



# The Supreme Court of South Carolina

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July 18, 2014

The Honorable Beth Carrigg  
205 E Main St Ste 146  
Lexington SC 29072-3557

## REMITTITUR

Re: The State v. Lawrence Burgess  
Lower Court Case No. 2006GS3201425  
Appellate Case No. 2011-194288

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

*Daniel E. Shearouse*

CLERK



Cc: Deborah R.J. Shupe, Esquire  
Kathrine Haggard Hudgins, Esquire  
Donald V. Myers, Esquire

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

The State, Respondent,

v.

Lawrence Burgess, Petitioner.

Appellate Case No. 2011-194288

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**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS**

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Appeal From Lexington County  
James W. Johnson, Jr., Circuit Court Judge

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Opinion No. 27405  
Heard October 16, 2013 – Filed July 2, 2014

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**AFFIRMED AS MODIFIED**

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Appellate Defender Kathrine Haggard Hudgins, of Columbia, for  
Petitioner.

Attorney General Alan McCrory Wilson, Chief Deputy Attorney  
General John W. McIntosh, Senior Assistant Deputy Attorney General  
Salley W. Elliott, Senior Assistant Deputy Attorney General Deborah  
R.J. Shupe, all of Columbia; Solicitor Donald V. Myers, of Lexington,  
for Respondent.

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**JUSTICE BEATTY:** Lawrence Burgess was convicted of possession of  
crack cocaine with intent to distribute and sentenced to three years in prison and  
ordered to pay a \$25,000 fine. The Court of Appeals affirmed. *State v. Burgess*,

393 S.C. 396, 712 S.E.2d 1 (Ct. App. 2011). Following the denial of his petition for rehearing, Burgess petitioned this Court for a writ of certiorari to review the decision. We granted the petition to analyze whether: (1) the multi-jurisdictional drug-enforcement agreement, which formed the purported basis of the arresting officer's authority to arrest Burgess outside of the officer's territorial jurisdiction, satisfied the statutory prerequisites to constitute a valid agreement; and (2) Burgess should have been permitted to cross-examine the arresting officer with his personnel records pursuant to Rule 608(c) of the South Carolina Rules of Evidence. Although we find the Court of Appeals correctly affirmed Burgess's conviction, we disagree with the court's conclusion regarding the multi-jurisdictional drug-enforcement agreement. Accordingly, we affirm as modified.

### **I. Factual / Procedural History**

On March 2, 2006, officers with the Lexington County Narcotics Enforcement Team (NET) executed a search warrant for a trailer at 7120 Two Notch Road in Batesburg, South Carolina, which had been the site of several controlled drug buys. When Agent Billy Laney of the Lexington County Sheriff's Department and Officer Emmitt Gilliam of the Batesburg-Leesville Police Department pulled into the driveway, they saw Burgess and another individual standing by a trailer that was not the target of the search warrant. The officers then witnessed Burgess run around the back of the trailer. Officer Gilliam ran around the other side of the trailer "to cut him off." When Officer Gilliam got within five to six feet of Burgess, he commanded him to stop and put his hands up. Officer Gilliam placed Burgess under arrest and handcuffed him with the assistance of Agent Eric Kirkland of the Lexington County Sheriff's Department. Agent Laney "backtracked" Burgess's steps to where Burgess had been standing and discovered a pill bottle top and pieces of crack cocaine on the ground. The substance found on the ground was chemically tested and determined to be 5.67 grams of crack cocaine. As a result, a Lexington County grand jury indicted Burgess for possession of crack cocaine with intent to distribute.

In a pre-trial hearing, Burgess moved to dismiss the charge for lack of jurisdiction. Burgess asserted that Officer Gilliam lacked authority to arrest Burgess in an area outside the officer's territorial jurisdiction of the Batesburg-Leesville town limits. Although the State maintained that the Lexington County Multi-Agency Narcotics Enforcement Team Agreement (NET Agreement) conferred authority for extra-territorial jurisdiction, Burgess disputed its validity on

the ground it failed to comply with the statutory prerequisites of sections 23-1-210<sup>1</sup> and 23-1-215<sup>2</sup> of the South Carolina Code.

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<sup>1</sup> At the time of the agreement's execution, section 23-1-210 provided in relevant part:

(A) Any municipal or county law enforcement officer *may be transferred on a temporary basis to work in law enforcement in any other municipality or county* in this State under the conditions set forth in this section, and when so transferred shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred.

(B) Prior to any transfer as authorized in subsection (A), *the concerned municipalities or counties shall enter into written agreements* stating the conditions and terms of the temporary employment of officers to be transferred. The bond for any officer transferred shall include coverage for his activity in the municipality or county to which he is transferred in the same manner and to the same extent provided by bonds of regularly employed officers of that municipality or county.

S.C. Code Ann. § 23-1-210 (2007) (emphasis added). In 2007, subsection (A) was amended to provide that "[a]ny municipal or county law enforcement officer may be transferred or assigned on a temporary basis to work in law enforcement within *multijurisdictional task forces established for the mutual aid and benefit of the participating jurisdictions.*" Act No. 3, 2007 S.C. Acts 4 (emphasis added).

<sup>2</sup> Section 23-1-215 provided in relevant part:

(A) In the event of a crime where multiple jurisdictions, either county or municipal, are involved, *law enforcement officers are authorized to exercise jurisdiction within other counties or municipalities for the purpose of criminal investigation only if a written agreement between or among the law enforcement agencies involved has been executed.* This limitation on law enforcement activity shall not apply to any activity authorized by § 17-13-40.

(B) Any law enforcement officer working under this agreement is vested with equal authority and jurisdiction outside his resident

Initially, Burgess argued that section 23-1-215 was the controlling statute because it provides authority for the institution of "agreements between multiple law enforcement jurisdictions." Because the governing bodies of Batesburg-Leesville and Lexington County were not provided written notice of the NET Agreement's execution as required by subsection (E) of section 23-1-215, Burgess claimed the agreement was invalid. Additionally, Burgess asserted that section 23-1-210 did not apply to the NET Agreement as that section is limited "to the temporary transfer of an officer." In the alternative, he argued that the agreement did not comply with section 23-1-210 because it was executed by law enforcement officers and not by "council members."

In response to Burgess's motion, the State presented a copy of the NET Agreement that was entered into by eleven law enforcement agencies in Lexington County<sup>3</sup> on September 18, 2001.<sup>4</sup> The NET Agreement, which referenced sections 23-1-210 and 23-1-215,<sup>5</sup> stated in relevant part:

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jurisdiction for the purpose of investigation, arrest, or any other activity related to the criminal activity for which the agreement was drawn.

....

(E) The respective governing bodies of the political subdivisions, wherein each of the law enforcement agencies entering into the agreement authorized in subsection (A) is located, must be notified by its agency of the agreement's execution and termination. *The notification must be in writing and accomplished within seventy-two hours of the agreement's execution and within seventy-two hours of the agreement's termination.*

S.C. Code Ann. § 23-1-215 (2007) (emphasis added). In 2007, this code section was amended. Act No. 3, 2007 S.C. Acts 5. This amendment, however, does not affect the disposition of this case.

<sup>3</sup> The agencies included Batesburg-Leesville Police Department, Cayce Department of Public Safety, Chapin Police Department, Columbia Metropolitan Airport Police Department, Gaston Police Department, Irmo Police Department, Lexington County Sheriff's Department, Pine Ridge Police Department, South Congaree Police Department, Springdale Police Department, and West Columbia Police Department.

WHEREAS, it is the desire and intent of the parties to evidence their joint undertaking for the provision of mutual assistance in criminal narcotics investigations by the creation and operation of a multijurisdictional task force within Lexington County.

WHEREAS, the parties as set out above, by and through their representatives affixing their signatures below, consent and agree to span the geopolitical boundaries of all areas of Lexington County to the fullest extent allowed under South Carolina law for the express purpose of investigating the illegal use of controlled substances and related crimes by creating this Lexington County Multi-Agency Narcotics Enforcement Team [.]

.....

#### 1. SCOPE OF SERVICES

It is agreed that the law enforcement agency parties shall assign, on a temporary basis, officers to participate in the Lexington County Multijurisdictional Drug Enforcement Unit for the duration of this agreement or until this agreement is rescinded as set forth herein.

#### 2. TERM AND RENEWAL

This agreement is effective as to each party at the date and time of signing and will automatically renew one year from the above date unless a party exercises its right to terminate as further described herein.

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<sup>4</sup> The NET Agreement was amended in May 2002 and July 2005 to add other law enforcement agencies; however, the substantive provisions of the agreement remained the same.

<sup>5</sup> The NET Agreement also referenced Article VIII, Section 13 of the South Carolina Constitution and section 17-13-45 of the South Carolina Code. These sections, however, are not at issue in the instant case. *See* S.C. Const. art. VIII, § 13 (authorizing joint administration of functions and exercise of powers among counties, municipalities, or other political subdivisions of the State); S.C. Code Ann. § 17-13-45 (2003) (providing authority for law enforcement responding to distress call or request for assistance in an adjacent jurisdiction).

### 3. VESTING OF AUTHORITY AND JURISDICTION

To the fullest extent permitted by the Constitution and statutes of this State, officers assigned under this agreement and so transferred shall be vested with authority, jurisdiction, rights, immunities, and privileges to include the authority to execute criminal process and the power of arrest as any other duly commissioned officer of any other party.

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### 10. RESPONSIBILITY TO RESPECTIVE GOVERNING BODIES

Each party is responsible for any notice, reporting, or approval requirements to their respective governing body as may be required under South Carolina law.

### 11. OFFICERS ASSIGNED

Each party agrees to designate and transmit in writing, the names of those individuals assigned to perform duties under this agreement to the other parties. Upon receipt, such is to be made a part of and is incorporated by reference into this agreement.

In explaining the agreement, the State showed that it was signed by Chief Wallace Oswald on behalf of the Town of Batesburg-Leesville. According to the State, Chief Oswald entered into the NET Agreement based on the advice and consent of the Batesburg-Leesville Town Council (Town Council). The State introduced a videotape of an August 31, 2001 Town Council meeting during which Chief Oswald informed Town Council of "that pending matter between the solicitor and the town of Batesburg[-]Leesville forming a multi-jurisdictional agreement for continued narcotics work in Lexington County."

The State also introduced minutes from the January 8 and December 10, 2002, Lexington County Council (County Council) meetings through the Clerk of the County Council. The January 8 minutes show County Council considered grant application requests from the sheriff's department for a NET. The December 10 minutes reflect that County Council voted in favor of grant requests regarding additional staff positions in both the solicitor's and sheriff's office to focus on the NET.

In conjunction with the minutes, the State presented testimony from Marguerite Crapps, the mayor pro tem of the Batesburg-Leesville Town Council. When asked whether the Batesburg-Leesville Town Council was "on board with the chief of police [to] enter into this agreement on the behalf of Town Council of Batesburg-Leesville," Crapps responded, "Yes."

Lieutenant Byron Snellgrove, who was employed with the narcotics unit of the Lexington County Sheriff's Department, was the NET supervisor at all times relevant to this case. Lieutenant Snellgrove testified Chief Oswald and the Town of Batesburg-Leesville assigned Officer Gilliam, of the Batesburg-Leesville Police Department, to the NET. He then assigned Officer Gilliam to the Batesburg-Leesville area of Lexington County "to take care of cases inside the town limits as well as outside the town limits." After Officer Gilliam advised Lieutenant Snellgrove that "there were drug [sales] going on at 7120 Two Notch Road," Lieutenant Snellgrove asked Gilliam "to try to make a case or get into that location one way or another." Lieutenant Snellgrove then requested that Officer Gilliam help with the drug problem at that location pursuant to the NET Agreement.

Based on this evidence, the State contended that the notice requirement of section 23-1-215 was met because both County Council and Town Council had actual notice of the NET Agreement and approved their respective law enforcement agencies' participation in the NET. In contrast to the defense, the State believed the notice provision of section 23-1-215 was "purely ministerial and administrative," similar to the ten-day notice requirement for the return of a search warrant to the magistrate upon the execution of the search warrant. Thus, the State asserted that section 23-1-215(E) should not be "strictly construed" to require written notice.

Additionally, the State maintained the NET Agreement satisfied the provisions of section 23-1-210. Because the governing bodies had actual notice of the NET Agreement and its terms, the State claimed that chief law enforcement officers were authorized to enter into these agreements "with the advice and consent of county council." The State explained that Chief Oswald "acting as agent for the corporate municipality of Batesburg[-]Leesville [had] apparent authority to bind them . . . because he had the total responsibility of law enforcement within that town."

After hearing arguments, the trial judge found the State failed to present evidence that written notification had been given within 72 hours of the agreement's execution as required by section 23-1-215(E). The judge, however,

ruled that the NET Agreement complied with section 23-1-210 because he found nothing in the statute "that would prohibit either a county or a municipality . . . from authorizing in some way the chief of police or the sheriff to enter into such agreements." Although the judge was unclear as to which code section the NET Agreement was based, he concluded the agreement was created pursuant to section 23-1-210. As a result, the judge denied Burgess's motion to dismiss.

Subsequently, the State made a motion *in limine* to exclude Officer Gilliam's personnel records. The judge sustained the State's motion, but indicated that he would consider the motion if Burgess "wanted to get into" these records.

During Officer Gilliam's testimony, Burgess sought to cross-examine him about why he was no longer with NET and to introduce his personnel records. The records, which describe three incidents that took place after Burgess's arrest but before trial, involved a disagreement with other officers about the use of confidential informants, his use of profanity, and his threat to harm another officer. The incidents resulted in a two-day suspension, a demotion to the rank of Corporal, and a ninety-day period of probation. The judge excluded the records, finding the personnel matters were irrelevant and highly prejudicial.

Ultimately, the jury found Burgess guilty of possession of crack cocaine with intent to distribute. Burgess appealed his conviction to the Court of Appeals, which affirmed. *State v. Burgess*, 393 S.C. 396, 712 S.E.2d 1 (Ct. App. 2011). In so ruling, the court upheld the trial judge's decision that the NET Agreement complied with the requirements of section 23-1-210. *Id.* at 402, 712 S.E.2d at 4. Specifically, the court found: (1) the concerned municipalities and county entered into a written agreement to create multi-jurisdictional law enforcement authority; (2) the agreement complied with the requirements of section 23-1-210 by stating the employment conditions and maintaining compensation from permanent employment; and (3) the officers acting with the NET were transferred to it on a temporary basis. *Id.* The court further found Chief Oswald informed Town Council of the NET Agreement before its execution, and Town Council gave him the authority to enter into the agreement. *Id.*

Additionally, the court distinguished the case from *State v. Boswell*, 391 S.C. 592, 707 S.E.2d 265 (2011), which was decided by this Court during the pendency of Burgess's appeal.<sup>6</sup> The Court of Appeals found *Boswell* inapposite as

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<sup>6</sup> In *Boswell*, the defendant was convicted of first-degree burglary. *Boswell*, 391 S.C. at 594, 707 S.E.2d at 265. On appeal, *Boswell* argued, among other issues,

the NET Agreement was not entered pursuant to the Law Enforcement Assistance and Support Act and, thus, section 23-20-50(A) of the Act did not apply. *Burgess*, 393 S.C. at 403, 712 S.E.2d at 4-5. Rather, the court found the NET Agreement was "made pursuant to section 23-1-210, part of a different chapter from the Law Enforcement Assistance and Support Act entitled 'General Provisions.'" *Id.*

Having found the NET Agreement was valid pursuant to section 23-1-210, the court declined to address its validity under section 23-1-215. *Id.* at 403-04, 712 S.E.2d at 5.

As to the judge's ruling regarding the admission of Officer Gilliam's personnel records, the Court of Appeals found the trial judge did not abuse his discretion in excluding these records. *Id.* at 404-05, 712 S.E.2d at 5. In so ruling, the court interpreted the judge's decision "as a finding that the records did not have a legitimate tendency to show bias on the part of the officer." *Id.* at 405, 712 S.E.2d at 5. The court noted that each incident in Officer Gilliam's personnel records occurred after Burgess's arrest and none of the incidents related directly to Burgess. *Id.* Additionally, the court concluded that while the personnel incidents "might show Gilliam to be hot-tempered and uncooperative with other officers, they do not show his bias against Burgess, or otherwise relate to Gilliam's credibility." *Id.*

Burgess petitioned this Court for a writ of certiorari to review the decision of the Court of Appeals. This Court granted the petition.

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that the trial judge erred in declining to suppress his confessions as they were the direct result of an unlawful arrest by officers acting outside their territorial jurisdiction. *Id.* at 594, 707 S.E.2d at 266. Specifically, Boswell contended the Lexington County officers were without authority to arrest him for a crime that occurred in Calhoun County. *Id.* at 598, 707 S.E.2d at 268. The State offered evidence of a 1999 multi-jurisdictional agreement entered into between the Calhoun County and Lexington County Sheriff's Departments that purported to confer the authority of officers to arrest in the other county's jurisdiction. *Id.* In assessing the validity of the agreement, this Court applied section 23-20-50(A) of the Law Enforcement Assistance and Support Act. *Id.* at 601, 707 S.E.2d at 270. Because the agreement was "not voted on by the county council" as required by section 23-20-50(A) of the Act, this Court deemed it invalid. *Id.* at 602, 707 S.E.2d at 270.

## II. Discussion

### A. Multi-Jurisdictional Agreement

In advocating the reversal of the decision of the Court of Appeals, Burgess posits three arguments. First, he contends that *Boswell* is dispositive as he broadly construes the holding to require all multi-jurisdictional agreements to be voted on by the governing body of each jurisdiction pursuant to section 23-20-50(A). Second, he asserts the agreement failed to strictly comply with the provisions of section 23-1-210 as the "State presented no written verification that the Batesburg/Leesville town council authorized the Chief of Police to enter into the agreement [on] behalf of the council." Burgess further notes that "there is no mention of the County authorizing Sheriff Metts to enter into the agreement on behalf of the County." Finally, Burgess maintains that it is "questionable" whether section 23-1-215 is applicable to the facts of the instant case as he believes this code section only applies to situations where a crime has occurred in multiple jurisdictions.<sup>7</sup> Even if applicable, Burgess avers that law enforcement failed to comply with the statutorily required written notice provision of subsection (E). Because the validity of a multi-jurisdictional agreement is dependent upon strict compliance, he disputes the State's contention that actual notice is sufficient.

#### 1. Implications of *Boswell*

We agree with the Court of Appeals that *Boswell* is not controlling as it is factually and legally distinguishable. However, as will be discussed, we find the interpretation of *Boswell* by the Court of Appeals was entirely too narrow.

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<sup>7</sup> As a threshold matter, Burgess asserts that any argument regarding the applicability of section 23-1-215 is not preserved for appellate review because the State did not appeal the trial judge's decision as to this statute and raised it for the first time in its final brief to the Court of Appeals and in its return to Burgess's petition for a writ of certiorari. We find the issue is properly before this Court because the State challenged the trial judge's ruling on this issue as an additional sustaining ground to the Court of Appeals and to this Court. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment.").

Initially, we note that Burgess did not argue to the trial judge or to the Court of Appeals that section 23-20-50(A) was applicable; therefore, any argument regarding this statute is not preserved for appellate review. *See State v. Sheppard*, 391 S.C. 415, 706 S.E.2d 16 (2011) (stating that an issue may not be raised for the first time on appeal). Furthermore, unlike the agreement in *Boswell*, the NET agreement in the instant case does not reference section 23-20-50 or contain a provision outlining the public safety situations identified in section 23-20-30.<sup>8</sup> Thus, we agree with the ultimate conclusion reached by the Court of Appeals regarding the inapplicability of *Boswell*.

However, we find the court interpreted *Boswell* too narrowly as it infers that section 23-20-50(A) either conflicts with or is mutually exclusive from sections 23-1-210 and 23-1-215. This is an incorrect reading of *Boswell*. Because all of these code sections are contained within Title 23, which is entitled "Law Enforcement and Public Safety," these sections cannot be read in isolation as the Court of Appeals appears to have done. *See Higgins v. State*, 307 S.C. 446, 415 S.E.2d 799 (1992) (recognizing rule of statutory construction that statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction).

Although we question why the General Assembly has failed to consolidate these sections into one that would govern all multi-jurisdictional agreements, we believe the separate sections were enacted as a result of legislative progression. Specifically, section 23-1-210 was enacted in 1981 to address the temporary transfer of law enforcement officers to another jurisdiction, section 23-1-215 was enacted in 1987 to expressly address crimes that occur in multiple jurisdictions, and section 23-20-50 was enacted in 2000 to authorize law enforcement to assist other jurisdictions with certain public safety concerns.<sup>9</sup> Notably, the drafters of these agreements appear to recognize this interrelationship as the agreements usually include a reference to all of these sections.

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<sup>8</sup> The agreement in *Boswell* implicitly included section 23-20-50 as it notes that one of the purposes of the agreement is to "provide mutual aid in the event of natural disaster, disorder, or other emergency situations." It also expressly provided that the agreement does not affect any agreements regarding narcotics investigations.

<sup>9</sup> Act No. 109, 1981 S.C. Acts 402; Act No. 107, 1987 S.C. Acts 262; Act No. 382, 2000 S.C. Acts 2604.

## 2. Propriety of NET Agreement under sections 23-1-210 and 23-1-215

Even though *Boswell* is not dispositive of the instant case, it is nonetheless instructive because it stands for the proposition that statutes governing multi-jurisdictional agreements must be strictly complied with to ensure the validity of the agreement. *See Boswell*, 391 S.C. at 602, 707 S.E.2d at 270 (recognizing the significance of territorial jurisdiction and concluding that a "more stringent approach needs to be followed in order to confer this type of authority"). Applying this principle to the instant case, we hold the NET Agreement is invalid as it does not satisfy the statutory requirements of either section 23-1-210 or section 23-1-215.

### a. Section 23-1-210

As a matter of state statute, the Town of Batesburg-Leesville and Lexington County operate and govern through Town Council and County Council. *See* S.C. Code Ann. § 4-9-30(3), (13) (1986 & Supp. 2013) ("[E]ach county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof: (3) to make and execute contracts . . . (13) to participate in multi-county projects and programs authorized by the general law and appropriate funds therefor . . ."); S.C. Code Ann. § 5-7-160 (2004) ("All powers of the municipality are vested in the council, *except* as otherwise provided by law, and the council shall provide for the exercise thereof and for the performance of all duties and obligations imposed on the municipality by law." (emphasis added)).

Consistent with this general authorization of power, subsection (B) of section 23-1-210 mandates that "the concerned municipalities or counties" enter into written agreements providing for the transfer of its law enforcement officers to another municipality or county. S.C. Code Ann. § 23-1-210(B) (2007). Certainly, there is evidence that County Council approved grant requests to fund additional staff positions associated with NET and Town Council was verbally informed of the "pending matter between the solicitor and the town of Batesburg[-] Leesville forming a multi-jurisdictional agreement." These procedures, however, did not constitute express approval by "the concerned municipalities or counties" as to the actual NET Agreement. In fact, the record reveals that the terms of the NET Agreement were never presented to the governing bodies for their approval. Instead, the only evidence is that Chief Oswald and Sheriff Metts entered into the

NET Agreement on behalf of their law enforcement agencies. Thus, without the express approval of Town Council and County Council, the NET Agreement failed to strictly comply with the statutory requirements of section 23-1-210.

Notwithstanding the lack of strict statutory compliance, the State contends the agreement is, nevertheless, valid as the governing entities provided Chief Oswald and Sheriff Metts with apparent authority to enter into the NET Agreement. We reject this contention as Town Council and County Council could not delegate this authority.

Because the authority to enter into these agreements was statutorily conferred upon the governing entities, these entities were prohibited from abdicating this power and delegating it to a law enforcement officer. *See* 2A Eugene McQuillin, *The Law of Municipal Corporations* § 10:46 (3d ed. 1996) ("Usually a power conferred without limitation upon the municipal corporation may be exercised by the common council or legislative body as the general agent of the corporation, and by no other authority. A fortiori, power conferred upon the council or legislative body in express terms cannot be delegated otherwise than in accordance with the expression of terms." (footnotes omitted)); 62 C.J.S. *Municipal Corporations* § 206 (Supp. 2013) ("The governing body of a municipal corporation, entrusted by the state with the police power, is prevented from delegating its high functions to any body or officer; instead, it may be discharged or exercised only by those to whom the state commits it." (footnotes omitted)); *see also Newman v. McCullough*, 212 S.C. 17, 25-26, 46 S.E.2d 252, 256 (1948) (recognizing that a municipal council, "acting as a governmental agency; . . . is bound always to act as trustee of the power delegated to it and may not surrender or restrict any portion of such power conferred upon it").

Thus, strictly construing section 23-1-210, we are constrained to find the NET Agreement was invalid as Town Council and County Council were the only entities authorized to enter into this multi-jurisdictional agreement. If law enforcement agencies are to have this authority, it is for the General Assembly and not this Court to grant them this authority. *See* 80 C.J.S. *Sheriffs & Constables* § 51 (Supp. 2013) ("Sheriffs and constables have all the powers and duties appertaining to their office at common law except as modified by a statute or the state constitution.").<sup>10</sup>

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<sup>10</sup> Even assuming Chief Oswald was authorized to enter into the NET Agreement on behalf of the Town of Batesburg-Leesville, we find Officer Gilliam was not "transferred on a temporary basis to work in law enforcement in any other

**b. Section 23-1-215**

Although not addressed by the Court of Appeals, we find the trial judge correctly ruled the NET Agreement did not comply with the provisions of section 23-1-215 as the State presented no evidence that County Council or Town Council received written notification within seventy-two hours of the execution of the NET Agreement as required by subsection (E). S.C. Code Ann. § 23-1-215(E) (2007).

Furthermore, it is arguable that section 23-1-215 was factually inapplicable as one could construe this section to govern only the investigation of past crimes rather than to provide blanket extra-territorial jurisdiction to officers addressing potential criminal activity. As titled, the purpose of section 23-1-215 is to authorize "[a]greements between multiple law enforcement jurisdictions for purpose of criminal investigation." *Id.* § 23-1-215. Subsection (A) then states in the past tense, "[i]n the event of a crime" involving multiple jurisdictions;<sup>11</sup> thus, by implication, the statute authorizes agreements for the investigation of completed crimes spanning multiple jurisdictions.

In the instant case, Officer Gilliam was assigned to assist in the execution of a search warrant for a specific trailer at 7120 Two Notch Road. Because Burgess was not the subject of this investigation as he did not reside at this trailer and was arrested near a trailer that was not the target of the search warrant, we do not

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municipality or county in this State." *Id.* § 23-1-210(A). Notably, the agreement was executed in September 2001 and the arrest occurred in March 2006. There is also evidence that Officer Gilliam worked on NET for at least a year and a half. Thus, although he may have been assigned to assist in the execution of the search warrant, Officer Gilliam had relied on the provisions of the NET Agreement to claim extra-territorial authority for an extended duration. Accordingly, even though "temporary" is not defined by section 23-1-210, Officer Gilliam's extended service under the NET Agreement cannot be construed as a "temporary" transfer as intended by the statute. *See State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999) (acknowledging rule of statutory construction that when faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning).

<sup>11</sup> We note the 2007 amendment to section 23-1-215 expressly included past tense language stating, "In the event of a crime or crimes *that have occurred* . . . ." S.C. Code Ann. § 23-1-215(A) (Supp. 2013) (emphasis added).

believe section 23-1-215 could be interpreted to confer authority on Officer Gilliam to arrest Burgess.

**c. Valid Conviction Despite Invalid Agreement**

Despite our finding that the NET Agreement was invalid, we conclude that Burgess's conviction was, nevertheless, valid. Although Officer Gilliam lacked authority to arrest Burgess, Agents Laney and Kirkland, who were authorized with territorial jurisdiction in Lexington County, played an integral role in the arrest and discovery of the drugs that formed the basis of the conviction.

Section 44-53-375(B) of the South Carolina Code creates a permissive inference that possession of one or more grams of a "cocaine base" is "prima facie evidence" of possession with intent to distribute. S.C. Code Ann. § 44-53-375(B) (Supp. 2007).<sup>12</sup> "Possession may be actual or constructive." *State v. Ballenger*, 322 S.C. 196, 199, 470 S.E.2d 851, 854 (1996). "Actual possession occurs when the drugs are found to be in the actual physical custody of the person charged with possession, while constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs are found." *Id.* (citation omitted).

Here, the evidence was sufficient to prove Burgess possessed crack cocaine with intent to distribute. Notably, Burgess fled when Agent Laney and Officer Gilliam arrived at the target location; thus, indicating consciousness of guilt. *See State v. Walker*, 366 S.C. 643, 655, 623 S.E.2d 122, 128 (Ct. App. 2005) ("Unexplained flight is admissible as indicating consciousness of guilt, for it is not as likely that one who is blameless and conscious of that fact would flee."). Officer Gilliam apprehended Burgess with the assistance of Agent Kirkland. Agent Laney then independently searched for and discovered 5.67 grams of crack cocaine and a pill bottle top in the area from which Burgess fled.

Even if we assume that Burgess's arrest was invalid, such an assumption would be of no consequence to Burgess as this Court has held that "the illegality of an initial arrest did not bar the accused person's subsequent prosecution and conviction of the offense charge." *State v. Biehl*, 271 S.C. 201, 204, 246 S.E.2d 859, 860 (1978). The *Biehl* Court pointed out that no evidence used in Biehl's trial was acquired as a result of the arrest. The same is true in Burgess's trial. The

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<sup>12</sup> Because the offense occurred in March 2006, we cite to the code section in effect at that time.

recovery of the crack cocaine by Agent Laney was directly related to Burgess's conduct during his furtive flight. Burgess attempted to flee immediately when he saw the arrival of Agent Laney and Officer Gilliam. Agent Laney followed Burgess's furtive flight path and found the drugs in an area where Burgess had been standing. Thus, the crack cocaine, which formed the basis for Burgess's conviction, was not fruit of the arrest. Specifically, the drugs were not found on Burgess's person nor were they located as a result of anything Burgess said after he was arrested. Rather, the drugs were independently found by Agent Laney of the Lexington County Sheriff's Office.

Finally, Burgess's reliance on our decision in *Boswell* is unavailing. After *Boswell* was arrested, he confessed to the arresting officers. *Boswell*, 391 S.C. at 597, 707 S.E.2d at 267. Accordingly, we held that the confessions should have been excluded at trial as they were the fruit of the invalid arrest. *Id.* at 606, 707 S.E.2d at 272. However, in this case, Burgess did not confess nor were the drugs found on his person or his property.

In light of the foregoing, we find the invalid NET Agreement did not negate the authority of Agents Laney and Kirkland to charge Burgess with the offense for which he was convicted.

### III. Cross-Examination

Burgess next asserts the trial judge erred in refusing to allow cross-examination about Officer Gilliam's personnel records as the records constituted evidence of bias and motive to misrepresent pursuant to Rule 608(c), SCRE.

Burgess maintains that Officer Gilliam's credibility as a witness was "a key issue at trial" because he was the only witness to testify that Burgess dropped a pill bottle that contained crack cocaine residue. Burgess also notes that neither Agent Laney nor Officer Gilliam witnessed Burgess in actual possession of the crack cocaine that was discovered on the ground. In view of this evidence, Burgess contends "the jury . . . had a right to know about Gilliam's disciplinary problems and removal from the NET because the information had a legitimate tendency to throw light on the accuracy, truthfulness and sincerity of Gilliam's testimony." Specifically, Burgess claims "[t]he records portray Gilliam as an overzealous narcotics officer who was willing to use unreliable confidential informants in order to make an arrest and who violated protocols of the NET concerning the use of confidential informants."

"Rule 608(c), SCRE, provides that 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. Sims*, 348 S.C. 16, 25, 558 S.E.2d 518, 523 (2002). "Rule 608(c) 'preserves South Carolina precedent holding that generally, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony.'" *Id.* (quoting *State v. Jones*, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001)).

"As a general rule, a trial court's ruling on the proper scope of cross-examination will not be disturbed absent a manifest abuse of discretion." *State v. Quattlebaum*, 338 S.C. 441, 450, 527 S.E.2d 105, 109 (2000). An abuse of discretion occurs when the trial court's ruling either lacks evidentiary support or is based on an error of law. *State v. Pagan*, 369 S.C. 201, 631 S.E.2d 262 (2006).

We find the Court of Appeals correctly upheld the trial judge's decision prohibiting Burgess from cross-examining Officer Gilliam about his personnel records as we discern no abuse of discretion. Significantly, each of the disciplinary incidents occurred after Burgess's arrest and did not involve Burgess. Furthermore, Officer Gilliam's hostile actions were directed at co-workers rather than subjects of criminal investigation. Thus, Burgess failed to offer evidence that Officer Gilliam lacked credibility due to bias against Burgess. Accordingly, the trial judge properly limited Burgess's cross-examination of Officer Gilliam. *Cf. Baldez v. State*, 386 S.W.3d 324 (Tex. Ct. App. 2012) (discussing Rule 608 and holding that trial judge did not err in prohibiting defendant from cross-examining the arresting officer concerning his disciplinary suspension for the sole purpose of showing the officer's lack of credibility as the defendant never argued that the officer was untrustworthy due to bias or interest against the defendant).

#### IV. Conclusion

Based on the foregoing, we hold the NET Agreement was invalid and, thus, did not confer extra-territorial jurisdiction upon Officer Gilliam. *See State v. Harris*, 299 S.C. 157, 159, 382 S.E.2d 925, 926 (1989) ("The jurisdiction of a municipal police officer, absent statutory authority, generally does not extend beyond the territorial limits of the municipality."). Our decision should not be construed as invalidating all multi-jurisdictional agreements. Instead, we recognize the import of these agreements and emphasize that they are not invalid per se. The validity of these agreements, however, is dependent upon strict compliance with the applicable statutes. Because the NET Agreement in the

instant case failed to satisfy the statutory requirements, we are constrained to find that it is invalid.

However, despite the invalidity of the NET Agreement, we find the Court of Appeals correctly affirmed Burgess's conviction as Officer Gilliam's lack of authority did not negate Agents Laney's and Kirkland's authority in Lexington County. Thus, Officer Gilliam's lack of authority did not vitiate the valid conviction. Moreover, we find the Court of Appeals correctly upheld the trial judge's decision prohibiting Burgess from cross-examining Officer Gilliam regarding his personnel records as we discern no abuse of discretion.

Accordingly, the decision of the Court of Appeals is

**AFFIRMED AS MODIFIED.**

**TOAL, C.J., KITTREDGE and HEARN, JJ., concur. PLEICONES, J., concurring in result only.**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

The State, Respondent,

v.

Lawrence Burgess, Appellant.

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Appeal From Lexington County  
James W. Johnson, Jr., Circuit Court Judge

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Opinion No. 4823  
Heard January 11, 2011 – Filed April 20, 2011

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**AFFIRMED**

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Appellate Defender Kathrine H. Hudgins, of  
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy  
Attorney General John W. McIntosh, Assistant  
Deputy Attorney General Salley W. Elliott,  
Assistant Attorney General Deborah R.J.  
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Columbia; and Solicitor Donald V. Myers, of  
Lexington, for Respondent.

**FEW, C.J.:** In Lawrence Burgess's appeal from his conviction for possession of crack cocaine with intent to distribute, we consider the validity of a multijurisdictional narcotics enforcement agreement, the admissibility of an arresting officer's employment records, and the circumstances under which a trial judge must charge "mere presence." We find no error and affirm.

### **I. Facts and Procedural History**

On March 2, 2006, officers on the Lexington County Narcotics Enforcement Team (NET) executed a search warrant for drugs at a trailer on Two Notch Road in Batesburg, South Carolina. When Agent Bill Laney and Officer Emmitt Gilliam pulled into the driveway, they saw Burgess and another individual standing by a trailer which was not the target of the search warrant. They then saw Burgess "run around the back side of the trailer and flee." Gilliam ran around the other side of the trailer "to cut him off." Gilliam got to within five to six feet of Burgess and told him to stop and put his hands up. He then saw Burgess drop an empty pill bottle with no top. Gilliam testified "the pill bottle had crack residue in it." Laney backtracked Burgess's steps to where Burgess had been standing and located a pill bottle top and pieces of crack cocaine on the ground. Burgess denied owning or dropping the pill bottle. He was arrested and indicted for possession with intent to distribute crack cocaine in

violation of South Carolina Code section 44-53-375 (Supp. 2010), based on the crack found by Laney.

At the time of the arrest, Gilliam was a police officer with the Batesburg-Leesville Police Department. The arrest occurred outside of the Batesburg-Leesville town limits. However, Gilliam was acting with NET, which has jurisdiction for all of Lexington County pursuant to a Multijurisdictional Drug Enforcement Unit Agreement (NET Agreement) signed by the police chief of the Batesburg-Leesville Police Department.

Burgess alleged Gilliam lacked authority to make an arrest outside the Batesburg-Leesville town limits, and made a pre-trial motion to dismiss the charge. He argued the NET agreement did not comply with the statutes authorizing such extra-territorial jurisdiction. The trial judge denied the motion because he found the agreement valid, and therefore that Gilliam had authority to make the arrest.

After the ruling on the validity of the NET agreement, but before opening statements, the State made a motion in limine to exclude Gilliam's employment records. The trial judge sustained the objection and told Burgess's counsel: "If you, depending on how the case goes, decide you want to get into that bring it to the court's attention . . . ." During Gilliam's testimony, Burgess sought to cross-examine him about why he was no longer with the NET and to introduce the employment records. The records outline three incidents, spanning from approximately March 2006 until February 16, 2007, in which Gilliam disagreed with other officers about the use of confidential informants, used profanity, and threatened to harm another officer. The judge refused to admit the records.

After the jury charge, Burgess requested the trial judge charge the jury on "mere presence." Relying on State v. Peay, 321 S.C. 405, 410-11, 468 S.E.2d 669, 672-73 (Ct. App. 1996) and State v. Ballenger, 322 S.C. 196, 199-200, 470 S.E.2d 851, 854 (1996), the judge denied the request, and stated: "The State indicated that they rely only on actual possession and not constructive possession. Those cases indicate that mere presence is not required and would be improper and for that reason I did not charge that."

The jury found Burgess guilty, and the judge sentenced him to three years in prison.

## II. The Multijurisdictional Drug Enforcement Unit Agreement

In September 2001, eleven law enforcement agencies in Lexington County entered into an agreement creating the NET. The agreement states it is made pursuant to South Carolina Code sections 23-1-210 (1981) (amended 2007) and 23-1-215 (1987) (amended 2007).[1] The agreement states its purpose as follows:

[T]he parties . . . consent and agree to span the geopolitical boundaries of all areas of Lexington County to the fullest extent allowed under South Carolina law for the express purpose of investigating the illegal use of controlled substances and related crimes by creating this Lexington County Multi-Agency Narcotics Enforcement Team[.]

The Batesburg-Leesville police chief signed the agreement. The State put into evidence a videotape of the August 13, 2001 Batesburg-Leesville town council meeting at which "the chief of police informed council of that pending matter between the solicitor and the town of Batesburg/Leesville forming a multi-jurisdictional agreement for continued narcotics work in

Lexington County." A town council member testified the police chief had "the advice and consent to enter into this agreement of town council."

Our analysis of Gilliam's authority to arrest Burgess begins with the premise that "[t]he jurisdiction of a municipal police officer, absent statutory authority, generally does not extend beyond the territorial limits of the municipality." State v. Harris, 299 S.C. 157, 159, 382 S.E.2d 925, 926 (1989); see S.C. Code Ann. § 5-7-110 (2004) ("Any such police officers shall exercise their powers on all private and public property within the corporate limits of the municipality . . ."). However, there are exceptions to this general rule, including the two statutes listed as authority for creating the NET agreement: section 23-1-210, allowing the temporary transfer of an officer to another municipality or county; and section 23-1-215, providing for agreements between multiple law enforcement jurisdictions for criminal investigation.[2]

The trial judge ruled the NET agreement valid under section 23-1-210, which provides in part:

(A) Any municipal or county law enforcement officer may be transferred on a temporary basis to work in law enforcement<sup>[3]</sup> in any other municipality or county in this State under the conditions set forth in this section, and when so transferred shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred.

(B) Prior to any transfer as authorized in subsection (A), the concerned municipalities or counties shall enter into written agreements stating the conditions and terms of the temporary employment of officers to be transferred. The bond for any officer transferred shall include coverage for his activity in the municipality or county to which he is transferred in the same manner and to the same extent provided by bonds of regularly employed officers of that municipality or county.

(C) Agreements made pursuant to subsection (B) shall provide that temporary transfers shall in no manner affect or reduce the compensation . . . of transferred officers and such officers shall continue to be paid by the county or municipality where they are permanently employed . . . .

The judge found the NET Agreement complied with section 23-1-210 because "there is nothing in here . . . that would prohibit either a county or a municipality or a town from authorizing in some way the chief of police or the sheriff to enter into such agreements."

An action involving the interpretation of a statute is an action at law, which we review de novo. Town of Summerville v. City of North Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). We agree with the trial judge that the NET agreement meets the requirements of section 23-1-210. First, the concerned municipalities and county entered into a written agreement to create multijurisdictional law enforcement authority. Second, the agreement complies with the requirements of 23-1-210, such as stating the employment conditions and maintaining compensation from permanent employment. Finally, the officers acting with the NET were transferred to it on a temporary basis.

Nevertheless, Burgess argues the agreement fails to provide jurisdiction under 23-1-210 for two reasons. First, Burgess argues "Gilliam was not temporarily transferred but rather he

was involved in an investigation focused on a case and location." We disagree. Even if Gilliam had been transferred for only this one investigation, it was still a temporary transfer. Second, Burgess argues the Batesburg-Leesville police chief who signed the agreement lacked the authority to enter into it under section 23-1-210. We agree with the trial judge's determination that nothing in the statute "would prohibit either a county or a municipality or a town from authorizing in some way the chief of police or the sheriff to enter into such agreements." The Batesburg/Leesville police chief informed the town council of the agreement *before its execution*, and the council gave him the authority to enter into it.

The supreme court's recent opinion in State v. Boswell, Op. No. 26941 (S.C. Sup. Ct. filed March 14, 2011) (Shearouse Adv. Sh. No. 9 at 22), does not change this analysis. In Boswell, the court applied section 23-20-50(A) of the South Carolina Code (2007) to a multijurisdictional agreement entered into between the Calhoun County and Lexington County Sheriffs' Departments pursuant to the Law Enforcement Assistance and Support Act. [4] Id. at 30-32. The court held the agreement was invalid because it was "not voted on by the county council" as required by section 23-20-50(A) of the Act. Id. at 31.

Burgess did not argue to the trial court and does not argue on appeal that section 23-20-50 (A) applies to the NET agreement in this case. In any event, we find Boswell distinguishable because the NET agreement here was not entered pursuant to the Law Enforcement Assistance and Support Act. Therefore, section 23-20-50(A) of the Act does not apply. By its own terms, the section applies to "[a]n agreement entered into . . . pursuant to this chapter . . . ." § 23-20-50(A) (emphasis added).[5] Section 23-20-30(B) specifically provides that the Act does not "alter, amend, or affect any rights, duties, or responsibilities of law enforcement authorities established by South Carolina's . . . statutory laws . . . except as expressly provided for in this chapter." The NET agreement here was made pursuant to section 23-1-210, part of a different chapter from the Law Enforcement Assistance and Support Act entitled "General Provisions." The NET agreement does not mention the Act or section 23-20-50. We find that the requirements of section 23-20-50(A) do not apply to the NET agreement.

Accordingly, we find the agreement is valid under section 23-1-210 and conferred upon Gilliam the authority to arrest Burgess outside of the Batesburg-Leesville town limits. Because we find the agreement valid under section 23-1-210, we do not address whether it meets the requirements of section 23-1-215. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (recognizing that an appellate court need not address remaining issues when resolution of one issue is dispositive).

### III. Cross-Examination on Employment Records

Burgess sought to introduce portions of Gilliam's employment records as "evidence of bias and motive to misrepresent" pursuant to Rule 608(c), SCRE. The judge sustained the State's objection and refused to admit the records. On appeal, Burgess argues the records "portray Gilliam as an overzealous narcotics officer who was willing to use unreliable confidential informants in order to make an arrest and who violated protocols of the NET concerning the use of confidential informants." The records include a summary of three incidents concerning Gilliam. First, in approximately March 2006, shortly after Burgess's arrest, a superior told Gilliam he did not think the NET should use a particular confidential informant. Gilliam "got upset, jumped out of his chair and went upstairs saying that he was going back to Batesburg and would not be coming back to NET." Second, in approximately

October 2006, Gilliam's partner requested to be transferred away from him due to disagreements and his "bad attitude." Third, in February 2007, Gilliam used profanity and threatened another officer over a disagreement about a controlled drug buy, and then he drove off with the confidential informant in his car, in violation of NET protocol. In March 2007, the Batesburg-Leesville Police Department formally disciplined Gilliam with a two-day suspension, a ninety-day probationary period, and a demotion to the rank of Corporal.

Evidence of bias is governed by Rule 608(c), SCRE, which states: "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." Our courts have held that "anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded to his or her testimony." State v. Baker, 390 S.C. 56, 66, 700 S.E.2d 440, 444 (Ct. App. 2010) (citing State v. Jones, 343 S.C. 562, 570, 541 S.E.2d 813, 817 (2001) (applying this rule of evidence to bias under Rule 608(c), SCRE)). In excluding the evidence in this case, the judge stated: "It is irrelevant and highly prejudicial and I don't think it is relevant to any of the issues in this case at least at this point in time." Although the judge did not use the language of Baker and Jones in his ruling, we interpret the ruling as a finding that the records did not have a legitimate tendency to show bias on the part of the officer. Each incident in the records occurred after Burgess's arrest, and none of them relate directly to Burgess. Though Burgess argues the incidents relate to Gilliam's use of confidential informants, the arrest of Burgess had nothing to do with confidential informants. Gilliam detained Burgess because he fled from police during the execution of a search warrant, and arrested him because the officers determined he dropped crack cocaine as he fled. While the incidents might show Gilliam to be hot-tempered and uncooperative with other officers, they do not show his bias against Burgess, or otherwise relate to Gilliam's credibility. Under these circumstances, we find the judge's decision to exclude the evidence was within his discretion. See Baker, 390 S.C. at 65, 700 S.E.2d at 444 ("The admission of evidence rests in the sound discretion of the trial court. The trial court's decision will not be overturned unless controlled by an error of law resulting in undue prejudice." (citing State v. Johnson, 318 S.C. 194, 196, 456 S.E.2d 442, 443 (Ct. App. 1995))).

#### IV. Mere Presence Jury Charge

The judge charged the jury as follows:

In this case, the State is charging the defendant with actual possession of a controlled substance[.] actual possession of a controlled substance exist[s] when the controlled substance is found in the actual physical custody of the person charged with possession. Circumstantial evidence may be used to prove actual possession, but actual possession must be proven beyond a reasonable doubt. It must be shown that the defendant has possession of the controlled substance and that the defendant knew that he had the controlled substance in his possession. . . . Again, in this case the State has charged and must prove actual possession of crack cocaine as I have defined that term for you.

Burgess's counsel objected to the charge, stating: "I guess . . . I should go ahead and except to the mere presence, the failure to charge mere presence but I understand the court's ruling."<sup>[6]</sup> We find no error.

"In criminal cases, the appellate court sits to review errors of law only. A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied." State v. Wharton, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009) (internal citations omitted). The law to be charged to the jury is determined from the evidence presented at trial. State v. Davis, 374 S.C. 581, 585, 649 S.E.2d 132, 134 (Ct. App. 2007).

Our supreme court "has held mere presence instructions are required where the evidence presented at trial reasonably supports the conclusion that the defendant was merely present at the scene where drugs were found, but it was questionable whether the defendant had a right to exercise dominion and control over them." State v. Lee, 298 S.C. 362, 364-65, 380 S.E.2d 834, 836 (1989). This court addressed the necessity of a mere presence charge in Peay, 321 S.C. at 411, 468 S.E.2d at 673. The State had presented evidence that the defendant put a bag of cocaine down his pants when he bought it from an informant. 321 S.C. at 410, 468 S.E.2d at 672. When he was arrested, however, the bag of cocaine was on the front seat of the car in which he had been riding. Id. This court determined that "[b]ecause the evidence the [S]tate produced tended to show Peay had actual control over the cocaine, a charge distinguishing actual and constructive possession was unnecessary." 321 S.C. at 411, 468 S.E.2d at 673 (finding "the trial judge did not err in refusing Peay's request to charge constructive possession or mere presence").

Burgess argues his case is distinguishable from Peay because "[n]one of the officers in the present case can testify that Burgess actually possessed the crack cocaine found on the ground." We disagree. The State's theory of the case depended on Burgess's actual possession of the crack. The State presented evidence that Gilliam saw Burgess drop the bottle with crack cocaine residue, and that both the top to the bottle and the crack pieces were found in Burgess's flight path. This evidence indicated Burgess had actual possession of the cocaine. Moreover, the jury charge limited the State to proving actual possession and gave the jury no option to find constructive possession. When constructive possession is not an issue in the case, it is not necessary to explain the concept of mere presence in the jury charge. In drug possession cases, the concept of mere presence relates exclusively to constructive possession, not actual possession. State v. James, 386 S.C. 650, 654-55, 689 S.E.2d 643, 646 (Ct. App. 2010) (noting "'a charge on mere presence is necessary only when the [S]tate attempts to establish constructive possession of contraband'" (quoting Peay, 321 S.C. at 411, 468 S.E.2d at 673)). Therefore, in this case it was unnecessary for the judge to charge mere presence.

## V. Conclusion

We affirm the trial judge's decision that Gilliam had jurisdiction to arrest Burgess because the multijurisdictional agreement was valid under section 23-1-210. We also affirm the trial judge's exclusion of Gilliam's employment records and his decision not to charge mere presence to the jury.

**AFFIRMED.**

**SHORT and WILLIAMS, JJ., concur.**

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[1] These code sections have been amended. See S.C. Code Ann. §§ 23-1-210, -215 (Supp. 2010). However, because the agreement was executed in 2001, we use the prior versions of the statutes in deciding this case.

[2] There are other instances of extra-territorial jurisdiction which are inapplicable to this case. See, e.g., S.C. Code Ann. § 5-7-120 (2004) (requesting help from other subdivisions in emergency situations); S.C. Code Ann. § 17-13-40 (2003) (extending authority to three-mile radius outside town limits or an adjacent county if an officer is in pursuit of one who violated an ordinance or statute within the officer's jurisdiction); S.C. Code Ann. § 17-13-45 (2003) (responding to a distress call or request for assistance in an adjacent jurisdiction).

[3] The 2007 amendment to this section includes the phrase "within multijurisdictional task forces established for the mutual aid and benefit of the participating jurisdictions, or . . . ."

[4] S.C. Code Ann. §§ 23-20-10 to -60 (2007).

[5] Section 23-1-210 and the NET agreement in this case authorize the temporary transfer of a law enforcement officer under different circumstances from the "public safety functions" contemplated by the Law Enforcement Assistance and Support Act. The Act allows law enforcement agencies to enter agreements, such as the one in Boswell, "as may be necessary for the proper and prudent exercise of public safety functions." § 23-20-30(A). The section defines "public safety functions" to "include traditional public safety activities which are performed over a specified time period for patrol services, crowd control and traffic control, and other emergency service situations." Id.

[6] A mere presence jury charge would have instructed the jury that a defendant cannot be found guilty of possession of narcotics simply because he was present at the scene where the narcotics were found. State v. Robinson, 306 S.C. 399, 401 n.1, 412 S.E.2d 411, 413 n.1 (1991).