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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE,

Respondent,

-against-

No. 197

DENNIS P. SMALLS,

Appellant.

20 Eagle Street
Albany, New York 12207
November 17, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM (By Video)
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY

Appearances:

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Sara Winkeljohn
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: 197, People v.
2 Smalls.

3 Counsel, you want any rebuttal time?

4 MR. HAUSMAN: Yes, Your Honor. I'd like to
5 reserve one minute.

6 CHIEF JUDGE LIPPMAN: One minute; go ahead,
7 counsel. You're on.

8 MR. HAUSMAN: And good afternoon. It's
9 Lawrence Hausman from The Legal Aid Society for the
10 defendant-appellant Dennis Smalls. And what I'd like
11 to discuss in this case are the - - - the facial
12 sufficiency of the allegations here. The allegations
13 - - -

14 CHIEF JUDGE LIPPMAN: Coun - - - counsel,
15 the fact that the - - - the - - - the drugs were used
16 up in this case - - -

17 MR. HAUSMAN: Yes.

18 CHIEF JUDGE LIPPMAN: - - - does that mean
19 the police officer can't - - - can't get to the point
20 of saying he knows that this is what it is? And then
21 - - - then the - - - the proof is - - - will be the
22 proof whether there's evidence to show that's what it
23 is. Why is this jurisdictional?

24 MR. HAUSMAN: I think the reason it's
25 jurisdictional is because - - -

1 CHIEF JUDGE LIPPMAN: What do you want the
2 cop to say in this situation?

3 MR. HAUSMAN: I think that in this
4 situation where all you have is a glass pipe - - -

5 CHIEF JUDGE LIPPMAN: Right.

6 MR. HAUSMAN: - - - and - - - and - - -

7 CHIEF JUDGE LIPPMAN: And it's used up in
8 the - - -

9 MR. HAUSMAN: - - - the tar-like residue
10 that's used up, our position is, and - - - and we've
11 supported it with some cases, including a - - - the
12 record from a case that was before this court - - -

13 CHIEF JUDGE LIPPMAN: Go ahead.

14 MR. HAUSMAN: - - - involving residue, is
15 that you can't tell by looking, and if you can't tell
16 by looking at - - -

17 CHIEF JUDGE LIPPMAN: But is that
18 evidentiary or jur - - - or - - - or jurisdictional?

19 MR. HAUSMAN: It's jurisdictional, because
20 don't forget, the prima facie case involves pleading
21 evidentiary facts - - -

22 CHIEF JUDGE LIPPMAN: Right.

23 MR. HAUSMAN: - - - establishing what, in
24 People v. Dumay, this court called the purpose of the
25 prima facie case - - -

1 CHIEF JUDGE LIPPMAN: Yeah, but you don't
2 have to establish - - -

3 MR. HAUSMAN: - - - is legally sufficient
4 evidence.

5 CHIEF JUDGE LIPPMAN: You don't have to
6 establish it beyond a reasonable doubt, right?

7 MR. HAUSMAN: Absolutely not, but you have
8 to establish that the crime occurred, a prima facie
9 case.

10 CHIEF JUDGE LIPPMAN: Within reasonable
11 cause, whatever.

12 MR. HAUSMAN: Well, more than reasonable
13 cause. Reasonable - - -

14 JUDGE RIVERA: But - - - but doesn't - - -
15 but doesn't your argument boil down to - - - doesn't
16 it devolve to requiring a lab test every single time?

17 MR. HAUSMAN: In residue cases, I would say
18 that it - - - it - - - it involves - - - in the vast
19 majority of cases, it does involve a lab report. I
20 can imagine other scenar - - - I - - - I don't think
21 it should be a per se rule, because I can imagine
22 other scenarios where - - -

23 JUDGE PIGOTT: What do - - - what do you do
24 with the defendant while you're waiting for the lab
25 report to come back? Do you put them in jail?

1 MR. HAUSMAN: Well, Your Honor, that's a
2 separate issue - - -

3 JUDGE PIGOTT: I know.

4 MR. HAUSMAN: - - - of whether there's
5 reasonable cause.

6 JUDGE PIGOTT: I know. But what I'm - - -

7 MR. HAUSMAN: If there's reasonable cause,
8 you can - - -

9 JUDGE PIGOTT: What - - - what you want to
10 say - - - what you - - - you want to say that an
11 officer who says I'm a trained officer and - - - and
12 this, to me, was a tar-like substance that indicated
13 drugs, is not enough. And it certainly was enough
14 for him to be suspicious, and I would hate to think
15 that we're going to tell our police, when you - - -
16 when you have a suspicion of - - - of possession of
17 drugs - - - cocaine, marijuana, whatever - - - and
18 you got to wait for a lab test that you put the guy
19 in jail waiting for the lab to come back, because
20 they can sometimes take a long time.

21 MR. HAUSMAN: Well, Your Honor, that was
22 the situation for twenty years between Matter of
23 Jahroon S. and People v. Kalin, just so you know.
24 And so all we're saying is that in a very narrow
25 category of cases - - -

1 JUDGE PIGOTT: Put them in jail.

2 MR. HAUSMAN: Well, that's a question of
3 whether or not there's reasonable cause. I actually
4 think in this case, where all you have is a glass
5 pipe and the conclusory assertion that it contained
6 cocaine, I think it's even just slight of reasonable
7 cause. But you and I can argue - - -

8 JUDGE STEIN: So - - - so if - - - if we
9 don't agree with you that there has to be a lab test
10 in every case, would you still say that this is
11 insufficient?

12 MR. HAUSMAN: In thi - - -

13 JUDGE STEIN: I mean, how much specificity
14 do you need? Or are you suggesting that this is - -
15 - that - - - that when - - - when it's burnt residue,
16 that the - - - that the inform - - - that - - - that
17 the police officer has to say what their experience
18 is in analyzing or - - - or recognizing burnt
19 residue; is that what you're saying?

20 MR. HAUSMAN: I think so, and I think they
21 won't be able to do so. Because I think we've
22 pointed to the testimony of a - - -

23 JUDGE STEIN: So you're saying it's not
24 ever possible?

25 MR. HAUSMAN: I think it's not possible

1 based on the residue alone, and - - - and so you may
2 have other cases where circumstantially, you could
3 establish it. For instance, let's say you recovered
4 a glass pipe from someone and some empty crack vials
5 that were identified as crack vials, and then you had
6 the defendant or the defendant made a statement about
7 it. There are other circum - - -

8 JUDGE STEIN: So like, you know, there's
9 some kind of packaging around - - -

10 MR. HAUSMAN: Right.

11 JUDGE STEIN: - - - or there was some kind
12 of paraphernalia around.

13 MR. HAUSMAN: Right.

14 JUDGE STEIN: Or what - - - what if - - -
15 what if the police officer alleged in this case just
16 that - - - instead of it just being a glass pipe,
17 that it was a - - - it was recognized as a glass pipe
18 commonly used to smoke cocaine, crack cocaine or - -
19 -

20 MR. HAUSMAN: Well, I think if it was - - -
21 I think you'd be getting closer. You'd be getting in
22 the right direction. If it was - - - certainly if
23 they said it was a pipe that was exclusively used for
24 crack cocaine, that would be a different case. That
25 would probably be reasonable cause. I still don't

1 think it'd be prima facie case.

2 JUDGE RIVERA: But why - - - why does that
3 do it for you? I mean, is - - - isn't your point
4 really that an officer cannot - - - cannot,
5 regardless of what the officer's experience is - - -
6 cannot visually look at whatever's in this pipe - - -

7 MR. HAUSMAN: Right, well - - -

8 JUDGE RIVERA: - - - and have a basis by
9 which to say - - -

10 MR. HAUSMAN: I think - - -

11 JUDGE RIVERA: - - - crack cocaine.

12 MR. HAUSMAN: I think my answer is - - -

13 JUDGE RIVERA: That requires a chemical
14 test. There's no way to do that with the human eye.
15 I thought that was your argument.

16 MR. HAUSMAN: I think that - - - I think
17 that's an important part of my argument, and I think
18 it's controlling under these facts where all you have
19 is a glass pipe and the residue. All I'm saying is
20 you don't have to have a per se rule as to the prima
21 facie case - - -

22 JUDGE RIVERA: Um-hum.

23 MR. HAUSMAN: - - - because perhaps in
24 another case, there'd be a whole other litany of
25 circumstantial evidence from which you could infer

1 that's crack cocaine.

2 JUDGE PIGOTT: Well, of course, but that's
3 not very common. I mean, isn't this fairly common?

4 MR. HAUSMAN: That's right. Well, I - - -
5 I think crack - - -

6 JUDGE RIVERA: But even if you had that,
7 that doesn't get to the point that maybe all the
8 crack cocaine has actually been smoked or evaporated
9 or gone and all that's left is something - - -

10 MR. HAUSMAN: Well - - -

11 JUDGE RIVERA: - - - that is not a drug.

12 MR. HAUSMAN: - - - a defendant's statement
13 might say, I just finished smoking the crack cocaine
14 - - -

15 JUDGE PIGOTT: Yeah, but suppose he
16 doesn't.

17 MR. HAUSMAN: - - - or the pipe was still
18 hot.

19 JUDGE RIVERA: Or I just finished.

20 JUDGE PIGOTT: You're - - - you're just - -
21 -

22 MR. HAUSMAN: Well - - -

23 JUDGE PIGOTT: - - - making things up to
24 make it harder and harder and harder - - -

25 MR. HAUSMAN: Right.

1 JUDGE PIGOTT: - - - for the police to - -

2 -

3 MR. HAUSMAN: Well, look, I'm - - - I'm - -

4 -

5 JUDGE PIGOTT: Please, I'm - - - I'm almost
6 done. I'm almost - - -

7 MR. HAUSMAN: Like I said, in - - -

8 JUDGE PIGOTT: All right, why don't you go?

9 MR. HAUSMAN: Like I said, in *Jahroon S.*,
10 for twenty years, it was the standard in all these
11 cases. And what I'm saying is that in this narrow
12 category of cases, in the vast majority of cases, I
13 think there should - - - for the prima facie case,
14 there should be a lab report. Don't forget that this
15 - - - the prima facie case is the case the People
16 state ready on for trial. They're saying, we're
17 ready to go to trial. We have facts that establish
18 that this residue has crack cocaine.

19 When I've pointed to the testimony of a
20 science in your last - - - in - - - in the last
21 residue case before this court, *People v. Jennings*,
22 where the chemist said - - - was asked on cross-
23 examination, can you tell by looking at this residue
24 whether it contains crack cocaine, and she said no.
25 If you can't tell by looking at it whether it

1 contains res - - - cocaine or whether it still
2 contains cocaine, then how can you say that you're
3 ready to go to trial? Would the People go to trial
4 on - - -

5 CHIEF JUDGE LIPPMAN: I think Judge Pigott
6 has a question for you.

7 JUDGE PIGOTT: Oh, that's okay. I - - -
8 I'm - - -

9 MR. HAUSMAN: Oh, I'm sorry. Did I
10 interrupt Your Honor?

11 JUDGE PIGOTT: No, I'm enjoying your - - -
12 go ahead.

13 MR. HAUSMAN: I - - - I'd love to answer a
14 question, but - - - but I think it's import - - - it
15 is important to point out that the prima facie case
16 standard is - - - is - - - has been said by this
17 court to be a much more demanding standard than the
18 reasonable cause standard. So while we can argue
19 about - - - I think there - - - there would be - - -
20 sort of easily there could be circumstantial facts
21 that establish reasonable cause so you could arrest
22 someone, but in order to get to the prima facie case,
23 I think we should know that - - - that if we have a
24 glass pipe with a substance, we should know whether
25 or not the crime occurred. We shouldn't allow the

1 People to state ready, to say that they would
2 actually be in a position to go to trial on this - -
3 -

4 JUDGE RIVERA: But really your argument,
5 though, counsel, seems - - - seems to suggest that
6 they'll never be able to pick up someone like this.

7 MR. HAUSMAN: Well, the - - - the - - -

8 JUDGE RIVERA: Because you can't do the lab
9 report until you have reasonable cause to pick them
10 up, and if they're only being picked up because of
11 the drugs, they're never going to have basis for
12 that.

13 MR. HAUSMAN: Well, I think what I'm saying
14 is - - - I mean, my position is that you're just
15 short of reasonable - - - reasonable cause here. But
16 you could disagree with me on that and you can say,
17 under these facts or perhaps slightly more facts - -
18 - we can argue about whether those are - - -

19 JUDGE RIVERA: Well, here he also had a
20 knife, so - - -

21 MR. HAUSMAN: Right. Well, so we could say
22 - - - like let's say here you could say all right,
23 you - - - let's say you disagree with me, because I
24 think it's a close call, and you say yeah, there's
25 reasonable cause here, that's fine. But I think - -

1 - but what these - - - the - - - this court has said
2 over and over and over again is that there's a big
3 difference between reasonable cause and prima facie
4 case, so you don't have to tie the hands of the
5 police. You could say all right, well, you can
6 arrest him. It's more probable than not that there's
7 still cocaine here. Perhaps you could say that.
8 Maybe I would disagree, but you could say that. I
9 don't think that's an unreasonable call.

10 But to say prima facie case, to say that
11 these facts actually establish that there is cocaine
12 present or still present here when a chemist who's
13 trained and who testifies in a trial in another case
14 before this court and says, I can't tell by looking.
15 Or - - -

16 JUDGE STEIN: Let me ask you. If - - - if
17 we - - - if we agree with you - - -

18 MR. HAUSMAN: Yeah.

19 JUDGE STEIN: - - - what's the remedy here?
20 Do we throw out the whole - - -

21 MR. HAUSMAN: Yeah, I'm - - -

22 JUDGE STEIN: - - - accusatory instrument
23 or - - - or - - - or can the - - - or can they pursue
24 the knife charge?

25 MR. HAUSMAN: They could pursue the

1 administrative code violation of possessing a knife
2 of four inches or longer. They - - - you would have
3 the discretion to do that, or you could just dismiss
4 the accusatory instrument in its entirety. I think
5 that's entirely in your discretion. I think at this
6 point where my client has already served his sentence
7 on the more serious misdemeanor, the appropriate
8 remedy in the interest of justice would be dismissal,
9 but that's absolutely in your discretion.

10 CHIEF JUDGE LIPPMAN: Okay, counsel. Thank
11 you. You'll have rebuttal.

12 Counsel.

13 MS. STRACQUADANIO: May it please the
14 court, Marianne Stracquadanio for the People. Your
15 Honors, defendant was prosecuted by facially
16 sufficient jurisdictionally perfect information in
17 this case.

18 JUDGE RIVERA: If - - - if you can't tell
19 without a chemistry test, how did - - - how does this
20 not end up being just rife for abuse?

21 MS. STRACQUADANIO: Well, that particular
22 opinion was one - - - was a - - - was from a trial
23 case and it was one particular criminologist's
24 opinion in one case that had nothing - - - that's not
25 part of this record. And the fact of the matter is

1 that this court has seen in this case, in the
2 Jennings case, and there have also been - - -

3 JUDGE RIVERA: But in Jennings, there was a
4 lab report.

5 MS. STRACQUADANIO: There was also a lab
6 report here. It was not part of the record, but the
7 People did alert the - - -

8 JUDGE FAHEY: I guess, you know, the
9 problem I'm having with it is - - - is - - - is his
10 argument that for the People to declare themselves
11 ready, geez, when I was in city court, they had to
12 have a lab report.

13 MS. STRACQUADANIO: Right.

14 JUDGE FAHEY: You know, now, that - - -
15 that was a while ago, but you had to have a lab
16 report, and you could bring it - - - you could - - -
17 you could show reasonable cause, you can arrest
18 somebody without a lab report, of course. But for
19 you to say you go ready for trial, which means you're
20 ready to prove your allegations, that - - - that's
21 what a prima facie requirement is, as I understand
22 that. How do you do that without a lab report?

23 MS. STRACQUADANIO: But then that would
24 mean going against Kalin, right, because the - - -
25 the prima facie - - -

1 JUDGE FAHEY: So let's say we go against
2 Kalin.

3 MS. STRACQUADANIO: Right.

4 JUDGE FAHEY: Was Kalin right?

5 MS. STRACQUADANIO: I think so, Your Honor,
6 because the - - - the fact of the matter is when - -
7 - when you're considering these defendants and - - -
8 and these arrest arraignment times, you know, the
9 People do not have all of the resources to get the
10 positive lab report in every case before the
11 defendant is arraigned. And then - - -

12 JUDGE RIVERA: Wasn't there more in that
13 instrument in - - - in Kalin than there is here? I
14 mean, don't you only have here the officer saying,
15 it's a tar substance; based on my experience, that's
16 crack cocaine residue? You had more in Kalin, did
17 you not? You had the packaging and so forth.

18 MS. STRACQUADANIO: I disagree, because the
19 - - - here - - - I mean, we are saying that it's in a
20 - - - a metal - - - a glass pipe.

21 JUDGE RIVERA: Okay.

22 MS. STRACQUADANIO: Glass pipes are used to
23 smoke crack cocaine.

24 JUDGE RIVERA: Are they used for anything
25 else?

1 MS. STRACQUADANIO: They could be used to
2 smoke other drugs.

3 JUDGE RIVERA: They can be used for
4 something else, okay.

5 MS. STRACQUADANIO: But - - - but these
6 officers, they are trained to know the - - - the - -
7 - the common, the trendy drugs that are being used at
8 the time, and they are trained to - - - to - - - to
9 be able to tell - - -

10 JUDGE STEIN: But the allegations here
11 weren't even - - - didn't even really seem tailored
12 to this situation. It seemed like they were
13 boilerplate allegations that had to do with, I - - -
14 you know, I know how to rec - - - recognize, you
15 know, the - - - the illegal substances and - - - and
16 paraphernalia or - - - or packaging. There was no
17 packaging here, and we didn't have a substance, we
18 had a burnt residue. So I mean, at the very least
19 shouldn't - - - shouldn't they have to allege
20 something more than just these boilerplate
21 allegations?

22 MS. STRACQUADANIO: I mean, they did allege
23 that it was tar-like and that, we know - - -

24 JUDGE STEIN: Tar-like could be anything.
25 It could - - - it could be tobacco, it could be tar,

1 it could be - - -

2 JUDGE FAHEY: It could be heroin.

3 JUDGE STEIN: Heroin.

4 JUDGE FAHEY: It could be crack cocaine.

5 JUDGE STEIN: Yeah.

6 MS. STRACQUADANIO: Right.

7 JUDGE FAHEY: It could be morphine.

8 MS. STRACQUADANIO: Right, but - - - but
9 commonly crack - - -

10 JUDGE FAHEY: That extends all my knowledge
11 of tar-like drugs - - - drug-related substances, but
12 - - - but - - -

13 MS. STRACQUADANIO: We know that crack
14 cocaine is smoked, and we know that when it's smoked
15 - - - and I'm referring to a lower court decision,
16 People v. Smith - - - that the residue can be re-
17 smoked and as it is re-hardened - - -

18 JUDGE PIGOTT: Let's assume for a minute
19 that you're absolutely right.

20 MS. STRACQUADANIO: Okay.

21 JUDGE PIGOTT: That that's exactly what
22 this was. I want to follow up on what Judge Fahey
23 suggested because in my experience, too, when you say
24 you're ready for trial, you're supposed to be ready
25 for trial, and district attorneys throughout this

1 state say they're ready for trial every single
2 appearance, from - - - from arraignment on, "and
3 People are ready for trial, Judge", because you don't
4 want - - - you don't want, you know, the time to go.

5 MS. STRACQUADANIO: Right.

6 JUDGE PIGOTT: Well, if you're ready, you
7 ought to be ready and - - - and - - - and if you're
8 not ready, why shouldn't you bring a motion to
9 dismiss saying they can't prove their case today,
10 Judge?

11 MS. STRACQUADANIO: You can, but that's not
12 what happened here. We had a lab report here.

13 JUDGE PIGOTT: He says you didn't.

14 JUDGE STEIN: Can we consider that?

15 MS. STRACQUADANIO: We did have a lab
16 report in this case. We alerted the trial judge in
17 our response to defendant's omnibus motion that said
18 that we are in the possession - - -

19 JUDGE STEIN: Can we consider that on the -
20 - - on the facial sufficiency question?

21 MS. STRACQUADANIO: The fact that - - - the
22 fact that we alerted the - - - well, it's relevant to
23 the question of whether or not that officer was able
24 to discern whether or not it was crack cocaine. But
25 with regards to Judge Pigott's question, that's - - -

1 those aren't the circumstances here because we were
2 ready to go to trial. And I certainly think that you
3 should have a lab report before you go to trial, and
4 that's certainly - - - I mean, the - - - that's when
5 you have it, and it's negative, that's - - -

6 JUDGE RIVERA: When the ADA said ready, you
7 had that lab report at that time?

8 MS. STRACQUADANIO: That's my
9 understanding, yes. I have not spoken with her
10 directly. And obviously that's - - - if Your Honors
11 have no further questions - - -

12 CHIEF JUDGE LIPPMAN: Okay, counsel.

13 JUDGE RIVERA: No - - - but let me just
14 follow up.

15 CHIEF JUDGE LIPPMAN: No, go ahead, Judge
16 Rivera.

17 JUDGE RIVERA: If there was no lab report -
18 - -

19 MS. STRACQUADANIO: Yes. No - - -

20 JUDGE RIVERA: Did the - - -

21 MS. STRACQUADANIO: No positive result or
22 no lab report, like we never - - - never - - -

23 JUDGE RIVERA: I'll go with either one, but
24 let's say no lab report, because obviously there's no
25 positive result, you have no basis to care about that

1 lab report. He cares, but you may not so much.

2 MS. STRACQUADANIO: I don't - - -

3 JUDGE RIVERA: If you don't have a lab
4 report, is it then facially insufficient?

5 MS. STRACQUADANIO: No, not - - - not for
6 pleading purposes. I mean, Kalin tells us that we
7 don't need - - - I mean, that we don't need a lab
8 report, and the officers do know what crack cocaine,
9 when it's smoked, what it looks like.

10 CHIEF JUDGE LIPPMAN: Okay, counsel.

11 MS. STRACQUADANIO: Thank you.

12 CHIEF JUDGE LIPPMAN: Counsel.

13 MR. HAUSMAN: Let me quickly just clarify
14 the matter of the lab report in this case, because I
15 think it's important to know that it wasn't part of
16 the accusatory instrument in this case, so it's not
17 relevant for facial sufficiency. The defense in fact
18 didn't learn about the existence of a lab report in
19 this case until six months after the filing of the
20 accusatory instrument, long after the People would
21 have been in a position to be ready within their
22 ninety days' time. So it's actually completely
23 irrelevant in this case. It was a lab report that
24 was done two months down the road and disclosed four
25 months after that. So really, the lab report dropped

1 out of the picture here, because we know that the
2 accusatory instrument is limited to the four corners.

3 But what I'd like to just - - -

4 JUDGE RIVERA: Different from Jennings in
5 that sense, where the - - -

6 MR. HAUSMAN: Absolutely, it's - - -

7 JUDGE RIVERA: - - - lab report was part of
8 the accusatory instrument.

9 MR. HAUSMAN: - - - it's - - - it's
10 absolutely different from Jennings in that - - -
11 that's why this is the - - - this presents the issue
12 that, you know, Jennings was not able to resolve
13 because there was a lab report that was part of the
14 accusatory instrument in Jennings.

15 And - - - and I'd just like to end by
16 saying that I really think this is the case where - -
17 - where you can accomplish two things. You can
18 really set out what the difference is between a
19 reasonable cause standard and the much higher prima
20 facie case standard. You can do that and you can do
21 that in a way that draws a reasonable distinction and
22 a reasonable boundary as to where Kalin - - - the - -
23 - sort of the scope of Kalin.

24 I think Kalin, you know, it was a four-
25 three decision, it was a close call, but there were a

1 lot of other facts there. There was telltale
2 packaging, there was powder in - - - in a recognize -
3 - - heroin powder in a recognizable form, there was
4 other incriminating evidence. And this case, where
5 you have a substance that isn't knowable by
6 observation, I think it's a great place to draw the
7 line and say - - - to actually go to trial, with - -
8 - which is what we mean by the prima facie case
9 standard, to be ready to go to trial, you have to
10 know that what you have constitutes the crime and in
11 this sort of relatively small category of cases, the
12 ones with the residue in the pipes - - -

13 CHIEF JUDGE LIPPMAN: Okay, counsel. Thank
14 you.

15 MR. HAUSMAN: - - - you should have a lab
16 report in most of the - - - in most situations.

17 CHIEF JUDGE LIPPMAN: Thank you both.

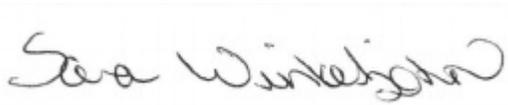
18 MR. HAUSMAN: Thank you, Your Honors.

19 (Court is adjourned)
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I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Dennis P. Smalls, No. 197 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: _____

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