Conviction S.C. Code §: 16-09-0320 (B)
Conviction GDR Code #: 0121516
Original Sentence: 6 YRS 559 DAYS (CT) AND 54 DAYS

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 4/3/14 in the Court of General Sessions of LEXINGTON County, and/or the additional conditions ordered by the Court in probation continuation orders(s) issued on 1/7/15, as set forth in the attached warrant(s) or citation(s) dated 6/1/16. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special conditions as provided in the affidavit) 3, 7, 10, SPECIAL CONDITIONS

Therefore, IT IS ORDERED that:

the suspended sentence be revoked and the above named defendant be required to serve 7 months/years the remainder of the original sentence, and/or pay \$ _____.

- the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____ thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.
- the above named defendant is placed on active electronic monitoring pursuant to §23-3-540 (mandatory if convicted of first degree criminal sexual conduct with a minor or lewd act, discretionary if convicted of any other applicable sex offense against a minor).
- Financial Obligations: Order satisfies:

<input type="checkbox"/> Department fees (arrears)	Civil Judgment:	<input type="checkbox"/> Department fees
<input type="checkbox"/> Fines and other fees (arrears/balance)		<input type="checkbox"/> Fines and other fees
<input type="checkbox"/> Restitution (and 20%) (arrears/balance)		<input type="checkbox"/> Restitution (and 20%)
- Additional Conditions ordered by the Court:

- The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.
- The defendant has previously served 35 DAYS months/years on this sentence. (split sentence time and/or prior partial revocation time)
- The defendant was previously placed on active electronic monitoring pursuant to §23-3-540

This 24 day of JUNE, 2016
LEXINGTON SC

[Signature]
Presiding Judge 11th Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation, impose any lawful conditions it deems proper, or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature _____ Witnessed by _____

Signed this _____ day of _____ at _____ SC.

WITNESSES

Lexington Medical Center Public Safety
Susan Fulmer
Law Enforcement Case #: 201302311

REM

ARREST WARRANT NUMBER

2013A3210600046

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2013GS3203649

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2014

THE STATE
vs.

Matthew Irving Smoak



CDR #: 0256

Indictment for

RESISTING ARREST

§ 16-09-0320(B)

DONALD V. MYERS, SOLICITOR

I DO HEREBY WAIVE MY RIGHT TO GRAND JURY PRESENTMENT	
 DEPENDANT	_____
4-3-14 DATE	_____
 WITNESS	_____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 RESISTING ARREST

§ 16-09-0320(B)

At a Court of General Sessions, convened on APRIL 2014, the Grand Jurors of Lexington County present upon their oath:

That **Matthew Irving Smoak** did in Lexington County, South Carolina on or about August 12, 2013 knowingly and willfully resist the efforts of Susan Fulmer a law enforcement officer of this State and did assault, beat, and wound Officer Fulmer by striking her in the face while making a lawful arrest of the said defendant and the defendant knew or reasonably should have known that Susan Fulmer was a law enforcement officer, in violation of §16-9-320(B), Code of Laws of South Carolina, 1976, as amended.

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


 ASSISTANT SOLICITOR

0-10 4/00 416 - 410E

STATE OF SOUTH CAROLINA)
 COUNTY OF Lexington)
 STATE VS.)
Matthew Irving Smoak)
 AKA:)
 Race: White Sex: M Age: 25)
 DOB: [REDACTED] SS#: [REDACTED])
 Address: [REDACTED])
 City, State, Zip: Pelion, SC 29123-9324)
 DL#: [REDACTED] SID#: [REDACTED])
 *CDE Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3203649
 A/W#: 2013A3210600046
 Date of Offense: 8/12/2013
 S.C. Code §: 16-09-0320(A)
 CDR Code #: 0326

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Resisting / Assault, beat, or wound police officer serving process or while resisting arrest.

in violation of § 16-09-0320(B) of the S.C. Code of Laws, bearing CDR Code # 0256
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS (CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, MS (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST:

[Signature] 68971 [Signature] [Signature] [Signature]
 Solicitor 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 8 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 307 1/2 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT of 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.
 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
 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 - SEE BELOW
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: SUCCESSFULLY COMPLETE
DRUG COURT; DNA IF MIT ID
DATABASE; PAY P.P. FEE & CC COSTS
@ \$25/mo. BEGINNING 8/1/14
 Appointed PD or appointed other counsel,
 § 47-12 requires \$500 be paid to Clerk during probation.

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 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	\$ 500
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 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	\$ 5
3% to County (if paid in installments)		\$
TOTAL		\$ 630.00

Clerk of Court/Deputy Clerk [Signature]
 Court Reporter: S. Shippard
 SCCA217 (03/2011)

Presiding Judge: William P. Hendry
 Judge Code: 205D
 Sentence Date: April 3, 2014

ORIGINAL

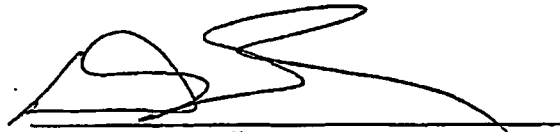
STATE OF SOUTH CAROLINA)
)
)
 vs.)
)
)
 Matthew Irving Smoak,)
)
)
 Defendant.)
 _____)

STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS
 Indictment #: 13-GS-32-03649
 Warrant #: C-32-16-0168

RULE 203(B) EXPLANATION

Pursuant to Rule 203(B)(iv), the undersigned asserts that he does have a good faith basis to appeal the Court's ruling that the Judge did not allow a continuance to obtain medical records.

Respectfully submitted,



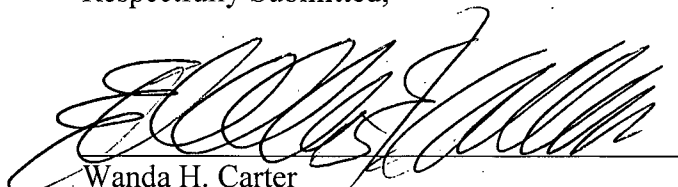
David M. Mauldin
 Assistant Public Defender
 407 West Main Street
 Lexington, South Carolina
 (803) 785-8873

Lexington, South Carolina
 June 27, 2016

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 15th day of September, 2016.

RECEIVED

SFP 15 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable , Circuit Court Judge

 ORIGINAL

RECEIVED
SEP 15 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

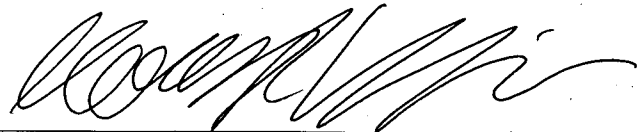
V.

MATTHEW SMOAK,

APPELLANT

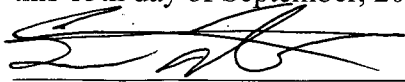
CERTIFICATE OF SERVICE

I certify that a copy of the Record on Appeal in the above-referenced case has been served upon Matthew Buchanan, Esquire, at the South Carolina Department of Probation, Parole & Pardon Services, PO Box 50666, Columbia, SC 29250; and upon Matthew Smoak, #309929, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 15th day of September, 2016.



George Vlasis
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 15th day of September, 2016.

 (L.S.)

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