

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2018-001708

The State,

Respondent,

v.

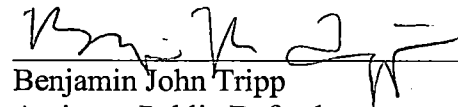
Rufus Lovelle Smalls, Jr.,

Appellant.

MOTION TO WITHDRAW APPEAL

RECEIVED
OCT 09 2018
SC Court of Appeals

The undersigned attorney for Appellant Rufus Lovelle Smalls, Jr. moves to withdraw this appeal because the Court lacks jurisdiction. Appellant's trial, conviction, and sentencing in the magistrate court below occurred on July 7, 2016. The undersigned attorney for Appellant filed the Notice of Appeal with the circuit court below on July 19, 2016. Exhibit A. South Carolina Code section 18-3-30 provides, "The appellant, within ten days after sentence, shall file notice of appeal with the clerk of circuit court"



Benjamin John Tripp
Assistant Public Defender
SC Bar #79789
Post Office Box 525
Beaufort, South Carolina 29901
(843) 592-5417
Attorney for Appellant

October 3, 2018

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
C/A NO: 2016-CP-07-1602

FILED
CLERK OF COURT
BEAUFORT COUNTY
JUL 27 2017

STATE OF SOUTH CAROLINA,)
RESPONDENT,)
Vs.)
RUFUS LOVELLE SMALLS, JR.,)
APPELLANT)

Return of Magistrate

This matter was before me for a jury trial on July 7, 2016 for a trial on the charge of Driving under the Influence Appearing in Court were the prosecuting officer, S. Michael of the South Carolina Highway Patrol, the Defendant, and his attorney Benjamin Tripp. Prior to trial, the Defendant's attorney Benjamin Tripp made an oral motion to dismiss the pending driving under the Influence charge on the grounds that the law enforcement's video evidence was insufficient under South Carolina Code Section 56-5-2953. The Court denied the Defendant's motion and allowed the case to proceed against the Defendant.

The officer offered as proof his own testimony and included in his presentation the videotape of the scene. The videotape included the administration of field sobriety tests which were not fully visible on camera in that the Defendant's feet were not fully visible during the entire walk and turn test, and the Defendant walked out the camera's view during the administration of the one leg stand test. The Defendant was not given his Miranda warning during the videotape of his arrest. No evidence of the Defendant's refusal to take the breathalyzer was presented and the Defendant did not testify. The jury was charged on the law and no objections to the charge were made. The Defendant's attorney moved for a directed verdict at the end of the State's case which was denied. The parties made closing statement and the case was submitted to the jury. The jury returned a verdict of guilty on the charge of driving under the influence.

A recording of the trial is attached along with the DVD containing the videotape at the scene.

Beaufort, South Carolina
July 22, 2017.


Nancy Sadler, Magistrate for Beaufort County

THE STATE OF SOUTH CAROLINA

2016 CP 07-1602

IN THE 14TH CIRCUIT COURT

APPEAL FROM BEAUFORT MAGISTRATE COURT

NANCY SADLER, MAGISTRATE COURT JUDGE

UNIFORM TRAFFIC TICKET NUMBER H400859

2016 JUL 19 PM 4:10
BEAUFORT COUNTY MAGISTRATE COURT

STATE OF SOUTH CAROLINA	-	RESPONDENT,
verus		
RUFUS LOVELLE SMALLS, JR.	-	APPELLANT.

RUFFUS LOVELLE SMALLS, JR. appeals his conviction on the charge of Driving Under the Influence before the Honorable Nancy Sadler, Presiding Judge, Beaufort County Magistrate Court. Judge Sadler improperly denied his Motion to Dismiss the charge based on the insufficiency of law enforcement's video evidence under S.C. Code Section 56-5-2953.

2016 JUL 19 PM 4:27
BEAUFORT COUNTY MAGISTRATE COURT

Benjamin Tripp
 Benjamin Tripp
 Assistant Public Defender
 Beaufort County Public Defender's Office
 Post Office Box 525
 Beaufort, South Carolina 29901

July 19, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Circuit Court Judge

Appellate Case No. 2018-001708

The State,

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Rufus Lovelle Smalls, Jr.,

Appellant.

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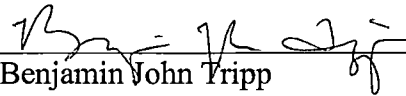
OCT 09 2018

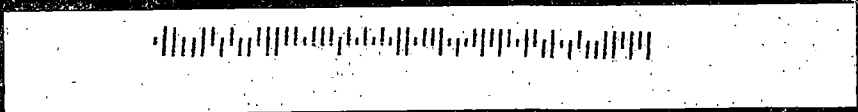
SC Court of Appeals

CERTIFICATE OF SERVICE

I certify that I have served the Motion to Withdraw Appeal on Respondent by depositing copies of it in the United States Mail, postage prepaid, on October 3, 2018 addressed to Respondent's attorneys of record, Margaret Strom, Esq., Post Office Box 1880, Bluffton, South Carolina 29910 and the Office of the Attorney General, Attn: Criminal Appeals, 1000 Assembly Street, Room 519, Columbia, SC 29201.

October 3, 2018


Benjamin John Tripp
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Attorney for Appellant



OFFICE OF THE PUBLIC DEFENDER
COLUMBIA, SOUTH CAROLINA
2015

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Human Services Building
1016 Pitt St, Room 210
P.O. Box 525
Columbia, SC 29201

RECEIVED
JUN 15 2015
SC Court of Appeals

Jerry Abbott Kitchings
Clerk, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211