

IN THE CIRCUIT COURT OF MISSOURI  
SCHUYLER COUNTY, DIVISION FOUR  
The Honorable Karl DeMarce, Judge

STATE OF MISSOURI,

Plaintiff,

v.

JIMMIE E. SMALL,

Defendant.

Cause No. 03CR48141

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Prosecuting Attorney  
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For: State

Mr. Jimmie Small  
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Pro Se

EXHIBIT IN  
SUPPORT of CLAIMS  
Before MO. Public  
Service Commission  
SMALL vs. AM. MO.  
Filed June 29 2011  
U.S. Mail. (as clerk)  
J.E.S.

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(March 9, 2011)

THE COURT: Calling Case No. 03CR48141, State of Missouri v. Jimmie E. Small, the Defendant appearing in person pro se, the State by its prosecuting attorney, Mr. Scott Summers.

We started--Before we went on the record, I indicated that it appeared to me from--this is my first appearance since I've been assigned to this case--that Count I, as it was entered into the Court's computer, actually is not a Class A misdemeanor of illegal taking of wildlife under 252.040. It is an infraction of trespass, second degree, under 569.150.

And Mr. Summers?

MR. SUMMERS: Yes. Judge, what I wanted to announce to the Court is that it is my understanding that the landowner in that charge has since passed away, since this charge was filed.

THE COURT: Uh-huh.

MR. SUMMERS: That being the case, I know of no way that we can prove the Defendant did not have consent to be in the premises or on the premises. And that being the case, I don't think we can proceed with that, and I'll have to ask that the Court dismiss that count at this time.

THE COURT: To dismiss Count I?

MR. SUMMERS: Yes.

THE COURT: Are the other counts affected?

MR. SUMMERS: I do not believe they are, sir.

THE COURT: All right. At this time, Count I will be shown as having been dismissed. That leaves pending a count of taking quail in closed season, taking wildlife from a public roadway, and take wildlife with aid of a motor vehicle, Counts

significance is, based on the record, December 22, 1987, there was an appropriate ticket filed, although I had some objection to it. The Court, just on the face of things, had personam jurisdiction over Jim Small, and the reason for that is, is because we can go back and we see a file stamp on it, we can see a specific date. And I would accept that, and I think the appellate court would accept that. It's a court seal.

What we do not have in Schuyler County cases is any semblance of any file stamp. There is no court seal, there's no date on it, and the State of Missouri would have you believe we're going to go ahead with a jury trial, and I'm saying, you know, just a second now. I didn't file these informations, and neither did this special prosecutor. With all due respect, there was a prosecuting attorney by the name of Mark Williams that assisted in putting these four tickets, complaints or informations or grievances together, along with a conservation agent who doesn't have the common decency and respect to show up in court today for any reason.

Now, they went ahead and decided to sign those tickets, but they didn't date them, and they're not going to come in this court and blame Clerk Penny for not doing something that they've had eight or nine years to do. So Brenda Wall-Swedberg, when she signed it--and R. Shannon Smith signed these documents, they done so knowingly, intelligently, voluntarily. Here's the problem, Your Honor: Let's just take the simple little case with first--with the trespass in the second degree, for example.

THE COURT: Okay. Now, that charge was dismissed this morning by the prosecutor. It isn't--

MR. SMALL: And I'm going to use it as evidence to show you the scope of this case, because this case is not over with, and that case was not properly charged, and I've been under--according to the State, going on nine years now when the statute

II, III and IV. All right.

Mr. Smith, do you have an attorney at this time?

MR. SMALL: My name is Small.

THE COURT: Oh, Mr. Small. I apologize, sir. Do you have an attorney at this time?

MR. SMALL: No, I do not, Your Honor.

THE COURT: All right. And you have filed a Motion to Quash Service.

MR. SMALL: That's correct, Your Honor.

THE COURT: Is there anything you wish to say in regard to that motion, beyond what you have filed in the written motion?

MR. SMALL: Yes, Your Honor. Has Your Honor had an opportunity to read the contents of the Motion to Quash?

THE COURT: I have.

MR. SMALL: You have? I'd like to say for the record, first of all, that it's my understanding that Your Honor is the fourth judge that's been appointed to hear these four informations, tickets or complaints, and I appreciate the Court's patience in looking through this, because just on the glance of things it looks a bit confusing, but it really isn't. And the reason that it isn't confusing is because the Missouri rules of court, the Missouri Constitution and the United States Constitution is pretty much the same 23 years ago, it is today. So what happened in Scotland County 23 years ago is pretty much exactly what's happening in the files that you have your hands on now.

There is a difference, and here's the difference: Judge Willcox treated me fairly and impartially on December 22, 1987, on a similar ticket information. And he done the very best he could do, and I done the very best I could do on the three days' notice. You come in, you be in my court, and you defend within three days. The

of limitations is six months. You've got problems with the service. There's several problems with the service. There's problems with the ticket. And I wanted the Court to take judicial notice of that, because it's been going on for 23 years. This is one county--Schuyler County is one county out of 114 counties in the state of Missouri, and if you took the valid tickets, Your Honor, that are signed, giving personam jurisdiction over a suspect or a defendant and you put them in one stack, and then you took the invalid ones that were constitutionally ambiguous, constitutionally deficient, and you put them in another stack, you would see what's going on with the administration of justice under the trespass in the second degree.

Oh, incidentally, you think that's dismissed. You can dismiss his case, but, Your Honor, you can't dismiss these notices to vacate the trailer park because I asked for a jury trial and continued to ask for a jury trial, and I ask for a jury trial now, but I'm not going to get one.

THE COURT: Why do you believe you're not going to get one?

MR. SMALL: Excuse me?

THE COURT: Why do you believe you're not going to get one?

MR. SMALL: Well, the reason that I do not believe that I'm going to get one is because the constitutional deficiencies with the first--second--trespass in the second degree. The other three counts suffer the same fate. That's why I believe that.

So if the Court wants to go ahead and rule in my favor, I agree that that case should be dismissed, but that doesn't end the inquiry. I have been in this court since May 1, 2010--May 1, 2010, and I've answered to these complaints, summons. I've been to Jefferson City, the conservation commission. I've been--been out here to the regional protector, and I've been to the prosecuting attorneys--present prosecuting

1 attorney. I've been to Mark Williams, I've been to Brenda Swedberg, I've been to the  
2 present prosecuting attorney down in Adair County, and this gentleman right here has  
3 been more cooperative about what he has seen in this record and what he doesn't see  
4 than all three of those other prosecutors put together.

5 Now, I say this Court has either personam jurisdiction or doesn't, and I'm here  
6 today specially, on a special appearance, to challenge the Court's personam  
7 jurisdiction, or the lack of it, over the Defendant Jim Small on--on all four--on all  
8 four of these informations or complaints.

9 And the way I understand it, in the state of Missouri, under the rules of court,  
10 if you're going to be charged with a crime, you will be charged either by indictment  
11 or by information, or you won't be. In this particular case, it's too lucrative for the  
12 Missouri Conservation Commission to pass up an opportunity to shove in an  
13 envelope some documents that are not even under any court seal and ship them out of  
14 state, and the following day issue an arrest warrant for that same individual, and he  
15 hasn't even received nothing yet.

16 So there's quite a lot going on here, and the way I understand this Walker--  
17 Rocker (sic) Feldman federal law, if you're involved in a criminal prosecution and  
18 you are a defendant in a state court case and you have some defenses, you need to  
19 present them before you get to trial in some instances, and that's what I've done in  
20 this Motion to Quash those documents.

21 If the witness that signed these tickets, either one of them would show up  
22 today, we'd put them on that witness stand, and I'd ask them about some  
23 documentation that they completed in this court and submitted it, attempting to  
24 influence you, Your Honor, that, number one, we've got personam jurisdiction over  
25 this individual, let's get the jury in here. Hold it just a second.

1 Going on eight or nine years after these tickets were supposedly circulated  
2 without any file stamp on it, the signature of any court clerk or any other responsible  
3 individual, under oath, we see a marked difference. We see some that are appropriate  
4 and some that aren't, and I pointed that out to the prosecutors. They didn't even know  
5 about it. They just overlooked it. And I'm of the opinion that a state can go back and  
6 amend an indictment or information and make certain corrections, but you can't  
7 discriminate against the defendant, and you can't prejudice him. And if you had been  
8 a judge in this case back eight or nine years ago and they served these documents on  
9 me, you'd been looking at that Motion to Quash eight or nine years ago instead of  
10 now, Your Honor.

11 Now, you'll think, well, why are you trying to make a--I'm not trying to make  
12 a federal case out of it, because I'm not prosecuting this case, the State of Missouri is.  
13 And I'm saying all they have to do is just keep going forward with it, within  
14 approximately the next three or four or five days, and I'm going to be up 1300 Oak  
15 Street, Kansas City, Missouri, at the appellate court, and I've already discussed the  
16 deficiencies in this case. And I said, "If it was just for me, I wouldn't really care so  
17 much," but when you take into consideration how much money the State of Missouri  
18 takes in on schemes and devices like this--And I'm not suggesting that an information  
19 or indictment is a scheme, unless a bunch of people got it together and put it together,  
20 like three game wardens, and tried to run it past you. Then when they fail, when it  
21 fails at the appellate court, they blame you, or her, and that ain't going to happen on  
22 my watch, because they've had eight or nine years to go back and say, "We made a  
23 mistake here. We're going to file amended complaints." Then I would have took that  
24 matter up with you or an appropriate court eight or nine years ago.

25 They have taken property, they have trespassed, and if you go down there on

1 the trespass thing, you will see where police reports finally, in 2010, have been filed  
2 about people that trespass on my property. Do you think I could get the Kirksville  
3 Police Department interested in filing a trespass charge to protect my interest? Oh,  
4 absolutely not. It doesn't work that way. And every--Lacost trailer park, you can  
5 come in there at will. It's private property, and you can do pretty much whatever you  
6 want, and you can go to Judge Honorable Kristie Swaim, and you can sign an  
7 affidavit, and you know it's false when you sign it, and you can convince her to put a  
8 signature on documents which purports to give search and seizure warrants. And just  
9 as soon as I get the judge's signature on it, if I'm R. Shannon Smith, I'm going to put  
10 them in an envelope and send them out of state. But it's not--it's not presented to the  
11 United States postal service for delivery at Box 33, Kirksville, Missouri, like they  
12 represented in their probable cause statement, for starters, Your Honor, for starters.  
13 Those just--just for starters.

14 And they will come back--they will come back and tell you, "Well, if you  
15 don't like Box 33, Kirksville, Missouri, how about Box 33, Quincy, Illinois? And if  
16 you don't like that, how about 1510A Green Street, or just simply Kirksville,  
17 Missouri?" That's what the evidence in the court file demonstrates. So if you don't  
18 like Box 33, that's--Your Honor, you don't have to worry about it. You don't have to  
19 worry about it.

20 But it's not your job to prosecute the State's case and present it to the ladies  
21 and gentlemen of the jury. We'll have a jury instruction here on second degree  
22 trespass or these other charges, and we would like for you to give this Defendant an  
23 address, an abode, an abode. Where's his residence at? We've got six or seven of  
24 them here. Just pick out one, and let's give it to him. Let's give him a fair trial.  
25 That's not their job, that's not their job, and I'm objecting to that, and I objected to it

1 then. If I'd had access to it, I'd have come in and filed a Motion to Quash back then.

2 You'd think that would be the stop of it, but it's not, and they went ahead and  
3 they falsified these documents since I was arrested on May 1, 2010, posted \$1,000  
4 bond. So it's a money thing, Your Honor. Doesn't have anything to do with, really,  
5 justice from the State's point of view.

6 THE COURT: Very well.

7 Mr. Summers, any response?

8 MR. SUMMERS: No, Your Honor.

9 THE COURT: Very well. At this time, the Motion to Quash filed December  
10 3, 2010 is overruled.

11 The--At this time, Mr. Small, I note that you entered a plea of not guilty in  
12 this case on June 23, 2010.

13 Is this matter ready to be set for trial on Counts II, III and IV that remain, Mr.  
14 Summers?

15 MR. SUMMERS: I believe it is, Your Honor.

16 THE COURT: Mr. Small, are you intending to retain counsel or are you  
17 intending to represent yourself in these proceedings?

18 MR. SMALL: If the Court would enter an order today of Findings of Fact  
19 and Conclusions of Law as to why--as to why it has overruled and denied my Motion  
20 to Quash--

21 THE COURT: Simply put, I find no lawful grounds in the Motion to Quash  
22 that would justify sustaining it. They--Your--Your--

23 MR. SMALL: Are you--Is this Court willing to take judicial notice of its  
24 own record?

25 THE COURT: Your--Your arguments seem to go toward questions of guilt

1 or innocence, not toward questions of jurisdiction. That's not a point I'm interested in  
2 arguing today.

3 So my question to you was, are you intending to represent yourself in these  
4 proceedings or do you wish to have--are you intending to retain counsel to represent  
5 you?

6 MR. SMALL: Yeah, well, I--I intend to represent--I intend to represent  
7 myself, and--in--in--in this case. And today's appearance is a special appearance to  
8 challenge this Court's personam jurisdiction, and that's the reason I'm not going to go  
9 to trial, because I do not believe that this Court has personam jurisdiction, based upon  
10 the contents or the omission for the State to properly prove, number one, we got  
11 personam jurisdiction as of a certain date, and because we got personam jurisdiction,  
12 we got subject matter jurisdiction. And this Court is not willing to go on record and  
13 identify a specific date when the State's case was commenced in any county, much  
14 less Schuyler County, and I object to that, Your Honor.

15 THE COURT: Very well. And your objection is--We're on the record. Your  
16 objection has been preserved, but we are going to go to trial. Is it your intent to  
17 represent yourself at trial? Well--You're not required, obviously--You have the right  
18 to remain silent. You're not required to participate to any great degree in the trial--

19 MR. SMALL: Uh-huh.

20 THE COURT: --although your--a warrant would be issued if you failed to  
21 appear for it. But what I--what I need to know is whether you intend to be  
22 represented by counsel or whether you--And you have previously, according to the  
23 records of this file, requested a jury trial; is that correct?

24 MR. SMALL: Uh-huh.

25 THE COURT: Yes?

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1 the evidence, number one, that they have personal jurisdiction over Jim Small in this  
2 case as of a certain date. And I know you're talking about what has transpired, and  
3 he was arrested and all that, but I'm talking about the dates on the four informations.

4 THE COURT: Well, you know, sir, I don't know if I can persuade you, and I  
5 don't have to--

6 MR. SMALL: You don't what?

7 THE COURT: I don't have to persuade you. I--You're entitled to your  
8 position, and you can take it up on appeal if it ever gets to that stage. I--I have read  
9 your affidavit, I just don't agree with your position.

10 MR. SMALL: You--You don't agree with my which?

11 THE COURT: Your position in regard to jurisdiction.

12 And so back to my original question--

13 MR. SMALL: Uh-huh.

14 THE COURT: --are you planning to represent yourself at trial?

15 MR. SMALL: Yeah, I'm planning to represent myself, and I'm planning on  
16 making discovery in this case, and the State is reluctant to turn over or allow personal  
17 inspection of original documents, and I'm afraid that I'm going to have to take an  
18 interlocutory appeal in order to get the Court to recognize whether or not there is a  
19 commencement date of any of these charges and, if so, where is it? And--And I  
20 believe you can waive personam jurisdiction by coming in and entering into matters.  
21 But this is a special appearance, and the Court's mere suggestion that, yeah, I have  
22 personal jurisdiction over the Defendant in this case, I think, is inadequate, without  
23 stating to the Defendant, we have had jurisdiction over you as of a certain date.

24 THE COURT: Now, Mr. Small, on June 23, 2010, you appeared before this  
25 Court and entered a plea of not guilty.

12

1 MR. SMALL: That's correct, Your Honor. That's correct, Your Honor, but  
2 my rights to a jury trial goes back to Rule 19 through 36.

3 THE COURT: I'm not denying your right to a jury trial on a Class A  
4 misdemeanor.

5 MR. SMALL: Well, you're denying my right to a speedy trial, Your Honor.

6 THE COURT: No, I'm wanting to set it today. This is the first time I've seen  
7 you, sir.

8 MR. SMALL: Yeah.

9 THE COURT: I am attempting to set it as promptly as we can.

10 MR. SMALL: Promptly as we can.

11 THE COURT: Yes. I am not trying to delay anything. I'm trying to move  
12 the case forward.

13 MR. SMALL: Uh-huh.

14 THE COURT: I have no interest in delay, nor any interest in frustrating your  
15 right to trial. The only reason the charges are as old as they are in this case is that the  
16 warrant was outstanding for a very long time before it was finally served. Once it  
17 was served, the record reflects that there have been several appearances, and the  
18 Court has been seeking to move the case forward. It was at one point set for jury trial  
19 in December, but the judge at that time determined that it would not be in the interest  
20 of justice to do that because his--his retirement was going to occur before your time  
21 for filing post-trial motions would have run, and that might have necessitated a retrial  
22 under some circumstances. So, you know--And I am here, for the first time since I've  
23 been assigned to this case, asking you are you ready to go to trial?

24 MR. SMALL: No, Your Honor, because you haven't read my affidavit, and  
25 the State of Missouri has not come forward and proved, okay, by a preponderance of

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1 MR. SMALL: Uh-huh.

2 THE COURT: That, as far as I'm concerned, is pretty well the end of the  
3 question of personal jurisdiction. If you were going to enter a special appearance to  
4 challenge it, that would have been the time.

5 Now, there are certain questions that I do need to go through with you, in the  
6 event you intend to represent yourself at trial, in order for me to make a finding that  
7 this is a--a knowing and voluntary decision on your part.

8 Is there a reason that you do not wish to have counsel to represent you?

9 MR. SMALL: Yeah, I can barely hear you, Your Honor.

10 THE COURT: Is--Is there a reason you do not wish to have counsel  
11 represent you in this matter?

12 MR. SMALL: Yeah, because I can't afford one, Your Honor.

13 THE COURT: Okay. And you did apply for the public defender, but you  
14 were declined; is that correct?

15 MR. SMALL: Yeah. Uh-huh. That's right.

16 THE COURT: Do you wish to appeal that determination and ask for them to  
17 be appointed?

18 MR. SMALL: Yes.

19 THE COURT: Well, then my first question, in that case then, is to the State.  
20 Is the State seeking a jail sentence on these conservation charges?

21 MR. SUMMERS: No.

22 THE COURT: If the State is not seeking a jail sentence but is only seeking a  
23 fine, and they're waiving any request for jail, then there would not be any  
24 circumstance when you would be eligible for the public defender. The reason for  
25 that is the public defender will only enter where a person is facing the possibility of

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1 incarceration. Mr. Summers is not asking for incarceration on these conservation  
2 tickets, he is asking only for a fine. So I--I could not appoint counsel to represent  
3 you under that circumstance.

4 Is it still--You know, in that event, would it still be your intent to represent  
5 yourself in the trial?

6 MR. SMALL: I--I don't intend to appear for a trial until the State has made  
7 proper disclosure, and it hasn't, and it's continued to do that, and I've asked for  
8 disclosure on three different occasions, and they have not done that. And they have  
9 falsified two, if not three, certifications that we've turned these records over, and they  
10 have not.

11 THE COURT: I--I note that you filed a request for disclosure on March 2nd,  
12 correct? Is that correct?

13 MR. SMALL: Yes, that's true, Your Honor.

14 THE COURT: And you provided an address in Milton, Iowa to which it's to  
15 be sent; is that correct?

16 MR. SMALL: (No audible response.)

17 THE COURT: And have you received that?

18 MR. SUMMERS: Last--That was just a week--a week ago.

19 THE COURT: Yeah. That would have been filed a week ago today,  
20 according to what I have. It is five pages of handwritten requests.

21 At any rate, we can provide that to the prosecutor if he has not yet actually  
22 gotten a copy of it.

23 MR. SMALL: He has got a copy of it, Your Honor. He admitted his  
24 secretary had a copy of it. We discussed it in his office.

25 MR. SUMMERS: Judge, I know Mr. Small was in my office last week. I

14

1 don't--

2 THE COURT: Well, at--

3 MR. SUMMERS: --see a copy of it, but I'm not going to deny that I have it,  
4 because the--

5 THE COURT: Well, at any rate, is it--is it the State's--

6 MR. SUMMERS: --the file is completely in disarray.

7 THE COURT: Is it the State's intention to provide disclosure with whatever  
8 you have within your possession?

9 MR. SUMMERS: Everything I have, Your Honor.

10 THE COURT: Very well. So that will be done, and I--I have no reason to  
11 doubt that.

12 Assuming that the State responds to your disclosure request, will you appear  
13 for trial?

14 MR. SMALL: As I stated earlier, if the Court would enter an order today on  
15 whatever its finding is today, then--then I plan to take an interlocutory appeal,  
16 because I have repeatedly asked the State, the conservation agents, to disclose and  
17 allow me to inspect, personally look at original documents, and I've been sent from  
18 one prosecutor back to the game warden, from the game warden back to the  
19 prosecutor and back, and so that's the reason we're having some difficulty in getting  
20 discovery completed. And if I don't complete proper discovery, there is no need of  
21 telling this Court--announcing ready for trial. That's the problem you have here,  
22 Your Honor. That's--That's one of the problems you have here.

23 And if I take an interlocutory appeal, we're going to have to certify this entire  
24 record, and there is a number of documents in there that's not even signed, and they're  
25 related to probable cause, and nobody here that I can cross-examine no more than the

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1 landowner himself. And so you can say you're going to go to trial here, but if I'm  
2 prejudiced even before I get there, then--then I--I feel that--that I should inform, you  
3 know, the appellate court that these are--these are my objections, and they're  
4 constitutionally deficient. And the Court has overruled my Motion to Quash, which  
5 contains constitutionally deficient matters, which is ongoing, and they haven't given  
6 me any--the State hasn't given me any explanation for that. And if I understand this  
7 Court correctly, you're satisfied with an incomplete record there, and contacts, too,  
8 having personal jurisdiction over the Defendant. I don't understand why that isn't  
9 final for purposes of an interlocutory appeal.

10 The State hasn't even put on any evidence to contradict my affidavit. And the  
11 Court, if I understand you correctly, said, well, you didn't agree with it. Well, the  
12 State is the one that's putting on its case, and then we're adversaries with each other.  
13 But--But when it comes from this table to that bench up there, this is supposed to be  
14 fair and impartial. And the way I understand it, the State hasn't appeared to  
15 contradict any affidavit, and they've had a long period of time to do so.

16 And in the meantime, I've asked him again, would you disclose original  
17 copies of these records? Maybe I'm mistaken, but I'd like to see the originals. He  
18 showed me his copies, but where are the originals at? Yeah, so that--if you just enter  
19 an interlocutory appeal saying that there is no reason--there is no reason for me to  
20 delay my decision here on this, and that's--that's my decision with regard to your  
21 Motion to Quash.

22 And if I understand correctly in talking to two or three attorneys and certain  
23 appellate courts from the Supreme Court up, the State Court Administrator, you deny  
24 the Motion to Quash, well, you can--that's--that's dispositive. You can--You can  
25 appeal that.

16

1 THE COURT: I'm not going to provide you with legal advice. I'm not  
2 permitted to do that, but my responsibility here is to bring this case forward,  
3 according to law, toward a disposition. You have requested a trial by jury. I am  
4 attempting to give you one. Now--And I--There are, under the law, some things I  
5 need to ask you, as you've told me you intend to represent yourself, so that we can  
6 indicate on the record, and so that if it becomes relevant and an appellate court could  
7 make a determination in the future, that you are knowingly, voluntarily and  
8 intelligently making the decision to represent yourself.

9 Is your decision to represent yourself simply based on the fact that you  
10 cannot afford counsel?

11 MR. SMALL: Oh, absolutely not. I have a Sixth Amendment constitutional  
12 right to a jury, and I have a right--I have a right to counsel, pro se counsel. So what  
13 the means is, you got a right to represent yourself. Whether or not you're successful--

14 THE COURT: You do--

15 MR. SMALL: But--

16 THE COURT: --yes.

17 MR. SMALL: But you have a right to have access to the State's discovery,  
18 its evidence it's going to use against you in a jury trial, and they haven't done that yet,  
19 Your Honor, and you haven't entered any order compelling them to do so, and you  
20 suggested already on the record more than once, I believe, that you--you--you don't  
21 have any reason to believe they wouldn't do that.

22 THE COURT: Well--

23 MR. SMALL: And I'm saying my motion suggests that they've been doing  
24 this for 23 years and haven't disclosed accuracy to the Court's records.

25 So I'd like to represent myself, and I'd like to prevail at trial, but if--if I'm

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1 going--If I'm going to be selectively excluded from gaining access to subject matter  
2 jurisdiction, such as original documents, I think I have another alternative, more than  
3 one.

4 THE COURT: Now, you prepared--These various motions that you've filed,  
5 your request for discovery, your Motion to Quash, your Motion for Continuance, you  
6 prepared those yourself; is that correct?

7 MR. SMALL: That's correct.

8 THE COURT: Then I take it that you are fully able to read and write the  
9 English language.

10 MR. SMALL: I'm fully able to which?

11 THE COURT: To read and to write the English language.

12 MR. SMALL: That's correct, Your Honor.

13 THE COURT: And how many years of schooling did you complete?

14 MR. SMALL: Well, in the 8th grade, I completed eight, and I completed  
15 four years of high school, then I went to Truman State University for a couple years.  
16 I got an honorable discharge out of the army and went into marine corps, spent 12  
17 months and two days in Vietnam, and I got an honorable discharge out of there, and  
18 I'm receiving compensation from the V.A., due to my disability, which I'm getting  
19 ready to take up in federal court system, because this Court right here has already  
20 proceeded to convince me I'm not going to prevail on anything, not even--not even  
21 discovery before I am coerced into facing a jury. I already know that I'm going--I  
22 already know that I'm going to lose, because in 1992--There is an appellate court  
23 judge, a Mr. Norton, A. Norton, is on--on--on--in the St. Louis Court of Appeals,  
24 who was the prosecuting attorney back then in this case. We went through a very  
25 similar thing like this for a couple of years, and the State--

18

1 "Are you going to withdraw your motion for a jury trial?"

2 "No."

3 You know, so after they wrangled it around, they proved nothing, and I  
4 certainly didn't get a jury trial, but I certainly got wooled around, and that record is  
5 going to be presented, and there's four or five, including the Scotland County case  
6 and the Knox County. There's two or three cases in Knox County, plus the Rails  
7 County State case, and I faced Judge Lemon back then, and we went through the  
8 same thing. And the State of Missouri Department of Conservation down there, they  
9 have rules and regulations that they have to follow, but I can't get this Court to focus  
10 on any of those type of defenses, even on a Motion--even on a Motion to Quash, and  
11 you looked at and read my affidavit, and you've stated so on the record, but you  
12 disagree with my position.

13 THE COURT: Well--

14 MR. SMALL: You disagree--

15 THE COURT: It does not appear to have any legal basis, Mr. Small, and that  
16 is why--I'm not trying to wool you around, I'm not trying to delay the proceedings,  
17 and I frankly don't understand where you're coming from when, on one hand, you tell  
18 me that I'm trying to deny you a speedy trial, and then on the other you turn around  
19 and say you don't want the case set for trial. How am I to understand what you are  
20 asking me? Now, I--You know, you had the right to present the motion with regard  
21 to jurisdiction. You presented it.

22 MR. SMALL: Jurisdiction on what, Your Honor?

23 THE COURT: Personal jurisdiction, sir, and you presented it, and I  
24 overruled it. That--

25 MR. SMALL: On what date? What date was--What date was relevant to--

19

1 THE COURT: I--I overruled it right here this morning, sir.

2 MR. SMALL: Yeah, you overruled it on March the 9th, and I'm saying--I'm  
3 saying we can get March 9, 2011 into the record. What we cannot get in this Motion  
4 to Quash proceeding on special appearance, the date the State believes, the  
5 State--You're the judicial system, this is the prosecutor, and no one is willing to take  
6 the stand and testify that these criminal cases, three misdemeanors, one trespass,  
7 commenced on a certain date according to indictments or information. That's the  
8 point this Court is missing. And what is this, the third or fourth time that this has  
9 come up now, and I still don't have a date that corresponds with those informations,  
10 and I object to that on a constitutional basis.

11 And I think I have a right to object to that on a constitutional basis, because if  
12 this Court overrules me on a Motion to Quash and doesn't give me a date, then there  
13 is no way that I can effectively represent myself under the Sixth Amendment of the  
14 Constitution to effective assistance of counsel, because you don't know, Your Honor,  
15 when they started, according to the informations. That's all--That's all I have to go  
16 by, and when we get to the appellate court, that's all the appellate court is going to  
17 have to go by, because that's going to be a singular point, a principle point.

18 So--And the only reason I suggest that that might be important, Your Honor,  
19 is because the appellate court and the supreme court is going to want to look at the  
20 record. When--When is the start date of these informations for the six-month statute  
21 of limitations period? Well, it sure isn't March 1, 2010. Oh, it started before then.  
22 Okay. Well, where's the summons at? We don't have a return summons. You got a  
23 false arrest, and that's all you got, and the dates merge with that. They had an arrest  
24 warrant before those documents was even returned.

25 THE COURT: Mr. Small--

20

1 MR. SMALL: Yeah.

2 THE COURT: --I have overruled your motion.

3 MR. SMALL: On what ground?

4 THE COURT: On the grounds that it has no legal basis whatsoever.

5 This case deals with three charges that were alleged to have occurred on  
6 January 18, 2003. The case was filed in this court on February 20, 2003.

7 MR. SMALL: February the 20th?

8 THE COURT: Correct.

9 MR. SMALL: According to the, what, docket sheet?

10 THE COURT: According to the--

11 MR. SMALL: To the docket sheet.

12 THE COURT: According to the clerk's records, and I have taken judicial  
13 notice of the Court's own files, of course, and the Honorable Steve Willcox issued a  
14 warrant on March 25, 2003, which at that point, you know, the case was filed well  
15 within the statute of limitations. The warrant was not served until May 11, 2010,  
16 when the current series of proceedings began. There are your findings of fact.  
17 Now--

18 MR. SMALL: The Court's file--The Court's file, Your Honor--

19 THE COURT: Mr. Small--

20 MR. SMALL: Yes.

21 THE COURT: --I am not interested in arguing any of these points any  
22 further.

23 MR. SMALL: Okay.

24 THE COURT: Thank you.

25 Now at this point, I'm going to try one more time to go through a few

21

1 questions with you, although I do believe that you understand what's going on, that  
2 you're merely attempting to frustrate the proceedings by not answering them.

3 Do you understand that since Mr. Summers has dismissed Count I today, you  
4 are facing charges, three Class A misdemeanors that have to do with illegal taking of  
5 wildlife under Section 252.040 of the Missouri statutes?

6 MR. SMALL: We've already went through that, Your Honor.

7 THE COURT: You do understand that.

8 MR. SMALL: We've already--

9 MR. SUMMERS: Judge, may I stand up? I apologize.

10 MR. SMALL: --went through that.

11 THE COURT: You--You may.

12 And you understand that the State is not seeking a jail sentence on these  
13 charges.

14 MR. SMALL: I understand that.

15 THE COURT: You said that on the record in open court. So the range of  
16 punishment that you face on each of those three charges would be a fine up to  
17 \$1,000. That's the potential range of punishment you're facing; do you understand  
18 that?

19 MR. SMALL: \$1,000?

20 THE COURT: That would be the maximum available fine on those--each of  
21 those three counts. That's not what you would necessarily get, that's the maximum  
22 possible. That's just--I'm--I'm asking you if you understand the range of punishment  
23 that has been authorized for these offenses.

24 MR. SMALL: Well, now that you're the fourth judge--and I have explained  
25 to me that these tickets, all four of them totaled together is only 500-some dollars,

22

1 and now you're saying it's \$1,000 on each.

2 THE COURT: Well, that's--I'm not saying that that's what you'd get. The  
3 500-some dollars was the standard scheduled fine in Schuyler County if you just  
4 came in and paid the ticket and pled guilty. If you go to trial, what will be before the  
5 Court is the full range of punishment, from a--if you're found guilty, from a low of \$1  
6 up to a high of \$1,000. And if you're found guilty, the Court would decide on an  
7 appropriate fine. That's the range. Do you understand that?

8 MR. SMALL: Yes, I understand what you said.

9 THE COURT: Very well. And you understand that you do have a right to  
10 trial by jury on these charges, and you have asked for that, correct?

11 MR. SMALL: I understand that my request for a jury trial and effective  
12 assistance of counsel goes back to February 3--2--3000 (sic), not eight or nine years  
13 later. So I'm not waiving--I'm not waiving that time period, okay? And when I sit  
14 here and tell you that I agree to a certain trial date, I'm waiving that, and I'm not  
15 waiving that. I have a right to a jury trial. I had a right to a jury trial. Once this  
16 Court says, yeah, we've got personam jurisdiction over you, and you're the first judge  
17 out of four today that went on record and saying on about February 20, 2003, we got  
18 personam jurisdiction over you. Well, the indictments and information do not reflect  
19 that, nor does the appellate court stare decisis decision agree with that, and I believe  
20 this Court is obliged to follow prior precedence set by the appellate court in Western  
21 Division and the supreme court, and that's--that's another one of my objections. It's  
22 not that I don't want to go to trial, it's that I don't want to sit here and tell the Court  
23 that, yeah, you can empanel a jury, going on into the ninth year, but--but--

24 THE COURT: I--

25 MR. SMALL: But I also--

23

1 THE COURT: I understand that you don't agree, sir.

2 MR. SMALL: Yeah.

3 THE COURT: Now, do you understand that at trial, acting as your own  
4 attorney, you will be opposed by an experienced prosecuting attorney and that neither  
5 the Court nor the prosecutor will be able to help you during the course of the trial?

6 MR. SMALL: Mr. Scott Summers being a special prosecutor in this case,  
7 according to the Court's record? You said you'd take judicial notice of it. Did you  
8 take judicial notice of that?

9 THE COURT: Yes, he's--he's the prosecuting attorney in this case.

10 MR. SMALL: No, he's the special prosecutor in this case, according to the  
11 Court's records.

12 THE COURT: Well, now--He is now the duly-appointed prosecutor of  
13 Schuyler County and the successor in office of the prosecutor who filed it, so he's  
14 actually not a special prosecutor. This is part of his ordinary duties.

15 MR. SMALL: I don't believe you have, Your Honor--I don't believe you  
16 have read your own court record where it shows Honorable Kelly Lovekamp  
17 appointed a special--a special prosecutor, and that special prosecutor was Scott  
18 Summers.

19 MR. SUMMERS: Your Honor, to the extent that that makes a difference, I  
20 can explain that to Mr. Small. And that is that on the first day I appeared in this case,  
21 my appointment had been made by the governor, but I had not actually received the  
22 written commission of the governor filed with the county clerk documenting my  
23 appointment. She thus appointed me as special prosecutor in the matter, and two or  
24 three days later my commission arrived, and I have been sworn in by Judge  
25 Lovekamp into the position of the duly-appointed prosecutor of the county.

24

1 THE COURT: So you were correct that at the time he was first assigned to  
2 the case, it was as a special prosecutor, but he has since become the prosecutor of  
3 Schuyler County, and this would have been his case in any event. So--

4 But you understand that at trial, the prosecutor cannot assist you in defending  
5 yourself. You understand that?

6 MR. SMALL: I understand.

7 THE COURT: Yes. And do you understand that at trial you will be bound  
8 by all the same rules of law and procedure and evidence as you would be if you were  
9 an attorney?

10 MR. SMALL: I believe in that regard, Your Honor, I've already been  
11 prejudiced by that, okay, because today is the first day the Court has actually clarified  
12 on the record--

13 THE COURT: But you do understand that at trial, you--the same rules apply  
14 to you as would apply to an attorney?

15 MR. SMALL: Yeah. Well, I think we're going to have some additional rules  
16 from the appellate court directing what we do with this--with this record at this point,  
17 but you can go ahead. And I don't want to interrupt the Court, you go ahead, but--  
18 but I've already decided what I need to do and what--what I'm going to do, and I do  
19 not believe that I can effectively represent myself, even if I had three lawyers, okay?  
20 Barry Scheck setting at this table, I could not get a fair trial, because the State is not  
21 going to timely disclose exculpatory materials that I would present to the jury. And if  
22 I'd had it eight or nine years ago, I'd have presented it to a jury then, but for some  
23 reason or other, the court system now has went on the record saying, well, we've had  
24 jurisdiction, you know, for eight or nine years, okay? All right. Then why didn't you  
25 give me a trial back eight or nine years ago? Okay. So that's what I'm going to be

25



1 arguing to the appellate court and in--probably yet this week.

2 THE COURT: Well, you understand that at trial, you will have to ask  
3 questions of witnesses and present evidence in accordance with established legal  
4 rules?

5 MR. SMALL: Here again, I--I think the record and the disclosure that's  
6 presented to this Court, you have it merged into one--to--to one file, four cases, four  
7 discovery, one of them an infraction, three of them misdemeanor, and the State is  
8 going to take the evidence of the infraction and it's going to use against me in a  
9 misdemeanor, and that's already been excluded. So there's going to be some  
10 problems there with the evidence right up, and we have to get a court ruling to  
11 whether or not that you can do that, because, number one, that case, that charge, does  
12 not even exist any longer, and that was the subject matter of your probable cause to  
13 begin with. So it really doesn't make any difference whether I'm represented by  
14 counsel or whether I represent myself. I've already been prejudiced by it, and this  
15 Court's already convinced me that it doesn't really make any difference what the  
16 evidence is, we've got jurisdiction over you. It doesn't make any difference.

17 Well, the way I read--If you read these cases that I've attached to this last  
18 pleading, and I asked him, "Can I personally inspect these records? Will you give me  
19 a time, a date and a location to come in and personally inspect all of it?" That's not  
20 going to happen, Your Honor. It hasn't happened in eight or nine years, and it hasn't  
21 happened now, and I've made three requests, two of them on Brenda Swedberg, and I  
22 got nowhere. I got sent to the Missouri Conservation Commission, where they--  
23 where is all this evidence? Okay. When can I look at it? Where's your receipts at?

24 We're getting into the--We're getting--We're getting back to the Motion to  
25 Quash, the reasons why this Court should rule to quash them, just like they did in this

26

1 in--it's--It's in the record. It's in--It's in the record. The record isn't all there, Your  
2 Honor, and the State knows it isn't, and Defendant knows it isn't, and you're saying,  
3 yeah, you're going to go to trial, and you're going to get a fair trial, fair that. I do not  
4 have to go to trial on a bobtail record. And the United States Supreme Court, in  
5 Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, said that, well, the judicial  
6 system, executive system, that's part of state government. And they can make the  
7 decisions all they--so long as they make their decision based upon a complete record  
8 at the time--

9 THE COURT: Mr. Small, I am--

10 MR. SMALL: --at the time the decision is made.

11 THE COURT: Mr. Small, stop. I am convinced that you feel strongly about  
12 this point. I'm not doubting that. I just don't think you're correct. That's my ruling.

13 Now, are you willing to answer the questions I--that I am trying to pose to  
14 you about proceeding on your own at trial without counsel?

15 MR. SMALL: Well, Your Honor, will you give me credit for the answers  
16 that I've already give the Court?

17 THE COURT: Of course.

18 MR. SMALL: I've give you--Okay.

19 THE COURT: Yes.

20 MR. SMALL: Okay.

21 THE COURT: All right. Now, we'll try it--try it one more time.

22 Now, do you understand that at trial you have to ask questions of witnesses  
23 and present evidence in accordance with established legal rules?

24 MR. SMALL: Yeah, I understand that.

25 THE COURT: Okay.

28

1 Howell (phonetic spelling) case up in Schuyler County before Honorable Judge  
2 Steele. He started and asked you for the driver's license. Here's the driver's license.  
3 Then he didn't stop there. He went further. And then the 1989 case--

4 THE COURT: Well, I--I believe, sir, that you're going back to your motion,  
5 which has already been overruled.

6 MR. SMALL: Yeah.

7 THE COURT: Well, at this point I do believe I can find that you are  
8 certainly informed of your right to--to assistance of counsel, that you understand it,  
9 that you're literate, that you're mentally competent, that you understand that you have  
10 the right to seek counsel to represent you if you wish to do so. I've advised you that  
11 you do not have a right to appointed counsel in this case because the State is not  
12 attempting to put you in jail. But, certainly, if the Defendant--if you decide to go  
13 ahead and proceed on your own behalf at trial, that that is a knowing, voluntary and  
14 intelligent decision, understanding of the consequences of it. I am somewhat  
15 despaired of going through the entire sequence of questions that is often prescribed,  
16 because you don't seem to be interested in answering them, but I will certainly--

17 MR. SMALL: Can I respond to that, Your Honor?

18 THE COURT: Of course. Of course you may, and if you would like  
19 me--And if you will tell me that you will actually give me direct answers to these  
20 very simple questions, I will be happy to continue going through them with you.

21 MR. SMALL: Well, I think we've been now before the Court in this case for  
22 30, 45 minutes, and this Court appears to be frustrated (sic) with me because I asked  
23 the Court to specifically take judicial notice, if you can find it in your record, the  
24 specific date on which these four cases allegedly--the Court obtained personal  
25 jurisdiction over the Defendant Jim Small. And we finally got it in the record, it's

27

1 MR. SMALL: Does the State have to do the same thing?

2 THE COURT: He does.

3 MR. SMALL: Oh, he does.

4 THE COURT: He does.

5 And do you understand that if I would at some point have to stop the trial  
6 because you are unable to do so, you might--

7 MR. SMALL: I'm unable to do what?

8 THE COURT: To follow the rules.

9 MR. SMALL: Okay.

10 THE COURT: If I--If I--If you behave in a way at trial that is rude or  
11 obnoxious or vulgar and the trial was stopped, you would be at a significant  
12 disadvantage. Do you understand that? I'm not saying that would happen, but do  
13 you understand that?

14 MR. SMALL: Could--Could you repeat that? I am a little bit of hard-  
15 hearing.

16 THE COURT: Yes. Do you--Do you understand that if you would engage in  
17 improper conduct at trial, such as--

18 MR. SMALL: I've never, ever done that, Your Honor.

19 THE COURT: Okay. Very well.

20 MR. SMALL: Never.

21 THE COURT: All right. Do you understand the charges against you?  
22 Your--The three charges that you're still facing at this time are taking quail in closed  
23 season, taking wildlife from a public roadway, and taking wildlife with the aid of a  
24 motor vehicle; do you understand that?

25 MR. SMALL: I do not understand the State--the date that the State alleges

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1 that we have filed that, which gives us, Schuyler County Circuit Court, associate  
2 division, subject matter jurisdiction and personam jurisdiction over the Defendant,  
3 because they're not shown of record. That's my objection.

4 THE COURT: But--But do you understand that those are the charges?

5 MR. SMALL: I understand what they put on the ticket, but I'm not saying  
6 that I understand those charges, because me handing you a check that I don't sign, it's  
7 frivolous. It amounts to nothing. I have to sign it, okay? There's a certain way to do  
8 things, a certain way not to do things--

9 THE COURT: Yes.

10 MR. SMALL: --and what they have done--

11 THE COURT: Yes, Mr. Small.

12 MR. SMALL: Yes.

13 THE COURT: I understand, and this goes back to your argument about  
14 jurisdiction. But do you understand what the charges are? Do you understand what  
15 the three charges are?

16 MR. SMALL: I understand what those pieces of paper in the Court's file  
17 reflect, but I'm not going to sit here and concede to the fact that there are charges,  
18 because there isn't any charges filed yet, because they haven't--it hasn't had the court  
19 seal on it, and they haven't followed the dictates of the Missouri rules of court in  
20 order to perfect a charge. So I am willing to defend, I'm willing to go to trial as soon  
21 as the State says yes or no, that start date on this and your Motion to Quash, based on  
22 the statute of limitations, is taken up and considered and overruled. Now, we've  
23 already done that on the Motion to Quash--we've already done that on my Motion to  
24 Quash. Now we have to come back in and now--Now you're setting this thing for  
25 trial. Now I have to really get in to defend the merits to what the Court is wanting to

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1 call charges, okay?

2 Now, the--the Court has already prejudiced the Defendant by suggesting to  
3 him, "You are defending four misdemeanors in that." No, the four--Hold it a second,  
4 no, no, I'm not agreeing to that, because three of them, according to statute and  
5 according to prior history of 23 years, they are misdemeanors under Revised Statute  
6 of Missouri 252.040. I understand that, but I do not understand the judicial system  
7 allowing the State to just throw in a second degree trespass, just so you'll come in  
8 here and plead guilty and forget about this jury trial and give us--We're just interested  
9 in the money. We're not interested in justice, okay? That's my objection.

10 Now, we--we--we got--we got one of them taken care of, and it's based on  
11 my Motion to Quash, that's the way I understand it, and I'm going to implore the  
12 appellate court to look at it like that, because that is the context. And when it's come  
13 up--it come up, we are arguing the Motion to Quash now, and the State has made a  
14 statement on the record to that effect. So we're not dealing with four complaints or  
15 informations, now we're dealing with three. Now I have to go back and do the same  
16 thing with the three, but now I feel like that I'm challenging and I'm obligated to go  
17 in and--and prepare a defense for the merit to these three pieces of paper in the  
18 Court's file.

19 THE COURT: Well, at this point, the Court finds that while the Defendant  
20 clearly does not agree with--with the Court's rulings, that he does understand the  
21 effect of--and consequences of proceeding pro se, and he's granted leave to proceed  
22 pro se in this matter.

23 When would the State be prepared to set this matter for trial?

24 MR. SUMMERS: Your Honor, what time does the Court have available? I  
25 have time in early May. I don't--I don't really have anything in April.

31

1 THE COURT: Okay. And I don't have much in April. The first two-day  
2 units I could give you would be May--I could give you May 12-13, May 16-17, or  
3 17-18.

4 MR. SUMMERS: I think I'd prefer the 12-13.

5 THE COURT: Would May 12th and 13th be agreeable to you, Mr. Small, for  
6 a jury trial date?

7 MR. SMALL: I do not believe that this Court has jurisdiction to proceed, and  
8 I believe that we will be in a higher court on that date, with all due respect.

9 THE COURT: And if--if a higher court stays these proceedings, I will  
10 certainly follow any mandate I receive from them.

11 MR. SMALL: I have no problem with that, Your Honor.

12 THE COURT: But--

13 MR. SMALL: I'm not trying--I'm not trying to be difficult.

14 THE COURT: I understand. I--

15 MR. SMALL: There's 114 counties in the state of Missouri, Your Honor,  
16 and I think those people in these other 113 counties, they have a right to walk  
17 through them doors and walk in before a justice and be treated fairly and impartially  
18 and receive justice under the law. And in this trial, the State's going to put on its  
19 evidence, and I'm going to put on evidence in my defense to show these people pick  
20 and choose when they want to follow these conservation rules and--That's what the  
21 evidence shows.

22 THE COURT: All we--All we are seeking to do is to give you a chance to  
23 have a fair trial. Now, the case will be set for trial by jury May 12 and 13, 2011. I  
24 would ask counsel and--and the Defendant to be here by 8:30 in the morning for any  
25 motions and pretrial matters. We'll commence jury selection at 9:00 a.m. Would ask

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1 the State to submit its proposed jury instructions to the Court and to Mr. Small, or to  
2 Mr. Small's counsel, if he gets counsel, not later than April 28. And Mr.--if Mr.  
3 Small wishes to file any proposed jury instructions, that those be provided to the  
4 Court and to Mr. Summers no later than May 5th.

5 Is there anything further for the State on this case--

6 MR. SUMMERS: No, Your Honor.

7 THE COURT: --this morning?

8 MR. SUMMERS: Thank you.

9 MR. SMALL: Yeah, there's--there--

10 THE COURT: Mr. Small.

11 MR. SMALL: I'd like to make a--I'd like to make an oral motion that the  
12 Court enter an order compelling the State of Missouri to turn over records and to be  
13 obedient to notices to take depositions of certain of these material witnesses that they  
14 plan to call at trial, which have all been merged together, and the discovery really  
15 needs to be separated, because you're going to try these one case at--one at a time?

16 THE COURT: Well, it appears--

17 MR. SMALL: Or are we going to allow--

18 THE COURT: It--

19 MR. SMALL: --all of the evidence to just be--

20 THE COURT: Well, it appears to me as I review this that this may originally  
21 have been filed as separate cases, but at some point was consolidated into one file,  
22 that the charges all relate to alleged incidents that occurred on the same date.

23 MR. SUMMERS: That's my understanding, Your Honor.

24 THE COURT: So my intent is to consolidate these three remaining counts  
25 into one trial in the interest of avoiding duplicative evidence and testimony.

33

1 If I see any indication that the State is not complying with the Supreme Court  
2 rules with regard to disclosure, I will make appropriate orders at that time. At this  
3 point, I do not believe there is a need to any--enter any rulings.

4 Is there anything further at this time from either party?

5 MR. SUMMERS: Not from the State, Your Honor.

6 MR. SMALL: Your Honor, in this Motion for Disclosure--in this Motion for  
7 Disclosure that I have filed on Brenda Wall-Swedberg some time ago, the State made  
8 certain disclosure, and they did not turn over all of their records. Now I made the  
9 second one, and then they turned over bits and pieces of their records, but they didn't  
10 turn over all of it, and that's the reason I wanted the Court to enter an order, you  
11 allow Mr. Small by such-and-such a date to appear at a certain location, and I don't  
12 mind if it's here. I want to see the originals, and I want to take the deposition of these  
13 people that put this together, because there are facts that they have presented to  
14 another judge, Honorable Kristie Swain, are completely contradictory and  
15 inconsistent with other evidence that they're presenting to you, and I'm going to have  
16 to object to that, because it's either one way or it's the other way. And if their  
17 probable cause is bad and I'm right, then I'm not going to stand here and take up 12  
18 people's time and this Court's time, which I've already done two previous occasions  
19 20 or 30 years ago and prevailed on both of them in this court right here, okay?

20 So I'll probably lose this case, but it's not going to be on a complete record,  
21 and I won't be losing it here, Your Honor. I'll be losing it down at the appellate court,  
22 1300 Oak Street, Kansas City, then in the Missouri Supreme Court, because those  
23 decisions that I've attached to it--I've attempted to follow your rules and your  
24 regulations, and the cases that I have cited to this Court tells me, Mr. Small, you have  
25 a remedy, and your remedy is to tell the trial court.

34

1 And, I'm sorry, I wish these issues--I didn't have to raise them, but the way I  
2 understand the law, you either raise them or you waive them. You either raise them  
3 and put them on the record or you waive them.

4 THE COURT: Well, Mr. Summers has indicated he's going to disclose  
5 everything he has. I--

6 MR. SMALL: When?

7 THE COURT: In the time provided by the rules. He's just received your  
8 request. If you don't believe he's done so, then you can notice up another Motion for  
9 Hearing, we'll come back and talk about it. But for today, we're going to leave things  
10 as they stand. I think it would be going over ground we've already plowed to discuss  
11 it any further today. We'll give him an opportunity to respond to the request you  
12 filed on March 2nd, and if you don't believe he has done so, we'll go from there.

13 MR. SMALL: Yeah. So if I understand, my oral motion to compel the State  
14 to turn over is taken up, considered and denied. Is that what I'm understanding the  
15 Court to say?

16 THE COURT: I am taking it under advisement at this time, pending to give  
17 Mr. Summers an opportunity to respond to the request you filed on March 2nd.

18 MR. SMALL: Yeah. Under--Under Missouri rules of court, they got ten  
19 days to respond, and that ten days will be like tomorrow, and then the following day,  
20 I'll come in, and I--Can I file the Motion to Compel with you in Kahoka or in  
21 Memphis?

22 THE COURT: All motions in this case need to be filed in Schuyler County,  
23 and the clerk will provide them to me, so--

24 MR. SMALL: Okay.

25 THE COURT: --file them here at this court.

35

1 MR. SMALL: Yeah, I--I--I--

2 THE COURT: So--

3 MR. SMALL: I will do that. I would do that, but I think in the--in the  
4 meantime, I'm going to file an appropriate special writ under Rule 83.24 with the  
5 appropriate appellate court, Your Honor.

6 THE COURT: Very well. All right. We'll stand in recess on this case for  
7 today.

8 MR. SMALL: Thank you.

9 MR. SUMMERS: Thank you, Judge.

10 MR. SMALL: Thank you, Your Honor.

11 THE COURT: Thank you, everyone.

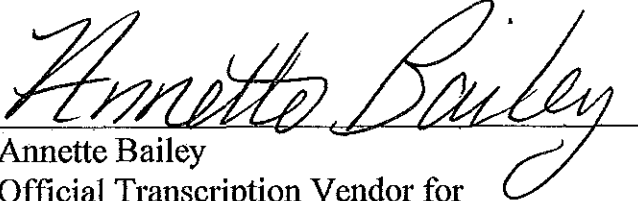
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1 STATE OF NEBRASKA )  
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3 COUNTY OF BUTLER ) ss.  
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7 submitted for transcription in the foregoing case.  
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9 In witness whereof, I hereby sign this date: 4-22-2011.

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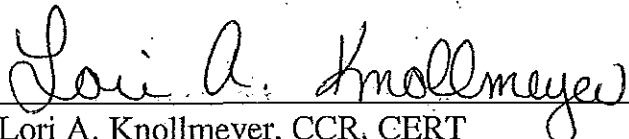
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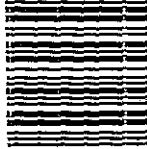
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