STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BALLAM JUSTIN ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2023-000275

PRO SE BRIEF OF APPELLANT

BALLAM J.ALEXANDER

SCDC ID: 00390308
Unit: F6B-2243-T
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

DEFENDANT APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

STATEMENT OF THE ISSUES ON APPEAL

1. Whether the Trial Court erred in denying Appellant's Motion to Suppress the Evidence because the police did not have probable cause to search the vehicle in which Appellant was a passenger?

2. Whether the Trial Court erred in denying Appellant's Motion to Suppress the Evidence because reasonable suspicion did not exist to prolong the traffic stop of the vehicle in which Appellant was a passenger?

3. Whether the Trial Court committed prejudicial error in admitting drug evidence without the proper foundation?

4. Whether the Trial Court committed prejudicial error in limiting Appellant's cross examination of co-defendant McMurray thereby violating Appellant's Sixth Amendment rights under the United States Constitution.

STATEMENT OF THE CASE

Appellant Ballan Justin Alexander was convicted of trafficking in methamphetamine, possession of a weapon during the commission of a violent crime, trafficking in gamma-hydroxybutyric acid, possession of cocaine with intent to distribute, and possession of heroin with intent to distribute per jury trial held during the February 2023 term of the Greenville County General Sessions Court before Judge Edward W. Miller. Assistant Solicitor Grace Moroney prosecuted the case and W. Christopher Castro appeared as counsel for appellant. Judge Miller sentenced appellant to imprisonment for a period of twenty-five years.

Appellant appealed. This brief follows.

STANDARD OF REVIEW

The South Carolina Supreme Court clarified its standard of review for cases involving an appeal from a motion to suppress based on Fourth Amendment grounds. State v. Frasier, 437 S.C. 625, 879 S.E.2d 762 (2022). The Court explained that due to the "dawn of the technological age, appellate courts are no longer dependent on the trial court" when the appellate court reviews the evidence. *Id.* Accordingly, the Court held that "appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means [the appellate court] review[s] the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to de novo review." Id.

In criminal cases, this Court only reviews errors of law. State v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011). "[T]he admission of evidence is within the discretion of the trial court and will not be reversed by this Court absent an abuse of discretion." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000) (citing State v. Smith, 337 S.C. 27, 34, 522 S.E.2d 598, 601 (1999)). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." Id. (citing Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000)). A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support. State v. Rice, 375 S.C. 302, 315, 652 S.E.2d 409, 415 (Ct. App. 2007).

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS THE EVIDENCE BECAUSE THE POLICE DID NOT HAVE PROBABLE CAUSE TO SEARCH THE VEHICLE IN WHICH APPELLANT WAS A PASSENGER.

Instead, we take this opportunity to refine our standard of review to better align with the federal standard, which has been adopted in nearly every state. Accordingly, appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion ... is a question of law subject to de novo review. State v. Frasier, 879 S.E.2d 762, 766.

Harris moved to suppress the evidence found in his truck on the ground that Aldo's alert had not given Wheetley probable cause for a search. At the hearing on that motion, Wheetley testified about both his and Aldo's training in drug detection. Florida v. Harris, 568 U.S. 237, 241 (2013). On cross-examination, Harris's attorney chose not to contest the quality of Aldo's or Wheetley's training. Id. at 242. A police officer has probable cause to conduct a search when "the facts available to [him] would 'warrant a [person] of reasonable caution in the belief' " that contraband or evidence of a crime is present. Id. at 243. In evaluating whether the State has met this practical and common-sensical standard, we have consistently looked to the totality of the circumstances. Id. at 244. For that reason, evidence of a dog's satisfactory performance in a certification or training program can itself provide sufficient reason to trust his alert. Id. at 246. A defendant, however, must have an opportunity to challenge such evidence of a dog's reliability, whether by cross-examining the testifying officer or by introducing his own fact or expert witnesses. Id. at 247. And even assuming a dog is generally reliable, circumstances surrounding a particular alert may undermine the case for probable cause--if, say, the officer

cued the dog (consciously or not), or if the team was working under unfamiliar conditions. Id. In short, a probable-cause hearing focusing on a dog's alert should proceed much like any other. The court should allow the parties to make their best case, consistent with the usual rules of criminal procedure. And the court should then evaluate the proffered evidence to decide what all the circumstances demonstrate. If the State has produced proof from controlled settings that a dog performs reliably in detecting drugs, and the defendant has not contested that showing, then the court should find probable cause. If, in contrast, the defendant has challenged the State's case (by disputing the reliability of the dog overall or of a particular alert), then the court should weigh the competing evidence. Id. 247-248. To be sure, Harris's briefs in *this* Court raise questions about that training's adequacy--for example, whether the programs simulated sufficiently diverse environments and whether they used enough blind testing (in which the handler does not know the location of drugs and so cannot cue the dog). Id. at 248-249. Because training records established Aldo's reliability in detecting drugs and Harris failed to undermine that showing, we agree with the trial court that Wheetley had probable cause to search Harris's truck. Id. at 250.

A. The Prosecution failed to establish probable cause to search the vehicle in which Appellant was a passenger.

Deputy Ledbetter was the only person to testify for the State during the suppression hearing. The only other person to testify during the suppression hearing was Appellant's expert, Andre (Andy) Falco Jimenez. Andy Jimenez was qualified by the Court at the suppression hearing as an expert in K9 training and handling for narcotics detection -without objection by the State. R. 154, 1. 24-p. 155, 1. 4. Notably, Ledbetter was not qualified as an expert in any matter.

Deputy Ledbetter only mentions the words "probable cause" once during the entire suppression hearing. R. 71, 1. 8-10. Ledbetter was asked whether he had probable cause to search

the vehicle in which Appellant was a passenger and his reply was that "I did not". Id. The only other time during the State's presentation at the suppression hearing that the words "probable cause" are mentioned is when counsel for the State argues to the Court that "we've already satisfied the probable cause to go into the car". R. 143, l. 6-7. Obviously, the argument of counsel is not evidence for consideration by the court in a motion to suppress – and certainly not the bald assertion, without more, that "we've already satisfied the probable cause". The State's only witness, the police officer who stopped the car in which Appellant was a passenger, never testified at the suppression hearing that he had probable cause to search Appellant's vehicle.

Deputy Ledbetter never testified that any alleged K9 alert established probable cause such that the police could search the vehicle. In fact, the only statement ever uttered during the suppression hearing that Ledbetter made about searching Appellant's vehicle was the following: "Q: You asked Deputy Jumper a question. Based upon his response, what did you feel you could do at that point? A: Search the vehicle." R. 72, l. 6-8. Deputy Jumper was deceased at the time of this particular hearing and therefore could not testify about anything. Deputy Ledbetter, here, does not mention anything about a canine, a canine alert, or any other such thing that provided him the ability to search the vehicle in question. Moreover, he never states that he had "probable cause" to search the vehicle. In fact, his response was that "he felt" (a subjective belief) he could "search the vehicle". Id. Further, he never testified that any senior officer, or any actual member of the interdiction team present on the location, provided him with direction to search the vehicle. His response was only that "he felt" he could search the vehicle. There is no testimony whatsoever, during any of the State's presentation, (or by the Appellant's expert, for that matter) that a canine alert provided this police officer the probable cause necessary to search the vehicle in which Appellant was riding There is no testimony at all, during the entire suppression hearing, that a

canine alert provided any other police officer, on the scene of the traffic stop, with the probable cause necessary to search the vehicle in which the Appellant was riding. Because the State failed to provide testimony or any other evidence during the suppression hearing, that a canine alert provided probable cause to search the vehicle in which Appellant was a passenger, the State failed to prove probable cause. Consequently, the search of the vehicle in which Appellant was a passenger was impermissible under the Fourth Amendment. Because of the State's violation of Appellant's Fourth Amendment rights, the denial of the motion to suppress should be reversed.

B. K9 Tango did not alert outside of the vehicle to establish probable cause to search the vehicle in which Appellant was a passenger.

The State failed to produce any expert testimony whatsoever about the canine used in this particular dog sniff (exterior search of the vehicle). The State failed to produce any of K9 Tango's training records which would have supported K9 Tango's training history. The State failed to produce any of K9 Tango's training records which could have established K9 Tango's reliability in detecting drugs. The State failed to produce a deployment log which could have demonstrated K9 Tango's performance in other similar traffic stops. Andy Jimenez testified that it is "industry standard" to maintain a deployment log for a narcotics detection dog to keep track of the dog's reliability in the field. R. 175, l. 9-23. The State failed to produce any of K9 Tango's veterinary records to document his good health. Andy Jimenez testified that it is important to examine a dog's veterinary history to ensure their health and that they have not sustained head injuries which could impair their olfactory abilities. R. 158, l. 23-p. 159, l. 19. The State failed to produce any records to establish how K9 Tango's handler was selected for that duty position. Andy Jimenez testified that a dog's handler's selection criteria and selection process is important. R. 160, l. 1-p. 161, l. 11.

Deputy Ledbetter testified that he has no training in K9 training or K9 detection. R. 134, l. 22-25. Deputy Ledbetter testified that he is not certified in K9 handling. R. 135, l. 8-9. Deputy Ledbetter testified that he was not involved in the training of this dog (K9 Tango). R. 135, l. 18-20. Deputy Ledbetter testified that although he thought Deputy Jumper told him the dog alerted, he was unable to recall if those exact words were ever used. R. 134, l. 2-3. Deputy Ledbetter maintained that just by watching dogs he was qualified to say what a particular dog does, or does not do. R. 135, l. 10-14. However, Ledbetter also testified that had had only been working with this particular interdiction team for three weeks. R. 78, l. 2-3. Further, Ledbetter testified that as of the date of this stop he had not received any formal training on interdiction skills. R. 78, l. 9-18. Moreover, Ledbetter testified that on the day of the stop he was not even a member of the interdiction team. R. 50, l. 8-11. R. 77, l. 23-p. 78, l. 1. Consequently, because Deputy Ledbetter was not a member of this team and had only been working alongside this team for three weeks, the best case scenario would be that he was able to observe this team's activity for a maximum of fifteen days (given a five-day work week).

Andy Jimenez testified that he had become a K9 handler in 1989. R. 146, l. 12. He testified that he had competed in K9 detection courses all over the United States. R. 147, l. 14-19. He testified that he was an instructor for the international police K9 conference in both the United States and Canada. R. 147, l. 20-22. He testified that he was the K9 team trainer for the Anaheim Police Department and multiple other police departments. R. 148, l. 22-p. 149, l. 6. Andy Jimenez testified that he owns and runs a K9 academy, which started in 2001, and is still functioning as of today. R. 149, l. 7-17. He further testified that he has been involved in training narcotics canines all around the world, to include Europe, Mexico, and Canada. R. 150, l. 1-19. Andy Jimenez also testified that he has trained dogs professionally and has trained between three

hundred (300) to five hundred (500) dogs over the last forty (40) years. R. 151, 1. 11-17. He further testified that he has trained, from scratch, approximately two hundred and fifty (250) narcotics dogs. R. 152, 1. 1-7. Andy Jimenez then testified that he has also trained "thousands of dogs" (already trained) from other agencies when those dogs had problems. R. 152, 1. 9-24. Andy Jimenez testified that he has trained many dogs from other agencies when those dogs exhibited problems with alert behavior. R. 152, 1. 15-24. Andy Jimenez then testified that he has vast experience in the video analysis of narcotic detection dogs in the field. R. 153, 1. 10-25. Andy Jimenez testified that he personally has observed eight hundred (800) to one thousand (1,000) videos of narcotic detection dogs in the field. Id. Andy Jimenez testified that he has authored multiple books on canine narcotics detection and has been a speaker on that topic throughout the country and around the world. R. 154, 1. 13-15. Finally, Andy Jimenez testified that he has been recognized as an expert in both State and Federal courts between twenty to thirty times. R. 154, 1. 19-22.

Clearly, Andy Jimenez is one of the foremost experts in the world on narcotics detection dogs. He has a documented forty (40) year career in the field and has trained hundreds of narcotics dogs from scratch. Furthermore, he has trained multiple hundreds of narcotics dogs who exhibited problems in the narcotics detection arena. Most importantly, however, may be the fact that this narcotics detection dog expert has analyzed between eight hundred and one thousand videos of narcotics detection dogs working in the field. Deputy Ledbetter has never trained a single narcotics detection dog nor has he ever analyzed even a single video of a narcotics detection dog working in the field.

Contrast Andy Jimenez with the State's only witness, Deputy Ledbetter. Deputy Ledbetter by his own admission has zero training with narcotics detection dogs in any fashion whatsoever.

Ledbetter has never attended any K9 training courses, is not certified or trained as a K9 handler, and was not involved with the training of this particular police K9 (K9 Tango). Deputy Ledbetter was unable to comment on the training or selection criteria that either the K9 itself, or the K9 handler underwent prior to this particular day. More importantly, Deputy Ledbetter fundamentally misunderstands the entire aspect of K9 activity by his statement that (concerning K9 Tango): "I watched him sniff alert". R. 71, 1. 22-23.

Andy Jimenez testified that a narcotics detection dog has a singular alert behavior. R. 179, 1. 7-12. He further testified that when a "dog gets the odor, hits the source, the butt hits the ground". R. 179, 1. 2-5. Deputy Ledbetter never describes the particular activity that constitutes his so-called "sniff alert". During his testimony Deputy Ledbetter was only able to say that he was told there was some behavior which he thought allowed him to search the vehicle. Deputy Ledbetter was unable to recall the exact words which provided him this subjective belief that he could search the vehicle. Deputy Ledbetter failed to describe any behavior whatsoever - demonstrated by this K9 outside of the vehicle – which provided probable cause to search the vehicle.

Andy Jimenez testified that he had examined the video of this traffic stop and dog sniff. R. 180, 1. 23-25. Andy Jimenez then testified to a reasonable degree of certainly in his field of expertise (in K9 training and handling for narcotics detection) that this K9 (K9 Tango) did **NOT** alert to the presence of narcotics outside of the vehicle. R. 181, 1. 1-4. Mr. Jimenez testified during the actual playing of the video [of this traffic stop and dog sniff] that K9 Tango was not actively sniffing the vehicle. R. 181, 1. 7-8. During his cross examination, Andy Jimenez testified that K9 Tango was barking and then randomly sat down – which was not a reliable indication because the dog was not actively sniffing the vehicle before he did that. R. 203, 1. 18-22.

Andy Jimenez testified that because this dog tried to jump through a half-open window, the K9 handler pulled back on the dog's leash – causing the dog to sit. R. 182, 1. 13-17. He further testified that this dog was not exhibiting other behaviors which would show signs that he was actively sniffing the vehicle prior to sitting. R. 182, 1. 17-19. Jimenez then testified that "the sit was caused by the handler". R. 182, 1. 19. When Mr. Jimenez was asked his opinion about the dog's actions outside of the vehicle, Mr. Jimenez testified that the K9 Handler's pulling on the dog's lead caused the dog to take some action ("caused the dog to sit"). R. 182, 1. 21-p. 183, 1. 8. Next, Andy Jimenez testified that this particular K9 (Tango) did not alert outside the vehicle to the presence of narcotics. R. 183, 1. 19-23. Finally, Andy Jimenez testified that the dog (K9 Tango) "didn't alert, he just sat based on what the handler **cued him to do**. R. 184, 1. 11-15.

The uncontroverted evidence in the record is that the State's only witness has zero knowledge about narcotics detection dogs. The State's only witness, Deputy Ledbetter, said that he observed K9 Tango do a "sniff alert". Notably, however, Deputy Ledbetter never described any type of descriptive behavior for the alleged "sniff alert". Further, there is uncontroverted evidence in the record – by one of the foremost experts in the world - that the K9 handler's behavior cued this dog to sit outside of the vehicle – and that the dog's act of sitting outside of the vehicle was not in response to the presence of narcotics. The State elicited no other testimony concerning the uncontroverted testimony of the dog being cued by his handler. The State offered no expert of their own to dispute Appellant's expert concerning the cuing activity of the K9 handler. The State offered no expert of their own to dispute that the K9 was never actively sniffing the outside of the vehicle in order to detect the odor of narcotics. The only evidence in the record concerning the K9's activities outside of the Appellant's vehicle – and which was provided by one of the foremost

K9 experts in the world - was that the K9 was not actively sniffing for narcotics, was cued by his handler to sit, and did not alert to the presence of narcotics.

The State utterly and completely failed to offer competent evidence to establish that K9 Tango alerted to the presence of narcotics outside of the vehicle so as to establish probable cause to search the interior of the vehicle. In fact, the Appellant offered uncontroverted expert testimony that the K9 involved in the exterior dog sniff never actually sniffed the exterior of the vehicle. Furthermore, the Appellant's expert offered: (1) uncontroverted evidence that the K9 did not alert to the presence of narcotics outside of the vehicle; and (2) uncontroverted evidence that the K9 handler improperly cued the K9 to sit, rather than the K9 having alerted outside of the vehicle to the presence of any narcotic(s). Because the evidence in the record establishes there was no probable cause to search the vehicle in which Appellant was a passenger, the denial of the motion to suppress should be reversed.

C. K9 Tango's alleged alert to the vehicle in which Appellant was a passenger was not reliable.

The State offered no testimony or documentary evidence concerning the training records of K9 Tango. The State offered no testimony or documentary evidence of how K9 Tango was trained to indicate, or alert, to the presence of illegal narcotics. The State offered no testimony or documentary evidence concerning the veterinary records of K9 Tango. Consequently, the good health of K9 Tango was never established for the record. Appellant's expert, Andy Jimenez, stated that the health of a dog is vital as injuries to a dog's face and/or snout can negatively affect the dog's olfactory abilities. The State failed to offer any testimony or documentary evidence concerning the selection process for the K9 or his handler. Appellant's expert testified, as an expert in K9 handling and training for narcotics detection dogs, that the lack of records to document how a K9 handler was trained is the "first sign of a problem that the dog may be

unreliable." R. 166, 1. 25-p. 167, 1. 4. Appellant introduced evidence that Tango's handler reviewed his own training records. R. 168, 1. 1-p. 171, 1. 4. That evidence was uncontroverted by the State. The Trial Court then cut short Appellant's counsel's elicitation of expert testimony in what appeared to be a fundamental misapprehension of the basis for the entire second argument contained in Appellant's motion to suppress evidence. R. 171, 1. 5-p. 173, 1. 25. Critically, the Court prohibited Appellant's counsel from introducing evidence to properly build Appellant's appellate record. R. 172, 1. 13-p. 173, 1. 17. Appellant then introduced uncontroverted evidence which showed that Tango's handler reviewed his own training records for over a calendar year. R. 174, 1. 2-14. Appellant's expert testified that such a problem would cause Tango's training to be unreliable because of the lack of oversight over the dog's training. Id. The State did not contravene this point about the unreliability of K9 Tango. Appellant's expert testified about training documents showing the extremely short training cycle of K9 Tango. Appellant's expert further testified that, in his expert opinion, the abbreviated training cycle of K9 Tango would make it "very difficult to believe that [the] dog is reliable after such a short period of time". R. 174, 1. 18-p. 175, 1. 8. Appellant played a video of K9 Tango sniffing the car in which Appellant was a passenger. Appellant's expert testified that the K9 (Tango) did not alert outside of the vehicle to the presence of narcotics. R. 181, 1. 1-4. The State failed to contravene Appellant's expert and offered no documentation or testimony of any kind in opposition to Appellant's expert. The Appellant's expert then testified that K9 Tango was not actively sniffing the vehicle. He further testified that K9 Tango, a Malinois breed of dog, was barking while walking around the vehicle and that such barking is common with this breed of dog. R. 181, 1. 7-10. Appellant's expert then testified about the mechanics of a dog's sniffing versus barking, that dogs smell odor when they breath in and out, and that dogs cannot sniff when they bark. R. 181, 1. 7-21. The State failed to

contravene Appellant's expert and offered no documentation or testimony of any kind in opposition to Appellant's expert. Appellant's expert then testified that "at no point outside of this vehicle was the dog doing any of that [sniffing the exterior of the vehicle]. R. 181, 1. 20-21. The State failed to contravene Appellant's expert and offered no documentation or testimony of any kind in opposition to Appellant's expert. Appellant's expert testified about K9 Tango's activity outside of the vehicle and stated that "this is not the actions of a detection dog". R. 182, 1. 9-10. The State failed to contravene Appellant's expert and offered no documentation or testimony of any kind in opposition to Appellant's expert. Appellant's expert testified that: "the handler pulls back on the leash which causes the dog to sit. He wasn't actively sniffing." R. 182, 1. 15-17. The State failed to contravene Appellant's expert and offered no documentation or testimony of any kind in opposition to Appellant's expert. Appellant's expert then testified that K9 Tango did not alert outside of the vehicle to the presence of narcotics. R. 183, 1. 19-23. The State failed to contravene Appellant's expert and offered no documentation or testimony of any kind in opposition to Appellant's expert. Appellant's expert then testified that "the dog did not alert, he just sat based on what the handler **cued him to do**." R. 184, 1. 14-15. The State failed to contravene Appellant's expert and offered no documentation or testimony of any kind in opposition to Appellant's expert. Appellant's expert then testified that in his opinion, based upon a reasonable degree of certainty in his field of expertise in K9 handling and training for narcotics detection, that K9 Tango's handler failed to use the standard procedures used by K9 handlers to perform dog sniffs around vehicles. R. 185, 1. 10-19. The State failed to contravene Appellant's expert and offered no documentation or testimony of any kind in opposition to Appellant's expert.

Florida v. Harris provides that the circumstances surrounding a particular alert may undermine the case for probable cause if the handler cued the dog. Florida v. Harris, 568 U.S.

237, 247. In Harris, the K9 handler testified about both his and his dog's training in drug detection. Id. at 241. Here, there was no testimony whatsoever, by any K9 handler of the dog performing this particular search, about the K9's training. In fact, there was ample testimony provided by Appellant's expert about the deficiencies and inadequacies of K9 Tango's training. In Harris, there was no contesting of the quality of the K9 or the K9 handler's training. Here, Appellant placed on the witness stand one of the foremost experts in the world to contest training and the performance of both K9 Tango and K9 Tango's trainer. That expert testified at length about the inadequacies (or complete lack thereof) of K9 Tango's training records, veterinary records, selection criteria, his handler's selection criteria, and the training record of the handler. Further, Appellant's expert testified at length about the complete failure of the K9 to even sniff the vehicle in question. Appellant's expert testified that K9 Tango never alerted outside of the vehicle to the presence of narcotics. Appellant's expert testified that K9 Tango's handler cued him to sit, and that the sit was caused by the trainer pulling the dog's lead. Moreover, he testified that the K9 handler failed to use the standard procedures used by K9 handlers to do dog sniffs around vehicles. Contrary to what was presented in Harris, here the State utterly and completely failed to introduce a single piece of documentary or testimonial evidence to buttress the training of Tango, the training of his handler, and the procedures used by both dog and handler in the alleged sniff around the exterior of this vehicle in which Appellant was a passenger. Further, there was a complete failure by the State to introduce testimonial or documentary evidence of any records to establish Tango's reliability in detecting drugs. Unlike Harris, however, here the Appellant has challenged: the reliability of K9 Tango's training; of K9 Tango's health; of K9 Tango's selection criteria; of K9 Tango's handler's training and selection; of K9 Tango's procedures in the field on this particular search; and of the actual alleged alert of K9 Tango to the vehicle in which Appellant was a

passenger. Here, the Appellant through his expert has introduced overwhelming evidence of the unreliability of this K9, of the unreliability of this K9 team (dog and handler), of the unreliability of the training and health of the K9, of the unreliability of K9 Tango's procedures in performing this dog sniff, and of the unreliability of the alleged alert of K9 Tango in this precise case. There has been no testimony or documentation to refute any of the testimony of Appellant's witness as to the unreliability of K9 Tango. Furthermore, the State has completely failed to introduce any evidence from controlled settings that this dog (Tango) performs reliably in detecting drugs.

Because K9 Tango's records, training, and field procedures are unreliable, K9 Tango is unreliable. Furthermore, K9 Tango did not alert to the presence of narcotics outside the vehicle. Expert testimony established that K9 Tango was not actively sniffing the exterior of the vehicle and sat after being cued by his handler. Because K9 Tango is unreliable, any alleged alert by K9 Tango in this precise case is unreliable. Consequently, because of the unreliability of K9 Tango and his failure to alert, the denial of Appellant's motion to suppress evidence should be reversed.

D. Appellant's Motion to Suppress should be granted because the Trial Court committed error by failing to weigh the competing evidence.

If, in contrast, the defendant has challenged the State's case (by disputing the reliability of the dog overall or of a particular alert), then the court should weigh the competing evidence. Florida v. Harris, 568 U.S. 237 at 248. The question – similar to every inquiry into probable cause – is whether all the facts surrounding a dog's alert, viewed through the lens of common sense, would make a reasonably prudent person think that a search would reveal contraband or evidence of a crime. A sniff is up to snuff when it meets that test. Id. While this training is done before the drug dogs arrive at the SCHP . . . the court was presented with no records of how Rao was trained to indicate. Sweatman testified that an "alert" "is simply a behavior as perceived by the handler of that particular canine. An alert behavior could be different for each

individual ***dog***, but an alert for a ***dog*** is perceived by that handler." United States v. Diaz, 2018 U.S. Dist. LEXIS 58775, 41 (D.S.C. Apr. 6, 2018). But defendants did dispute Rao's ***reliability***, arguing "[t]here is no presentation . . . of an error rate through any of the training records about what exactly a passing grade is, what is above average, what is average. . . So it's our position that [the government] [has] not shown that this is a reliable ***dog***, based upon the training records. Id. at 53. Given that the government did not present any records of Rao's performance in a controlled environment, it follows that the court has no way of determining Rao's error rate in a controlled environment. Id. Therefore, even assuming that Rao did "alert"—which the court finds that he did not—the court finds that Rao was not sufficiently reliable such that his positive "alert" would constitute probable cause to search defendants' vehicle as set forth in *Harris*. Ultimately—and unfortunately—Rao's sniff is simply not "up to snuff." *Harris, 568 U.S. at 248.* Id. at 55.

Appellant filed a motion to suppress evidence based upon two sub-parts. Part one was that the police stop was unconstitutionally extended beyond the normal time required to issue a traffic citation; part two was that the police canine did not alert to the presence of narcotics outside of the vehicle such that probable cause was established to search the car – and that the police canine was unreliable.

The Trial Court's entire ruling on the record, concerning both parts of Appellant's motion to suppress, consisted of forty-five (45) words. The second part of the Court's ruling, concerning the question of whether the police canine alerted outside of the vehicle to the presence of narcotics, and as to whether the police canine was reliable, was even more brief - consisting of only eleven (11) words. The Court's entire ruling on the second part of Appellant's motion to suppress (alleged

dog alert and reliability of police canine) was the following: "I'm going to find that the sniff was up to snuff." R. 236, 1. 12-13.

The United States Supreme Court ruled in Harris that if a Defendant has challenged the State by disputing the reliability of a dog overall, and/or of a particular alert by that dog, then the Court should weigh the competing evidence. Florida v. Harris, 568 U.S. 237 at 248. The Court's scant eleven word ruling (which parrots a statement found in both Florida v. Harris and United States. v. Diaz) fails to meet the test set out by the United States Supreme Court in Harris. Id. Most concerning, however, is the appearance by the Court below of a complete lack of interest in the evidence offered by Appellant's expert, Andy Jimenez. Despite the fact that Appellant's expert came from California to testify, the Court attempted to curtail the exposition of Andy Jimenz. R. 172, 1. 10-12. Present in the courtroom was one of the world's foremost experts in K9 handling and training for narcotics detection. The Trial Court never asked Mr. Jimenez a single question concerning Jimenez's testimony about the dog and the handler's failures. The Court never asked a single follow-up question concerning any of Andy Jimenez's conclusions. At one point during Jimenez's testimony, the Court indicated that it no longer wanted to hear about canine training records and demanded that Appellant's counsel "get to the point". R. 172, 1. 3-p. 173, 1. 25. The inadequacies of the canine training records, and the unreliability of the subject K9, **was** the point of Appellant's presentation.

The State's singular evidentiary offering concerning the alert and the reliability of the police canine was the singular statement by Deputy Ledbetter that "I watched him sniff alert". This scant five words of testimony came from Deputy Ledbetter who, by his own admission, had no training whatsoever with regard to police dogs. Deputy Ledbetter was not a K9 handler, did not have a police dog, and had only worked alongside this interdiction team for three weeks – and

then only as an unofficial apprentice. Deputy Ledbetter was unable to describe the physical actions which constituted the alleged "sniff alert". Deputy Ledbetter only uttered the words "probable cause" one time – when he answered that he did NOT have probable cause to search the vehicle in which Appellant was a passenger.

As in Diaz, Deputy Ledbetter never testified concerning the topic of Tango's error or passing rate in the dog's training records. Deputy Ledbetter never testified concerning records of Tango's performance in a controlled environment. The State presented no records whatsoever of Tango's performance – at any point in time during Tango's tenure as a police working dog. The State presented no evidence whatsoever of Tango's training at any point in time during his tenure as a police working dog. Like in Diaz, the State failed to produce to the Court any record(s) which would show how Tango was trained to indicate. The State presented no records whatsoever, at any point in time of Tango's handler's selection, training, or performance. Simply put, the State presented no evidence whatsoever concerning Tango's reliability. Further, the only evidence offered by the State at all concerning Tango was the bald assertion that an untrained person watched this dog "sniff alert". In U.S. v. Diaz, it was posited that an alert for a particular dog is perceived by its handler. Diaz, 2018 U.S. Dist. LEXIS 58775 at 41. In this case, there was no testimony by Tango's handler as to what particular action(s) constituted an alert for Tango. A person who is not trained in handling police dogs, and who has never observed a particular dog during its training, is categorically unqualified to offer an opinion as to whether a particular dog alerted to the presence of narcotics outside of a vehicle. The Appellant's expert, Andy Jimenez, testified (as extensively detailed in this brief, above) at length about K9 Tango's failure to sniff the vehicle, about K9 Tango's non-alert to the presence of narcotics outside of the vehicle, about the failure of the K9 handler to use standard procedures, and about the K9 handler's cuing of K9

Tango to sit. Further, Jimenez testified to the deficiency in the training records (thirteen months' worth) that he reviewed for this police dog. None of Andy Jimenez's testimony was controverted by the State, nor was testimony or documentary evidence offered in opposition to Jimenez's conclusions. Andy Jimenez testified as to the complete lack of training records as to how K9 Tango was trained. Jimenez testified that this lack of training documentation could be a sign that this dog was unreliable. Jimenez testified that the lack of oversight over K9 Tango's training records meant that the dog's training was unreliable. None of this testimony by Jimenez was controverted by the State, nor was testimony or documentary evidence offered in opposition to Jimenez's conclusions.

The Appellant met his burden in challenging the reliability of the police dog, K9 Tango. The Appellant's expert conclusively proved that this dog was unreliable in that it never sniffed the exterior of the vehicle in which Appellant was a passenger. Appellant's expert conclusively proved that K9 Tango's handler failed to use standard police K9 procedures and that Tango's handler improperly cued K9 Tango to sit. The State failed to produce any evidence that K9 Tango was reliable. Because Appellant met his burden in challenging the police dog, the United States Supreme Court requires that the trial judge weight the competing evidence. The Court's conclusory statement that "the sniff was up to snuff" completely failed that task. The Court's cursory conclusion was not a weighing of the competing testimony. The trial court here was required to gather the evidence introduced by the State (Ledbetter's testimony), gather the evidence introduced by Andy Jimenez (Appellant's expert), and weight one against the other. As in Harris, the Trial Court was required to perform an evaluation of the proffered evidence to decide what all the circumstances demonstrate. Harris, 568 U.S. at 248. The undeniable brevity of the statement, "the sniff was up to snuff", conclusively demonstrated that a weighing calculus never

took place. Moreover, the Trial Court appeared to demonstrate that it was not interested in the testimony of Andy Jimenez and attempted to limit his exposition of facts. The record plainly demonstrates that the trial court failed to weigh the evidence offered by both sides during the suppression hearing. The record plainly demonstrates that the Trial Court never evaluated the proffered evidence to decide what all of the circumstances demonstrate. The Trial Court's failure to weigh the competing evidence offered on Tango's reliability during the suppression hearing was error. Further, the Trial Court's failure to evaluate the proffered evidence, to determine what the circumstances demonstrated, was error. The evidence offered by Appellant during the suppression hearing overwhelmingly showed that K9 Tango was not reliable, and that K9 Tango did not alert to the presence of narcotics. As such, the Trial Court's conclusion is without evidentiary support. Consequently, the ruling of the trial court should be reversed and Appellant's motion to suppress should be granted.

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS THE EVIDENCE BECAUSE REASONABLE SUSPICION DID NOT EXIST TO PROLONG THE TRAFFIC STOP OF THE VEHICLE IN WHICH APPELLANT WAS A PASSENGER.

Instead, we take this opportunity to refine our standard of review to better align with the federal standard, which has been adopted in nearly every state. Accordingly, appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court's factual findings for any evidentiary support, but the ultimate legal conclusion—in this case whether reasonable suspicion exists—is a question of law subject to de novo review. State v. Frasier, 879 S.E.2d 762, 766 (2022).

The *Fourth Amendment* prohibits unreasonable search and seizure, and requires that evidence seized in violation of the Amendment be excluded from trial. *State v. Khingratsaiphon, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002)* (citing *Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684,*

6 L. Ed. 2d 1081, 86 Ohio Law Abs. 513 (1961)). "Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement." State v. Brown, *401 S.C. 82, 89 (2012)* (citation omitted). These exceptions include the following: (1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile; (5) plain view; (6) consent; and (7) abandonment. *Id.* The prosecution bears the burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures. State v. Moore, *377 S.C. 299,309, 659 S.E.2d 256, 261 (Ct. App. 2008)*. State v. Gamble, 405 S.C. 409, 416 (2013).

In *Caballes*, however, we cautioned that a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a warning ticket. *543 U. S., at 407, 125 S. Ct. 834, 160 L. Ed. 2d 842*. And we repeated that admonition in *Johnson*: The seizure remains lawful only "so long as [unrelated] inquiries do not measurably extend the duration of the stop." Rodriguez v. United States, 575 U. S. 348, 354 (2015). But contrary to Justice Alito's suggestion, *post, at 372, n. 2, 191 L. Ed. 2d, at 510*, he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual. Id. at 355. Candidly, the Government acknowledged at oral argument that a dog sniff, unlike the routine measures just mentioned, is not an ordinary incident of a traffic stop. Id. at 355-356. As we said in *Caballes* and reiterate today, a traffic stop "prolonged beyond" that point is "unlawful." *Ibid.* The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket, as Justice Alito supposes, *post, at 370-372, 191 L. Ed. 2d, at 509*, but whether conducting the sniff "prolongs"—*i.e.*, adds time to—"the stop," *supra, at 355, 191 L. Ed. 2d, at 499*. Id. at 357.

In Rodriguez, the Court addressed the question of "whether the *Fourth Amendment* tolerates a ***dog*** sniff conducted after completion of a traffic stop," and held that "a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures." United States v. Diaz, 2018 U.S. Dist. LEXIS 58775, 16 (D.S.C. Apr. 6, 2018). For reasonable suspicion, an officer must be able to articulate more than an "'inchoate and unparticularized suspicion or hunch' of criminal activity." *Illinois v. Wardlow, 528 U.S. 119, 123-124, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000)* (quoting *Terry v. Ohio, 392 U.S. 1, 27, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968))*. The reasonable suspicion test is one of totality of the circumstances. *United States v. Perkins, 363 F.3d 317, 319 (4th Cir. 2004)*. Diaz, 2018 U.S. Distr. at 18. In considering whether the factors articulated by a police officer amount to reasonable suspicion, the court is to "separately address each of these factors before evaluating them together with the other circumstances of the traffic stop." *United States v. Powell, 666 F.3d 180, 187-88 (4th Cir. 2011)*. Diaz, 2018 U.S. Distr. at 21.

Although "[a]rticulating precisely what 'reasonable suspicion' . . . mean[s] is not possible," *Ornelas, 517 U.S. at 695*, "the precedents of the Supreme Court and this circuit suggest several principles that should animate any judicial evaluation of an investigatory detention pursuant to *Terry*." *United States v. Branch, 537 F.3d 328, 336 (4th Cir. 2008)*. To show the existence of reasonable suspicion, "a police officer must offer 'specific and articulable facts' that demonstrate at least 'a minimal level of objective justification' for the belief that criminal activity is afoot." *Id. at 337* (quoting *Illinois v. Wardlow, 528 U.S. 119, 123, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000))*. "Reasonable suspicion is a commonsense, nontechnical standard," *Palmer, 820 F.3d at 650* (internal quotation marks omitted), "that deal[s] with the factual and practical considerations of everyday life on which reasonable and prudent men, not

legal technicians, act," *Ornelas, 517 U.S. at 695* (internal quotation marks omitted). In reviewing police action, courts must look at whether the evidence as a whole establishes reasonable suspicion rather than whether each fact has been individually refuted, remaining mindful of "the practical experience of officers who observe on a daily basis what transpires on the street." U.S. v. Bowman, 884 F.3d 200, 213 (4th Cir. 2018). "To support a finding of reasonable suspicion, we require the detaining officer to . . . articulate why a particular behavior is suspicious . . . ." (internal quotation marks omitted)). Id. at 215. Finally, even if the totality of the circumstances here could have been viewed as vaguely suspicious, the government has failed to articulate why Bowman's "behavior is likely to be indicative of some more sinister activity than may appear at first glance." Id. at 218-219.

Under the applicable standard, the facts, "in their totality," should "eliminate a substantial portion of innocent travelers." *Id. at 413*. Furthermore, an officer must "either articulate why a particular behavior is suspicious or logically demonstrate, given the surrounding circumstances, that the behavior is likely to be indicative of some more sinister activity than may appear at first glance." See *Foster, 634 F.3d at 248*. United States v. Williams, 808 F.3d 238, 251 (4th Cir. 2015).

Second, Gates' prior arrest history cannot be a logical basis for a reasonable, particularized suspicion as to Black. Without more, Gates' prior arrest history in itself is insufficient to support reasonable suspicion as to Gates, much less Black. *See Powell, 666 F.3d at 188* " [A] prior criminal record is not, standing alone, sufficient to create reasonable suspicion." (citation omitted)). Moreover, we "ha[ve] repeatedly emphasized that to be reasonable under the *Fourth Amendment*, a search ordinarily must be based on *individualized*

suspicion of wrongdoing." *DesRoches v. Caprio, 156 F.3d 571, 574 (4th Cir. 1998).* United States v. Black, 707 F.3d 531, 540 (4th Cir. 2013).

Frasier contended once Hall wrote the warning ticket, the legal justification for the stop ended, and nothing the officer relied on established reasonable suspicion to prolong the encounter. Frasier, 879 S.E.2d. at765. Frasier contends Hall did not have reasonable suspicion to prolong the traffic stop beyond the purpose of issuing the warning for an inoperable third brake light. He asserts law enforcement had, at best, an "unparticularized suspicion or hunch, not reasonable suspicion to justify the prolonged detention." Conversely, the State argues evidence supports the trial court's determination that Hall had reasonable suspicion of potential criminal activity, and therefore, the extension of the initial traffic stop was constitutionally permissible. Applying the facts as found by the trial court, we disagree these findings rise to the level of reasonable suspicion. Id. at 767. In order to prolong or exceed the scope of a stop beyond the initial traffic violation, law enforcement must have reasonable suspicion that criminal activity may be afoot. *Robinson, 407 S.C. at 182, 754 S.E.2d at 868-69.* Id. Although reasonable suspicion is not susceptible to a rigid, formulaic approach, it requires more than a mere hunch or unparticularized suspicion. *Id. at 182, 754 S.E.2d at 868.* In other words, for an officer to have reasonable suspicion, "there [must] be an objective, specific basis for suspecting the person stopped of criminal activity." Id. While reasonable suspicion is not a high bar and "is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop." *Illinois v. Wardlow, 528 U.S. 119, 123, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000).* Id. Accordingly, in order for Hall to prolong the traffic encounter, there had to be more indications of criminal activity once Hall initiated the traffic

stop. Although the State contends the following additional facts establish reasonable suspicion—repeating questions, noticing Jones's unzipped zipper, sweating, and being nervous—we disagree. Hall did not see any items that would demonstrate potential criminal activity—such as cash on hand, hollowed out blunt cigars, or the smell of marijuana—before deciding to extend the stop. Id. at 786. It is equally apparent that this was a drug stop masquerading as a traffic encounter. Indeed, the goal of the stop was to "try to obtain consent," as Hall can be heard telling dispatch on the dashcam video. While we do not suggest that pretexual stops are illegal, in order to prolong the stop, there must be an *objective* basis for concluding that criminal activity may be afoot. Simply put, "[i]n law, the ends do not justify the means." Id.

A. The Trial Court impermissibly shifted the burden of proof onto the Defendant Appellant for the warrantless seizure of all car occupants.

Initially, Judge Miller readily acknowledged the issue of a "warrantless search" based upon the suppression motion filed by Attorney Castro. R. 48, l. 14-p. 49, l. 8. Judge Miller also readily acknowledges that the suppression motion and the warrantless search "shifts the burden" [to the prosecution]. R. 48, l. 17. The prosecution bears the burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures. State v. Moore, 377 S.C. 299, 309 (Ct. App. 2008). Shortly thereafter, Deputy Nicholas Ledbetter, during direct questioning by the prosecution, simply lists out three cursory and subjective reasons why he concluded that he had reasonable suspicion to ask for consent to search. R. 59, l. 4-p. 60, l. 19. For reasonable suspicion, an officer must be able to articulate more than an "'inchoate and unparticularized suspicion or hunch' of criminal activity." *Illinois v. Wardlow, 528 U.S. 119, 123-124, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000)* (quoting *Terry v. Ohio, 392 U.S. 1, 27, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968))*. Diaz. During his testimony, Ledbetter never explains in objective terms his specific basis for believing that McMurray or any

other vehicle occupant is or was engaged in criminal activity. Further, as in U.S. v. Black, prior arrest history is in itself insufficient to support reasonable suspicion. During his entire direct testimony, Ledbetter never articulated any objective justification for a belief that criminal activity was readily ongoing, nor did he offer any specific and articulable facts that would have allowed him to conclude that criminal activity was ongoing. He mentioned that the car occupants drove to Atlanta overnight and were returning a short time later. R. 59, l. 4. Ledbetter mentions aggressive driving, a quick turnaround, and the nonextraditable warrant for McMurray. R. 60, l. 6. However, those are the only reasons elicited from Ledbetter to support his claim for reasonable suspicion. Ledbetter's direct exam is followed by a cross examination by Attorney Castro. During Attorney Castro's cross examination, the Court attempts to cut the cross examination short. R. 101, l. 19. The Trial Court, without any contemplation about Ledbetter's testimony, without any weighing of the evidence presented so far, and without any calculus as to a totality of the circumstances, improperly shifts the burden to the Appellant to disprove reasonable suspicion. R. 101, l. 20-22. The Court demonstrates, prematurely and without the proper calculus, its conclusion that reasonable suspicion exists and demands that Appellant disprove this conclusion. As in State v. Moore, the prosecution bears the burden to establish the circumstances giving rise to their continuation of the traffic stop. But, at this point, the Trial Court appears to have already made a conclusion, without the proper weighing calculus, and demands that Appellant disprove the State. This burden shifting is error. The Court, however, continues. The Court, appearing frustrated that Appellant is attempting to prove his case for suppression, cuts Appellant's counsel short and demands that "you need to show me that there was a not a reasonable articulable suspicion for them to conduct this search". R. 120, l. 5-7. Further, the Court conflated the two issues. The issue in the suppression motion, as to this point, was that the police did not have reasonable

suspicion to prolong the traffic stop. Such unjust prolonging of the stop was a violation of Appellant's Fourth Amendment rights. R. at 49, 1. 4-5. Despite this conflation of the specific issues being contested, the Court again impermissibly shifts the burden onto Appellant to disprove reasonable suspicion. To this point in the preceding, the Court has not yet heard the balance of Appellant's cross examination of Ledbetter. At this point in the suppression hearing, Judge Miller has yet to conduct the required weighing of the evidence to arrive at a totality of the circumstances calculation. Unfortunately, the Court then effectively ends any further consideration of Appellant's arguments and evidence by the statement that "all this is irrelevant". R. 120, 1. 7. Further on in Appellant's cross examination of Ledbetter, Appellant's counsel attempts to introduce pictures into evidence. R. 136, 1. 24-25. The Court, without viewing the pictures or allowing a proffer, prevents potentially relevant evidence from being introduced. R 138, 1. 9-10. The Court, for a third time, errantly demands that Appellant disprove "reasonable suspicion", rather than have it proved by the prosecution. R 138, 1. 14-19. Further, the Court impermissibly shifts the burden without performing the required calculation of the totality of the circumstances. Judge Miller's shifting of the burden, from the prosecution onto the Appellant, is error. Because the Court impermissibly shifted the burden of demonstrating the existence of reasonable suspicion onto Appellant, the Trial Court committed error. Because the Trial Court committed error, the denial of Appellant's motion to suppress should be reversed.

B. The Prosecution failed to demonstrate that reasonable suspicion existed such that the traffic stop could be prolonged.

Deputy Ledbetter was the only person to testify for the prosecution concerning whether reasonable suspicion existed such that the traffic stop of McMurray, and by extension, the passengers in McMurray's automobile could be prolonged. As in Williams, in order to extend the detention of a motorist beyond the time necessary to accomplish a traffic stop's purpose, the

authorities must either possess reasonable suspicion or receive the driver's consent. Williams, 808 F.3d at 246. Further, Ledbetter had to articulate something other than a suspicion or an inchoate hunch. He did not. Ledbetter first stated that the fact of McMurray's trip to Atlanta and back, in a short period of time, " kind of threw a red flag in my head". R. 59, 1. 4-6. The words "kind of" indicate subjectivity and/or a hunch. There is not a single bit of objectivity in the words "kind of". Further, Ledbetter fails to articulate why a quick trip indicates potential criminality. Deputy Ledbetter then describes that dispatch revealed a warrant out of Georgia for McMurray for marijuana. R. 59, 1. 16. Ledbetter, conveniently, fails to reveal that the warrant is nonextraditable. The State, also, purposely overlooks this fact. Ledbetter then states that the "aggressive driving", the quick trip to and from Atlanta, and the nonextraditable warrant gave him "reasonable suspicion". R. 60, 1. 5-9. What Ledbetter is required to do is to articulate objective reasons why these factors would point to criminal activity. He fails to articulate any such reasoning and only describes that he now has "reasonable suspicion". Further, Williams provides that the "facts" articulated by police officers must in their totality serve to eliminate a substantial portion of innocent travelers. Williams, 808 F.3d at 246. Moreover, a person following a car too closely is more akin to a driver failing to pay attention that an "aggressive driver". Aggressive drivers often speed and quickly change lanes – rather than motor too close to the car in front of them. However, Ledbetter failed to state any objective reasoning concerning why the act of allegedly following too closely indicated criminal activity. And, he failed to articulate any objective reasoning why the three factors he cited indicated that a criminal act was currently taking place. If nothing else, the fact that McMurray had a nonextraditable warrant out of Georgia would have indicated that some alleged criminal act had taken place at a point in time other than the particular date and time of

this traffic infraction. Ledbetter's bald assertion, with nothing more, was that these three factors gave him "reasonable suspicion" [to prolong the stop].

Ledbetter also mentioned "criminal activity" several times during his testimony. He stated that "aggressive driving", a "quick turnaround", and the nonextraditable warrant from the State of Georgia for McMurray – caused him to believe there was criminal activity. R. 60, 1. 6-8. His innate belief, of course, is subjective. Ledbetter again stated his "belief" of criminal activity based upon unnamed "circumstances" and "indicators". R. 69, 1. 15-18. Ledbetter's "belief", without an articulation in objective terms for the reasons which would tie unarticulated "circumstances" and "indicators" into currently ongoing criminal activity – was simply a hunch. During Ledbetter's entire direct testimony, he utterly failed to articulate any objective reasoning whatsoever as to why any of the three cited factors indicated that criminal activity was taking place – other than the reasons for the traffic stop itself (the following too closely). Ledbetter's description of the driving activity gave rise to the warning citation for what he termed "aggressive driving". R. 55, 1. 5-13. However, this alleged bad driving cannot also be the basis for some other nebulous criminal activity - without an articulation of the objective reasons to support it. Ledbetter failed to offer any. Similar to Frazier, Deputy Ledbetter did not testify about seeing any items in the vehicle, or on the persons detained, that would demonstrate potential criminal activity such as cash, hollowed out blunt cigars, or the smell of marijuana – before he decided to extend the stop. Frazier, 879 S.E.2d at 786.

Deputy Ledbetter admitted on cross examination that neither of the two incidents reports which he wrote about the traffic stop contained the words "suspicion", "suspicious", or "reasonable suspicion". R. 12, 1. 21-p. 128, 1 .5. Ledbetter again admitted during cross examination that neither of his two incident reports ever mentioned the words "criminal", "criminal activity",

"indicators of criminal activity", or "engaging in criminal activity". R. 128, 1. 6-15. Next, Ledbetter incoherently states that although the words "reasonable suspicion" never appeared anywhere in either of his incident reports, "reasonable suspicion is in the report". R. 131, 1. 5-22.

Rodriguez provides that a traffic stop prolonged beyond the point needed to reasonably complete the mission of the stop is unlawful. Rodriguez, 575 U. S. at 357. In this case, the reason for the traffic stop was for allegedly following too closely. Ledbetter testified during his direct testimony that he pulled over McMurray at 9:12 AM. R. 56, 1. 10. Ledbetter testified, reluctantly, during cross examination that he finished with running McMurray's license and registration and had finished with all of the business necessary to issue the warning citation. R. 102, 1. 20-p. 105, 1. 9. Ledbetter also reluctantly testified during cross examination that the time that he wrote on the warning citation was 9:22 AM. R. 109, 1. 4-5. Ledbetter further testified that he was "done" talking to McMurray about the traffic infraction at 9:22 AM. R. 119, 1. 6-8. Ledbetter then attempted to explain away the fact that although the warning citation was issued at 9:22 AM, he did not actually "issue" it then. R. 109, 1. 6-p. 112, 1. 10. Ledbetter then testified that although all of the business of the stop had been completed, McMurray (and by extension all other vehicle passengers) was not free to leave. R. 112, 1. 10. Ledbetter earlier testified on direct examination that during the stop "at not [sic] time did I pause or waste any kind of time". R. 62, 1. 2-3. However, during cross examination, Ledbetter reluctantly agreed that after running the license and registration, and getting the information about the nonextraditable warrant, he delayed handing the warning citation to McMurray and then asked McMurray thirteen (13) additional questions – all unrelated to the warning citation for following too closely. R. 105, 1. 14-p. 106, 1. 15. Ledbetter reluctantly agreed to the fact that he asked passenger Appellant twenty (20) questions all unrelated to McMurray's alleged actions of following too closely. R. 113, 1. 15-20. As such, Ledbetter's

testimony about "not pausing or wasting time" was dishonest. Ledbetter testified on cross examination that at 9:28:45 he continued to ask questions - and continued to do so until 9:32:16. R. 118, l. 14-p. 119, l. 12. In total, Ledbetter's additional questioning, beyond the time needed to write the citation, lasted at least six additional minutes (9:28:45) and possibly ten additional minutes (9:32:16). Like Rodriguez, this additional questioning added six to ten minutes past the time needed to complete the warning citation. Deputy Ledbetter's entire reason for stopping this car was to "find something". Earlier in the day, Ledbetter confided to a member of the interdiction team that "he was going to find something today". R. 90, l. 12-16. On cross examination, he did not deny that he told another member of the team [about the car in which Appellant was a passenger] that "that looks like a good one right there" [to stop in order to find something]. R. 90, l. 12-23. Deputy Ledbetter testified on cross examination that he was seeking to become a member of the interdiction team. R. 96, l. 5-12. Finding drugs could certainly have earned him a spot on this interdiction team. On cross examination, Ledbetter did not deny that he stated on camera to his colleague: "it's a good end to the week, especially seeing how many cars we've been stopping trying to find stuff". R. 96, l. 13-17. Just as in Frazier, this was a drug stop masquerading as a traffic encounter. Frasier, 879 S.E.2d at 768. Just as in Frazier, the goal of this stop was to try to obtain consent to search. Id. Deputy Ledbetter testified on cross examination that it was his goal to obtain consent to search, and that if he did not obtain consent, he was going to run the dog around the car no matter what. R. 99, l. 25-p. 100, l. 1-5. Ledbetter testified that Deputy Wasserman arrived as backup after Ledbetter was finished talking with only the vehicle driver,. R. 60, l. 8-11. Deputy Ledbetter then testified that despite Wasserman not knowing a single fact about the car occupants or the circumstances of the stop, the first words spoken by Deputy Wasserman were: "are you going to search it?". R. 99, l. 12-17. Frazier provides that while

pretextual stops are not illegal – there has to be an objective basis for concluding that criminal activity is afoot. Frazier, 879 S.E.2d at 768. Here, in the case as bar, there was no objective basis ever provided by Deputy Ledbetter.

Because Ledbetter was unable to cite objective, articulable reasons as to why any alleged activity of the car occupants enabled his belief that criminal activity was afoot, his continued detention of the car occupants was unlawful. Similar to Bowman, even if the totality of the circumstances could have been viewed as vaguely suspicious - the State (Ledbetter) failed to articulate why any behavior he observed was likely indicative of some more sinister activity that would appear at first glance. Like Rodriguez, this additional six to ten minute prolongation of the traffic stop, without objective articulable facts amounted to an unlawful detention. Furthermore, for the reasons expounded upon above, the Prosecution was unable to meet their burden of proving reasonable suspicion sufficient to allow for any further roadside detention. Because the prosecution was unable to meet their burden of proving reasonable suspicion, and because the stop was unlawfully prolonged for at least six additional minutes – and up to ten additional minutes – all Defendants were subjected to an unlawful detention in violation of their Fourth Amendment rights. Consequently, Appellant's motion for suppression should have been granted based upon the deprivation of their Fourth Amendment rights under the United States Constitution. The Trial Court's denial of that motion to suppress should reversed.

C. The Trial Court committed error when it failed to calculate the totality of the circumstances regarding whether reasonable suspicion was established.

The Court never performed any type of analysis, or a weighing of the evidence presented by both sides during the suppression hearing. The Diaz Court required that in considering whether the factors articulated by a police officer amount to reasonable suspicion, the court is to separately address each of these factors before evaluating them together with the other

circumstances of the traffic stop. Diaz, 2018 U.S. Distr. at 21. In fact, the Trial Court's negative disposition toward Appellant cut short any type of measured analysis of whether reasonable suspicion existed such that the traffic stop could be prolonged. Appellant's counsel attempted to enter a Court's exhibit showing that Deputy Ledbetter had already donned his search gloves before the dog had even finished circling the car during the sniff process. R. 139, 1. 7-p. 142, 1. 9. Attorney Castro attempted to play a video and to then to introduce still pictures of Ledbetter's actions. Judge Miller refused to allow the pictures or the video to be shown and played. R. 139, 1. 18-25. The Court stated that (about the pictures): "I'm not looking at it because this is not relevant to the question before the Court on whether or not to suppress the evidence." R. 140, 1. 13-16. At that particular point, and even though the hearing was in full swing, the Court appeared to have ceased contemplating any further showing by the Appellant and appeared to have prematurely formed an opinion. Unlike Diaz, here the Trial Court failed to separately address each factor cited by Ledbetter – before evaluating them together with other circumstances of the traffic stop.

The Trial Court errantly shifted upon the Appellant the burden of disproving a prematurely formed opinion. The Court in Harris provided that: in evaluating whether the State has met this practical and common-sensical standard, we have consistently looked to the totality of the circumstances. Florida v. Harris, 568 U.S. at 244. The Court's entire ruling, concerning whether the stop was unlawfully prolonged, was that: "Well, viewing the totality of the circumstances and the evidence presented here, I'm going to find that the stop was not unconstitutionally extended". R. 236, 1. 8-11. The Trial Court did not perform a weighing, an analysis, or any type of calculation to support this plain statement. The motion to suppress hearing lasted the larger portion of an entire day. The Trial Court's entire ruling consisted of

forty-five (45) words. The Trial Court's complete failure to earnestly weigh all of the factors, data, and evidence from both sides amounted to a prejudicial error against the Appellant. Moreover, the Court improperly arrived at this errant conclusion well before it performed any type of analysis or calculation. The record demonstrates that there was never a separate evaluation of any factors cited by Deputy Ledbetter before an overall evaluation was done of the traffic stop.

Deputy Ledbetter made multiple conclusory statements that he had reasonable suspicion to extend the stop – yet he presented no evidentiary foundation for any of his conclusions. R. 60, 1. 9-17. R. 100, 1. 4. Without the mention of any specific, articulable, and objective reasons as to why any particular set of circumstances allowed Ledbetter to arrive at reasonable suspicion, the Trial court had already arrived at its conclusion. R. 101, 1. 20-21. While the Trial Court had yet to perform a calculation or weighing of the evidence presented, it demanded that Appellant disprove Ledbetter's (obviously) self-serving conclusion. The Trial Court made this demand, for Appellant to disprove the State, despite the fact that Appellant's counsel would continue his motion presentation throughout forty-one (41) additional pages of the Record.

Throughout Appellant's presentation during the motion hearing, the Trial Court appeared to be negatively disposed to Appellant's entire presentation. Further, the Trial Court appeared to have arrived at a conclusion well prior to performing a totality of the circumstances analysis. Other factors appear to support the conclusion that a premature decision was reached. Appellant's Motion to Suppress consisted of two parts: (1) an unlawful prolongation of the traffic stop beyond the time needed to write the warning citation; and (2) a probable cause violation based upon a false and unreliable K9 alert. The Trial Court gave the indication that it had ceased listening to Appellant's expert witness. R. 171, 1. 5-p. 173, 1. 24. Despite the fact

that Appellant's expert came from California to testify, the Court attempted to curtail the exposition of Appellant's expert. R. 172, 1. 10-12. The Trial Court's disposition during the entire motion hearing seemed to demonstrate that the Court had arrived at its conclusion well before its constitution requirement of performing the totality-of-the-circumstances calculation. The Court's scant forty-five (45) word "analysis" – which failed to demonstrate any weighing or calculating - pursuant to a totality of the circumstances analysis – was error. The Court's failure to properly analyze the evidence presented is amply demonstrated by the failure of the conclusion to mention even one single factor presented during the hearing. In fact, the Court's decision failed to even mention the words "reasonable" and "suspicion". Moreover, this cursory "conclusion" failed to demonstrate any logical progression for how a particular factor, or set of factors, demonstrated reasonable suspicion (despite the absence of those words in the "conclusion") based on the totality of the circumstances. Because the Trial Court failed to properly assess all factors presented by both sides during the motion hearing – and failed to perform a totality of the circumstances weighing calculation, the Trial Court committed error. Because the Trial Court committed error in failing to properly calculate reasonable suspicion, the denial of Appellant's motion to suppress evidence should be reversed.

III. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN ADMITTING DRUG EVIDENCE WITHOUT THE PROPER FOUNDATION.

Where the analyzed substance has passed through several hands, the evidence must not leave it to conjecture as to who had it and what was done with it between the taking and the analysis. While the proof of chain of custody need not negate all possibility of tampering, it must establish a complete chain of evidence as far as practicable. *State v. Williams. 297* S.C. *290. 293. 376 S.E.2d 773. 774 (1989) ; Johnson. 318* S.C. *at 196. 456 S.E.2d at 443.* State v. Taylor, 360 S.C. 18, 22-23 (2004).

"[T]his Court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a complete ***chain*** of custody as far as practicable." *State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011)* (quoting *State v. Sweet, 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007))*. State v. Pulley, 423 S.C. 371, 377 (2018). Where multiple people have handled the analyzed substance, "the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture." *Sweet, 374 S.C. at 6, 647 S.E.2d at 205*. Id. "Where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates the manner of handling of the evidence, our courts have been willing to fill gaps in the ***chain*** of custody due to an absent witness." *Id. at 7, 647 S.E.2d at 206*. Id. Consequently, as the trial court noted and the State stipulated, there was no testimony or forms indicating how the cocaine was transported from Brewer's car back to Craven. Thus, at the time of the trial court's ruling, it was error to assume that Brewer transferred the cocaine to Craven and the State had established a sufficient ***chain*** of custody as far as practicable. *Sweet, 374 S.C. at 6, 647 S.E.2d at 205* (stating "who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture"). Id. at 378.

Although our courts have been willing to fill in gaps in the chain of custody where other evidence reasonably demonstrates the identity of each individual in the chain of custody and the manner of handling of the evidence, such circumstances are not present here. Accordingly, we hold that the trial court erred in admitting evidence of drugs allegedly purchased from Appellant by the informant. State v. Sweet, 374 S.C. 1, 9 (2007).

A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law or a factual conclusion without evidentiary support. State v. Rice, 375 S.C. 302, 315, 652 S.E.2d 409, 415 (Ct. App. 2007).

A. The Trial Court committed error by admitting evidence that lacked the proper foundation.

Deputy Christopher Hines testified on direct examination regarding searching the vehicle in which Appellant was a passenger and discovering multiple items. R. 457, l. 1-6. He further testified regarding the sheer volume of items contained in the trunk. R. 439, l. 3-5. Deputy Hines stated that "there was so much stuff several of us were actually looking through everything during the search". R. 457, l. 5-6. Hines testified that there was a lot of stuff in the trunk and that he was going to help Deputy Ledbetter and Deputy Wasserman go through the contents. R. 459, l. 3-5. Deputy Hines testified on direct examination that his team does not seal confiscated items on the roadside. R. 461, l. 6-8. He testified that they only seal it once it gets to the laboratory. R. 461, l. 16. Deputy Hines also testified on cross examination that they do not seal confiscated items on the roadside. R. 468, l. 9. Deputy Hines testified that several items had been discovered prior to his arrival on scene. R. 504, II. 20-25. Deputy Hines testified, reluctantly, that he was not with Deputy Jumper when Jumper left the scene of the traffic stop. R. 522, II. 1-p. 523, II. 3. Deputy Hines testified that he was unable to observe a grocery sack during a period of time. Id. Deputy Hines then testified that after he left the scene of the roadside the traffic stop, a period of time had elapsed before he again saw Deputy Jumper at the Law Enforcement Center (where the laboratory is located). R. 521, II. 23-p. 522, II. 23. Hines testified that when he again saw Deputy Jumper at the Law Enforcement Center, after they both had left the roadside traffic stop, that Deputy Jumper was carrying a grocery sack. R. 520, II. 9-10. Deputy Hines testified that the grocery sack was unsealed, and that the grocery sack contained several loose items which also were unsealed. R.

520, II. 9-16. Deputy Hines testified on redirect to the following: "Q: But Master Deputy Jumper has all the items from the roadside? A: That's correct." R. 499, 1. 24-p. 500, 1. 1. Chemist James Armstrong testified that he saw Deputy Jumper "pull something out and place it down on the cart". R. 531, II. 15-16. Armstrong testified that he tested samples for Deputy Jumper but that the bags from which he pulled the substances were not sealed. R. 531, II. 15-p. 532, II. 25. Kara Bennick, the manager of the Greenville County Property and Evidence section testified that she had no knowledge of the prior whereabouts of any of the items Deputy Jumper submitted into evidence. R. 496, 1. 18-p. 497, 1. 16 Bennick testified that she had no knowledge about where these items originated. Id. She testified that she had no knowledge about the conditions under which these items originated. Id. She testified that she had no idea about what conditions these items were in at the time they were confiscated. Id.

Deputy Jumper did not testify during the trial of this matter. Deputy Hines, on direct examination, only responded "that's correct" when the State posed that: "Deputy Jumper had all the items taken from the roadside?". R. 499, 1. 24-p. 500, 1. 1. There was no documentary evidence produced at trial which showed that Deputy Jumper was the person with singular control over all of the items confiscated from the roadside traffic stop of the car in which Appellant was a passenger. Deputy Hines testified that he was not with Deputy Jumper when Jumper left the scene. Hines did not testify that he visually verified that Deputy Jumper had marshalled all confiscated items and they were in Jumper's possession. The only person who could attest to that fact, Deputy Jumper, did not testify. Hines statement, therefore, is simply conjecture.

It is undisputed that Deputy Jumper submitted some items, allegedly from the roadside traffic stop of appellant, into Property and Evidence. It is undisputed that Property and Evidence Manager Bennick received items to log into evidence from Deputy Jumper. It is also undisputed

that no item, allegedly confiscated on the scene of the traffic stop of Appellant, was sealed. It is undisputed that Deputy Christopher Hines first mentions a "grocery sack" when he testified that he observed Deputy Jumper have one in his hand at the law enforcement center. There is no other testimony anywhere in the record about a "grocery sack" being present at the scene of the traffic stop. There is no other testimony, anywhere in the record, that items taken from the stopped vehicle were placed in a grocery sack. There is no other testimony, anywhere in the record, that items taken from the stopped vehicle were consolidated into a grocery sack. There is no other testimony anywhere in the record, that Deputy Jumper controlled all confiscated items seized from the stopped vehicle in this "grocery sack". The only other mention of the words "grocery sack" are when Hines testified that he did not have "eyes on the grocery sack". More importantly, however, is the testimony that this grocery sack was not sealed. Further, the undisputed testimony revealed that the items contained within the grocery sack were not sealed.

There was undisputed testimony about the large quantity of items located in the trunk of the vehicle detained during the traffic stop, and that several people were going through the trunk, and the items. There was testimony that at least four deputies were involved with pulling items out of the vehicle (Deputy Hines, Deputy Ledbetter, Deputy Wasserman, Deputy Jumper). Deputy Hines testified that some items had been pulled from the vehicle prior to his arrival on scene.

There was no testimony from any person in the trial about an inventory being completed at the scene of the roadside traffic stop. The roadside scene of the traffic stop was complete chaos, with at least four different deputies pulling items from several different places in the vehicle. In the trial there was no testimony about a list being compiled of the various items seized from the stopped vehicle. During the trial there was no testimony or documentary evidence about any one person being responsible for maintaining a controlled listing of all items confiscated at the scene

of the roadside traffic stop. During the trial there was never any testimony or other documentary evidence which showed a singular, detailed list of items confiscated at roadside In the trial there was never any testimony or documentary evidence which showed a comparison of the items seized at the roadside and the items submitted to Property and Evidence. No person was able to testify that any particular item seized at the roadside was the exact same item that was submitted into property and evidence. In fact, at trial there was no testimony or documentary evidence which showed that "we collected A, B, C & D from the roadside", and that "this same A, B, C, & D" are the exact items which I submitted into Property and Evidence."

What is known is that multiple people handled the substances alleged to have been drugs seized from the car at the roadside. Pulley requires that where multiple people have handled fungible substances, "the identity of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture" Pulley, 423 S.C. at 377. Like in Pulley, here there was no testimony whatsoever about how anything allegedly seized at roadside was transported to Property and Evidence. At some point, back at the Law Enforcement Center, we see Deputy Jumper with an unsealed grocery sack. Jumper's unsealed grocery sack contained other smaller containers which too were unsealed. At trial, there was never any testimony or other evidence produced - about what items went into a grocery sack as it sat on the roadside at the scene of the traffic stop. In fact, there was no testimony at all about a grocery sack even being on the roadside. Grocery sacks too are fungible items. The particular grocery sack in question is not uniquely identifiable. There is no way to uniquely identify a particular grocery sack. Just because Deputy Jumper showed up at Property and Evidence with a grocery sack does not mean that the grocery sack on camera in Property and Evidence was the same grocery sack that may have been at the roadside.

Furthermore, no person has any way of knowing how many unsealed grocery sacks where already in the cab of Deputy Jumper's vehicle. The court was presented with nothing that would show that the grocery sack in Deputy Jumper's hand at Property and Evidence was the same grocery sack from the scene of the roadside detention of Appellant. Furthermore, the Court was presented with nothing which would show that the items in the grocery sack in Jumper's hand at Property and Evidence came from the roadside traffic stop of Appellant. There was no testimony or documentary evidence about a controlled list which documented every item seized at roadside. There was no testimony about a comparison, performed by any person, which demonstrated that each item submitted into Property and Evidence was the exact same item seized at the roadside.

Christopher Hines is unable to fill in the gap about what exact items were confiscated at roadside – and whether or not any items confiscated at roadside was submitted into Property and Evidence. As in Pulley, any linking that the Trial Court attempted to perform, between the seizure at roadside and the submission to Property and Evidence - is simply conjecture. Kara Bennick's testimony is equally unavailing. She was not present at the roadside traffic stop and is therefore not qualified to comment on anything that transpired before the exact moment that she was handed alleged evidence. Bennick's linking of any items handed to her, at Property and Evidence, is simply conjecture.

The Court was presented with chain of custody forms with no testimony from the person who completed the forms. The only testimony about chain of custody documents was given by people who handled the paperwork at the lab. The lab personnel handling the paperwork were not present when the forms were created and therefore possessed no independent knowledge about the paperwork itself, or about the circumstances leading up to the creation of the paperwork.

All of these deputies involved in this stop worked on a daily basis in roadside interdiction activities. These deputies all come into contact on a daily basis with illegal narcotics. As such, they have ready access to narcotics. State v. Sweet stands for the proposition that courts have filled in gaps in the chain of custody when there is other evidence to demonstrate an appropriate manner of handling the evidence. Sweet, 374 S.C. at 9. There was no other evidence presented at the trial of this matter which could have competently bridged the gigantic gap between what was taken at roadside – and what was submitted into Property and Evidence.

The property and evidence reports for the alleged seized substances were compiled by Deputy Jumper at the Law Enforcement Center after the alleged seized substances had been removed from the roadside by Deputy Jumper. No person other than Deputy Jumper compiled these reports. No person other than Deputy Jumper transported the alleged seized substances from the roadside to the laboratory at the Law Enforcement Center. Deputy Jumper did not testify at the trial. None of the containers that was seized at the roadside was immediately sealed. All of the containers seized at the roadside and taken to the laboratory were in fact not sealed.

For all the trial court knew, Deputy Jumper could have dumped every seized substance taken from the roadside into grocery sack "A". Deputy Jumper could then have taken a prearranged set of unsealed bags from his vehicle and placed them into grocery sack "B". Grocery sack "B" could well have been the bag seen by Deputy Hines at the Law Enforcement Center. Grocery sack "A" could then have been dumped into a lake, a river, or a dumpster. There was no testimony that all items seized at the roadside were marshalled into a grocery sack, and that exact grocery sack was the one seen at the Law Enforcement Center. There was never even a mention of a grocery sack until Deputy Hines testified that he saw it at the Law Enforcement Center in Deputy Jumper's hand. The entire movement of these fungible items, seized at roadside, has never

been definitively documented. There was never any testimony about a singular person being in control of the entire collection of seized items taken at roadside. There was never any testimony about a singular person compiling a written list of the entire collection of seized items taken at roadside. There was never any testimony that the person who controlled the seized items, and the person who compiled the list, then transported those exact items to the lab – and then transported those items into Property and Evidence. There is no way to bridge that divide.

Our courts have stated that proof of the chain of custody must be established as far as practicable. However, our courts have also provided that what was done with the evidence between its taking and its analysis must not be left to conjecture. Moreover, our Courts have never stood for the proposition that: "well, it's close enough?". Here, the State has shown nothing but conjecture. There simply has been no showing that the exact items confiscated on the roadside where the exact items submitted into property and evidence. The only person who could provide that testimony was not present at the trial.

There was no testimony from the only person singularly responsible for collecting the seized items, transporting the seized items, moving the seized items to the laboratory for a pre-test, moving the seized items back from the laboratory pre-test to the workbench, individually separating the seized items, individually weighing and marking the seized items, and then transporting the seized items to the Property and Evidence custodian. The Property and Evidence custodian has no knowledge about the fungible items that were presented to her. It is nothing but pure conjecture to say that fungible items taken from the roadside "must" be the same ones that were presented to Kara Bennick. It is nothing but pure conjecture to say that fungible items taken from the roadside were the same items that appeared almost thirty minutes later at the Law Enforcement Center in a fungible paper grocery sack.

At the trial of this matter, the State provided nothing but conjecture about which items were seized at roadside, and which items where then subsequently entered into Property and Evidence. The only person who could resolve the conjecture was unavailable to testify at the trial. There was no other evidence provided which would reasonably demonstrate the handling of this evidence. The State only offered conjecture as to which items were confiscated and as to how it became that certain other items were submitted into Property and Evidence. Because a proper chain of custody was not provided, there was no foundation for the items offered to be introduced into evidence. The Trial Court committed error by allowing alleged drug evidence without a proper foundation to be entered into evidence. This error was an abuse of discretion. Because it was error to introduce this alleged drug evidence into evidence at trial, Appellant's convictions should be reversed.

IV. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR IN LIMITING APPELLANT'S CROSS EXAMINATION OF CO-DEFENDANT McMURRAY THEREBY VIOLATING APPELLANT'S SIXTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. U.S. CONST. amend. VI. A defendant has the right to cross examine a witness concerning bias under the Confrontation Clause. *Davis v. Alaska, 415 U.S. 308, 94 S. Ct. 1105, 39 L. Ed. 2d 347 (1974)*; *State v. Brown, 303 S.C. 169, 399 S.E.2d 593 (1991)*. "'On cross examination, any fact may be elicited which tends to show interest, bias, or partiality' of the witness." *State v. Brewington, 267 S.C. 97, 101, 226 S.E.2d 249, 250 (1976)* (quoting 98 C.J.S. Witnesses § 560a

(1957)); see Rule 608(c), SCRE ("Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced."). State v. Mizzell, 349 S.C. 326, 331 (2002). A criminal defendant may show a violation of the Confrontation Clause "by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness.'" *Delaware v. Van Arsdall, 475 U.S. 673, 680, 106 S. Ct. 1431, 1436, 89 L. Ed. 2d 674, 684 (1986)*. The trial judge retains discretion to impose reasonable limits on the scope of cross-examination. *State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991)*; accord *Delaware v. Van Arsdall, supra.* Before a trial judge may limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross examination is inappropriate. *State v. Graham, supra.* If the defendant establishes he was unfairly prejudiced by the limitation, it is reversible error. *State v. Brown, supra. Id.* The trial judge prohibited questioning Steele about a specific possible sentence because the charges against Steele and petitioners were the same. Id. at 331. The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence. However, other constitutional concerns, such as the Confrontation Clause, limit the applicability of this rule in circumstances where the defendant's right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude the evidence. Id. at 332. We found Brown was unfairly prejudiced because the witness "was permitted to avoid a mandatory prison term of more than three times the duration she would face on her plea to conspiracy [was] critical evidence of potential bias that appellant should have been permitted to present to the jury." *Id., 303 S.C. at*

171, 399 S.E.2d at 594. Moreover, the witness provided the only evidence to link Brown to the cocaine trafficking. *Id., 303 S.C. at 171-72, 399 S.E.2d at 594.* Id. A promise to recommend leniency (without assurance of it) may be interpreted by the promise as contingent upon the quality of the evidence produced; the more uncertain the agreement, the greater the incentive to make testimony pleasing to the promisor. We agree. Id. at 332-333. The fact the witness has yet to reach a plea bargain or been found guilty should not prevent the admission of such evidence. The lack of a negotiated plea, if anything, creates a situation where the witness is more likely to engage in biased testimony in order to obtain a future recommendation for leniency. Accordingly, we conclude the Court of Appeals erred in holding the trial judge properly excluded testimony concerning Steele's potential sentence if convicted of the same crimes as petitioners. Id. at 333. Steele's general admission he "could get a long sentence for these crimes" denies petitioners' Confrontation Clause rights under the Sixth Amendment. A "long sentence" may have different meanings to different jurors. Id. at 334.

SECTION 44-53-375. Possession, manufacture, and trafficking of methamphetamine and cocaine base and other controlled substances; penalties.

(C) A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as "trafficking in methamphetamine or cocaine base" and, upon conviction, must be punished as follows if the quantity involved is:

(1) ten grams or more, but less than twenty-eight grams:

(a) for a first offense, a term of imprisonment of not less than three years nor more than ten years, no part of which may be suspended nor probation granted, and a fine of twenty-five thousand dollars;

(b) for a second offense, a term of imprisonment of not less than five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand

dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(2) **twenty-eight grams or more, but less than one hundred grams**:

(a) **for a first offense, a term of imprisonment of not less than seven years nor more than twenty-five years**, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(b) for a second offense, a term of imprisonment of not less than seven years nor more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(c) for a third or subsequent offense, a mandatory minimum term of imprisonment of not less than twenty-five years and not more than thirty years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars;

(3) **one hundred grams or more, but less than two hundred grams, a mandatory term of imprisonment of twenty-five years, no part of which may be suspended nor probation granted, and a fine of fifty thousand dollars**;

S.C. CODE ANN. §44-53-375 (1976).

A. The Trial Court violated Appellant's Confrontation Clause rights by improperly excluding evidence of the possible sentence faced by the Prosecution's key witness.

Appellant's codefendant William McMurray testified for the State during Appellant's trial. R. 607, II. 25. McMurray testified that he hoped his "truthful" testimony would help him at the end of the day. R. 609, II. 9-12. McMurray testified that he had not yet been sentenced. Id. at 17-18. McMurray testified that he obtained the rental car through a person named "George", and that George rented the car for McMurray. R. 612, II. 25-p. 613, II. 7. McMurray further testified that George put McMurray's name, but not Appellant's, on the rental car agreement. Id. at 10-14. McMurray testified that he was aware of the narcotics that were in the vehicle. R. 614, II. 21-23. However, McMurray testified that Appellant was the one who "packed the back of the car". R. 615, II. 1-2. McMurray then testified that he was aware that all [drug] items picked up in Atlanta

were somewhere in the vehicle. R. 615, II. 7-10. McMurray testified on cross examination that by telling his story at Appellant's trial, it was McMurray's intention to get a better deal. R. 618, II. 20-24. McMurray testified that it was his goal [at sentencing] to get a lesser number of years than a larger number of years. R. 619, II. 13-19. McMurray then testified that it was his goal today, at Appellant's trial, to help himself. R. 620, II. 5-7. McMurray testified that one of the charges that he was originally facing was trafficking methamphetamine between 100 and 200 grams, and that in exchange for his testimony at Appellant's trial, he was allowed to plead to a lesser charge of trafficking in methamphetamine between 28 to 100 grams. R. 623, II. 10-15. Counsel for Appellant then attempted to ask about the mandatory minimum sentencing for the first charge, but faced an objection by the State which was sustained by Judge Miller. R. 623, II. 16-21. Appellant's counsel attempted to hand the Court a copy of State v. Mizzell, but that request was denied. R. 624, II. 4-9. The State then made the same argument which was struck down in State v. Mizzell. R. 625, II. 6-15. The Court then misapprehended the seminal holding in State v. Mizzell. R. 625, II. 16-21. Appellant's counsel attempted to build the appellate record by entering case law from State v. Mizzell concerning its underlying facts. R. 626, II. 1-3. Appellant's counsel was again cut off from speaking as the Court continued to misapprehend the case law of Mizzell. Id. at 6-8. McMurray testified that during his own plea hearing to the lesser charges, he stated that the drugs which were procured in Atlanta were "intended for George and me". R. 628, II. 17-18. On the witness stand in Appellant's trial, however, McMurray then changed his story about for whom the drugs were intended. R. 634, II. 1-25. McMurray's testimony changed to allege that the drugs procured in Atlanta were for George, McMurray, **and** Appellant. The State, on redirect, then assisted McMurray with his changed testimony. R. 643, II. 13-18,

In Appellant's trial, the only person directing pointing the finger at Appellant for having some knowledge of the drugs was McMurray. McMurray testified in his own plea hearing that the drugs were for George and him. McMurray, in his original plea colloquy, did not name Appellant as being a recipient of the drugs. At Appellant's trial, McMurray testified that George rented the car for McMurray to use to drive and procure the drugs. He testified that George placed McMurray's name on the rental agreement, but that George did not place Appellant's name on that agreement. McMurray testified that he knew the drugs were in the vehicle.

McMurray then changed his testimony at Appellant's trial. McMurray testified at Appellant's trial that it was his intention to get a better deal. He testified that it was his goal that day to help himself. McMurray further testified that despite his guilty plea, he had not yet been sentenced. McMurray, at Appellant's trial, changed his testimony concerning for whom the drugs were intended. At Appellant's trial, McMurray changed his testimony to say that the methamphetamine was for all three of us. This testimony, concerning for whom the drugs were intended, was completely different that the testimony given by McMurray during his own guilty plea to the lesser charges. McMurray changed his testimony, to directly implicate Appellant, so that McMurray could receive a lesser number of years at his sentencing. McMurray obviously has a bias against Appellant to slant his testimony such that it would benefit himself.

McMurray was originally charged with trafficking methamphetamine of between 100 and 200 grams. The sentence to that charge carries a minimum mandatory twenty-five (25) years in prison – no part of which may be suspended. S.C. CODE ANN. §44-53-375 (1976). McMurray was allowed to plead to a charge of trafficking methamphetamine of between 28 and 100 grams. The sentence for the lesser offense pled to by McMurray is a term of imprisonment of not less than 7 years nor more than 25 years. Id. McMurray, in exchange for his favorable testimony against

Appellant, avoided a mandatory prison term of more than three times the duration of which he would have faced on his original charge. Moreover, McMurray's sentencing was held in abeyance pending his cooperation against Appellant.

The Sixth Amendment to the United States Constitution's Confrontation Clause provides to a defendant the right to cross examine a witness concerning bias. Mizzell, 349 S.C. at 331. Mizzell provides that on cross examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness. Id. Mizzell provides that a criminal defendant may show a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness. Id. Mizzell further provides that before a trial judge may limit a criminal defendant's right to engage in cross-examination to show bias on the part of the witness, the record must clearly show the cross examination is inappropriate. Id. Mizzell then provides that if the defendant establishes he was unfairly prejudiced by the limitation, it is reversible error. Id.

After the State elicited testimony from McMurray, Appellant attempted to cross examine McMurray to reveal McMurray's biased testimony. McMurray was allowed to plead to a lesser charge in the hopes that it would help him obtain a lesser number of years on his sentence. As in Mizell, McMurray was the only person directly implicating Appellant in the methamphetamine trafficking plot. As in Mizell, McMurray's plea was not a negotiated plea deal. McMurray's sentencing was held in abeyance pending his successful finger-pointing at Appellant. Like in Mizzell, the lack of a negotiated plea created a situation where McMurray was more likely to engage in biased testimony in order to obtain leniency at his sentencing. Like in Mizell, the more

uncertain the agreement, the greater the incentive to make the testimony pleasing to the promisor (the State). Id. at 332-333. McMurray's sentencing was purposefully postponed until after he had successfully testified at the trial of co-defendant Appellant. Like in Mizzell, McMurray avoided a mandatory prison term of more than three times the term for which he pleaded guilty – all in exchange for his testimony against Appellant. McMurray's plea to the lesser weight on the trafficking methamphetamine charge changed his minimum mandatory number of years in prison to seven (7) years, from twenty-five (25) years. As such, McMurray stood to gain at least eighteen (18) years of freedom by changing his testimony to implicate the Appellant. Even so, the change in mandatory minimums was greater than a factor of three.

The jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence. Id. at 331. Other constitutional concerns limit the applicability of this rule in circumstances where the defendant's right to effectively cross-examine a co-conspirator witness of possible bias outweighs the need to exclude evidence. Id. at 331-332. Appellant, when beginning to question McMurray on the minimum mandatory number of years he was facing, was objected to by the State. Appellant's counsel invoked State v. Mizzell and attempted to hand up the case to Judge Miller. The Court refused to take a copy of the case and directed Appellant's counsel to "cut to the chase". The State argued the same as in Mizzell, that the publication of the possible sentence of Appellant outweighed its probative value. The Court then stated that he [McMurray] did not agree to a mandatory 25 years. R. 625, II. 16-17. The Court's statement, however, misapprehends the holding in State v. Mizell. Of course, the fundamental holding in Mizzell was not that a testifying co-defendant had pled to the same charge, but that he had been charged with the same offense. Mizzell, 349 S.C. at 331. The Court then disallowed Appellant from questioning McMurray on the fact McMurray had saved himself at

least eighteen years of incarceration in exchange for his favorable testimony against Appellant. Appellant's counsel then attempted to supplement the appellate record for a specific ruling but was threatened with contempt of court if counsel "followed through with this" [placing reasoning on the record]. R. 626, II. 3-p. 627, II. 1.

Appellant was only allowed to elicit from McMurray that McMurray's goal was to get a lesser number of years. In Mizzell, cross examination of the testifying co-defendant was limited to eliciting that testifying co-defendant could go to jail for a "long time". Mizzell, 349 S.C. at 334. Here, Appellant's counsel was only permitted to elicit that McMurray hoped for a lesser number of years. The Mizzell court ruled that a testifying co-defendant's statement about a long sentence denied Mizzell his Confrontation Clause rights under the Sixth Amendment. Id. Mizzell held that the term "long sentence" may have meant different things to different jurors. Id. at 335. Here, the term "lesser number of years" is equally as nebulous. Here, the Trial Court refused to allow Appellant to show that McMurray, in exchange for his testimony, was allowed to plead to a charge which carried a minimum prison term of less than three times the original charge. Rather, the Trial Court only allowed Appellant to elicit that McMurray faced a "lesser number of years". This refusal by the Trial Court to allow Appellant to elicit the extreme difference in the prison sentences unfairly prejudiced Appellant's ability to show bias. The Mizzell Court held that a defendant's right to effectively cross examine a testifying co-defendant outweighed the right of the State to shield the jury from knowledge of the possible sentence for a defendant who faced the same charge. Id. at 334. The same is true for Appellant, here. As in Mizzell, McMurray's statement "lesser number of years" is quite different from McMurray stating that he was facing a mandatory minimum sentence of 25 years, but in exchange for his testimony he was facing a mandatory

minimum of only 7 years. Further, the record does not clearly show that Appellant's attempt to show bias in his cross-examination of McMurray was inappropriate.

McMurray was the only witness who directly implicated Appellant in the trafficking methamphetamine scheme. As such, the limitation of cross examination of testifying co-defendant was not harmless. The Trial Court's refusal to allow Appellant to cross-examine McMurray was a violation of Appellant's Confrontation Clause rights because important evidence of McMurray's bias was improperly excluded. The Trial Court's violation of Appellant's Confrontation Clause rights was error.

B. The Trial Court committed prejudicial error by violating Appellant's Sixth Amendment right to confront witnesses against him.

Co-defendant William McMurray was the only person to testify against Appellant and to directly implicated Appellant. McMurray was originally charged with the exact same offense for which Appellant was on trial. McMurray pled guilty to a lesser trafficking methamphetamine charge, but his sentence was deferred pending his testimony at Appellant's trial. McMurray testified differently at Appellant's trial than the way he testified at his own plea hearing. McMurray changed his original testimony that the alleged recovered drugs were for two people (George and McMurray), to testifying that the alleged drugs were for three people (George, McMurray, **and** Appellant). Without McMurray's testimony, the State possessed only circumstantial evidence against Appellant. McMurray admitted that his purpose for testifying at Appellant's trial was to get a better deal for himself. McMurray testified that he was charged with the same offense as Appellant but was allowed to plead guilty to a lesser charge. McMurray faced cross-examination by Appellant's counsel. Counsel for Appellant attempted to introduce the mandatory minimum sentence that McMurray was facing prior to McMurray being given a reduction. The fact that McMurray was allowed to plead to a prison term more than three times

less than what he faced without giving testimony was critical evidence of McMurray's potential bias. Appellant's counsel was prohibited by the Trial Judge from questioning McMurray about the specific possible sentence that he faced. That potential specific sentence was a minimum mandatory 25 years in prison.

The Trial Court failed to clearly show on the record that Appellant's cross-examination of McMurry was inappropriate. The Trial Court failed to show how Appellant's questioning that McMurray originally faced a mandatory twenty-five years in prison – but in exchange for his testimony – was allowed to plead to only a mandatory seven years in prison – was somehow inappropriate. Further, McMurray was the only person to provide direct evidence that Appellant was actively involved in allegedly trafficking methamphetamine.

McMurray's sentencing for his guilty plea was held in abeyance until after he testified against Appellant. McMurray testified that he hoped his testimony against Appellant would get him a better deal. McMurray's testimony at his own plea hearing was the that drugs were for himself and George. McMurray changed his testimony at Appellant's trial so as to directly implicate Appellant. McMurray stood to gain eighteen (18) years of freedom if his testimony was convincing enough in the eyes of his promisor (The State). The State had the power to recommend to the sentencing judge a possible range of between seven (7) to twenty-five (25) years for McMurray – after McMurray successfully testified. As in Mizzell, the uncertainly of that sentencing range provided McMurray a greater incentive to cant his testimony, against Appellant, so as to please his promisor. Here, the State directly held the power of sway over McMurray such that he made his testimony as pleasing to the State as possible. The State was successful then, in that McMurray changed his testimony at Appellant's trial to directly implicate Appellant.

The Trial Court's refusal to allow Appellant to cross-examine McMurray, about the sentence originally faced by McMurray, was a violation of Appellant's Confrontation Clause rights under the Sixth Amendment to the United States Constitution. The Trial Court's violation of Appellant's Sixth Amendment rights was error. Because McMurray was the only person to directly implicate Appellant in the alleged trafficking methamphetamine conspiracy, the error against Appellant was not harmless. Consequently, the Trial Court committed prejudicial error against Appellant by limiting Appellant's examination into McMurray's potential sentence. Because the Trial Court committed prejudicial error against Appellant, Appellant's sentence should be reversed.

CONCLUSION

Based on the foregoing arguments, Appellant respectfully requests that this Court reverse the decision of the Trial Court and grant Appellant's motion to suppress the evidence. Further, based upon the prejudicial errors committed by the Trial Court, Appellant respectfully requests that this Court reverse and remand for a new trial.

BALLAM J.ALEXANDER

SCDC ID: 00390308
Unit: F6A-1139-T
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

DEFENDANT APPELLANT

2/02/2024
Date

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BALLAM JUSTIN ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2023-000275

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) Entire Trial Transcript dated February 14-17, 2023
(2) Indictments

I certify that this designation contains no matter which is irrelevant to this appeal.

BALLAM J. ALEXANDER

SCDC ID: 00390308
Unit: F6A-1139-T
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

DEFENDANT APPELLANT

2/02/2024

Date

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Edward W. Miller, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BALLAM JUSTIN ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2023-000275

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Pro Se Brief of Appellant and Designation of Matter in the above-referenced case has been served upon the following:

The South Carolina Court of Appeals
1220 Senate Street
Columbia SC 29201

Via United States Mail
Priority Mail

Febr. ~~on January~~ 02, 2024.

BALLAM J. ALEXANDER

SCDC ID: 00390308
Unit: F6A-1139-T
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010

DEFENDANT APPELLANT

January 21, 2024

The South Carolina Court of Appeals
Attention: Jenny A. Kitchings
Post Office Box 11629
Columbia, South Carolina 29211

Re: **State v. Ballam Justin Alexander**
Appellate Case Number: 2023-000275

Dear Mrs. Kitchings:

In accordance with your letter dated December 12, 2023, please find enclosed a copy of my *Pro Se* Brief in the matter referenced above. A certificate of service is also enclosed and is located at the back of the *Pro Se* Brief.

With kind regards,

Ballam J. Alexander

BALLAM J. ALEXANDER

SCDC ID: 00390308
Unit: F6A-1139-T
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010
DEFENDANT APPELLANT

UNITED STATES POSTAL SERVICE®

PRIORITY® MAIL

PRIORITY MAIL POSTAGE REQUIRED

■ Expected delivery date specified for domestic use.
■ Most domestic shipments include up to $50 of insurance (restrictions apply).*
■ USPS Tracking® included for domestic and many international destinations.
■ Limited international insurance.**
■ When used internationally, a customs d

*Insurance does not cover certain items. For details
Mail Manual at http://pe.usps.com.
**See International Mail Manual at http://pe.usps.co

MAILING ENVELC
FOR DOMESTIC AND INTERNATI

To schedule free Package Pickup,
scan the QR code.

USPS.COM/PICKUP

TRACKED ■ INSUI

PS00000133100

EP14 September 2021
OD: 15 x 11.625

UNITED STATES POSTAL SERVICE. Retail

P US POSTAGE PAID
$13.65
Origin: 29502
02/02/24
4536230270-96

PRIORITY MAIL®

0 Lb 12.50 Oz
RDC 03

EXPECTED DELIVERY DAY: 02/05/24

C076

SHIP TO:
1220 SENATE ST
COLUMBIA SC 29201-3769

USPS SIGNATURE® TRACKING #

9510 8134 3508 4033 5712 73

PRIORITY ★ MAIL ★

UNITED STATES POSTAL SERVICE®

VISIT US AT USPS.COM®
ORDER FREE SUPPLIES ONLINE

FROM:

Ballam J. Alexander
SCDC ID: 00390308
Unit: F6B-2243-T
Lee Correctional Institution
990 Wisacky Highway
Bishopville SC 29010

RECEIVED
FEB 05 2024

TO: SC Court of Appeals

The South Carolina Court of Appeals
1220 Senate Street
Columbia SC 29201

Label 228, March 2016 FOR DOMESTIC AND INTERNATIONAL USE

VISIT US AT USPS.COM®
ORDER FREE SUPPLIES ONLINE

DuPont™ Tyvek®
Protect What's Inside.™

This packaging is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail® and Priority Mail International® shipments. Misuse may be a violation of federal law. This package is not for resale. EP14 © U.S. Postal Service; March 2020; All rights reserved.