

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Beaufort County  
Honorable Carmen T. Mullen, Circuit Court Judge  
Court of Appeals Appellate Case No. 2016-000379

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**RECEIVED**  
JUN 22 2017  
SC Court of Appeals

THE STATE,

Respondent,

vs.

KEVIN ALSTON,

Appellant.

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**MOTION TO CERTIFY THE CASE TO  
THE SOUTH CAROLINA SUPREME COURT**

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Respondent (“the State”), through its undersigned counsel, would respectfully show unto the Court as follows:

**I.**

Kevin Alston, the appellant in this case, was arrested after law enforcement officers discovered a quantity of crack cocaine in his vehicle and an oxycodone pill in his pocket during the course of a traffic stop. Subsequent to his arrest, Alston was indicted for one count of possession of crack cocaine and one count of possession of a controlled substance. Prior to and during trial, Alston moved to suppress the incriminating evidence discovered as a result of the traffic stop on the novel ground the traffic stop was unconstitutional pursuant to the South Carolina Constitution due to the fact it was allegedly pretextual in nature, and the trial judge denied the motion. Ultimately, the jury convicted Alston as indicted, and the trial judge

sentenced Alston to an aggregate term of imprisonment of three years suspended upon the service of a three-year term of probation.

## II.

Subsequently, Alston appealed his convictions and filed an initial brief of appellant in the Court of Appeals. In his appellate brief, Alston has raised the following issue:

Did the court err by denying Appellant's motion to suppress evidence seized by law enforcement during a pretextual traffic stop in violation of Appellant's right to privacy under Article I, Section 10 of the South Carolina Constitution where a drug interdiction officer stopped Appellant's vehicle under the guise of a routine traffic stop after orchestrating the arrival of a drug detection drug before commencing the stop because he had a mere hunch Appellant was involved in criminal activity?

Thereafter, the State filed an initial brief of respondent, and Alston did not file a reply brief. At present, the Record on Appeal has not yet been filed, and the matter is currently pending before the Court of Appeals.<sup>1</sup>

## III.

Pursuant to both statute and rule in our state, this Court has the discretion to certify any case pending before the Court of Appeals for review and to take jurisdiction over the matter. See S.C. Code Ann. § 14-8-210(b) ("In any case pending before the court of appeals, the Supreme Court may in its discretion, on motion of any party to the case, on request by the court of appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the court of appeals."); see also Rule 204(b), SCACR ("In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for

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<sup>1</sup> The briefs filed in this case are available for review through the South Carolina Appellate Court Public Index. Appellate Records for State v. Kevin Alston, South Carolina Appellate Court Public Index, <http://ctrack.sccourts.org/public/caseView.do?csIID=61876>.

review by the Supreme Court before it has been determined by the Court of Appeals.”).

Significantly, it is appropriate for the Court to exercise such discretion when “the case involves an issue of significant public interest or a legal principle of major importance, or in other cases the court considers appropriate.” S.C. Code Ann. § 14-8-210(b).

#### IV.

Respectfully, the State submits certification is appropriate in Alston’s case due to the significance of the issue raised in this appeal. Specifically, in Alston’s case, the issue currently being raised on appeal involves a significant constitutional issue involving the novel question of whether a law enforcement officer in South Carolina is precluded from conducting a pretextual traffic stop pursuant to the South Carolina Constitution even though such a stop would be constitutionally permissible under the United States Constitution so long as there is an objectively reasonable basis for the stop. See Whren v. United States, 517 U.S. 806, 808 (1996) (instructing a traffic stop is reasonable pursuant to the Fourth Amendment of the United States Constitution regardless of the subjective intentions of the officer who initiated the stop so long as probable cause supports the stop). Because this novel constitutional question has not yet been resolved in the context of the South Carolina Constitution and could potentially have a widespread impact on law enforcement practices in our state, Alston’s case involves a legal issue of major importance and is a matter of significant public interest. For those reasons, the State submits certification is appropriate and warranted in Alston’s case. See S.C. Code Ann. § 14-8-210 (“Certification is appropriate where the case involves an issue of significant public interest or a legal principle of major importance, or in other cases the court considers appropriate.”).

**WHEREFORE**, Respondent prays this Court will certify the Alston’s appeal for consideration by the South Carolina Supreme Court for all purposes pursuant to S.C. Code Ann.

§ 14-8-210 and Rule 204, SCACR; hold the matter in abeyance pending a ruling on Respondent's motion; and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

ALAN WILSON  
Attorney General

MARK R. FARTHING  
Assistant Attorney General

By

  
Mark R. Farthing

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
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COUNSEL FOR RESPONDENT/

June 22, 2017

STATE OF SOUTH CAROLINA  
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**PROOF OF SERVICE**  
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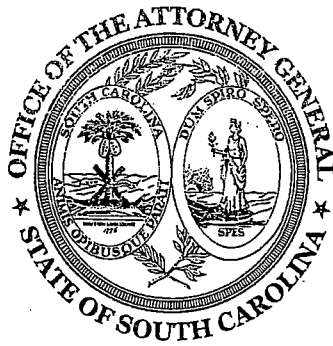
I, Keely Carter, certify that I have served the within Motion to Certify the Case to the South Carolina Supreme Court on Appellant by sending two copies of the same to:

Lara M. Caudy, Esq.  
S.C. Commission on Indigent Defense  
Division of Appellate Defense  
Post Office Box 11589  
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.  
This 22nd day of June, 2017.

  
\_\_\_\_\_  
KEELY CARTER  
Assistant Attorney General

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Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727



ALAN WILSON  
ATTORNEY GENERAL

June 22, 2017

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**SC Court of Appeals**

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
Post Office Box 11330  
Columbia, South Carolina 29211

RE: State v. Kevin Alston – Court of Appeals Appellate Case No. 2016-000379

Dear Mr. Shearouse:

Enclosed please find the original and six copies of the Motion to Certify the Case to the South Carolina Supreme Court, along with proof of service, for filing in the above-referenced appeal.

Sincerely,

Mark R. Farthing  
Assistant Attorney General  
Bar Number 76901

MRF/  
Enclosures

cc: Honorable Jenny A. Kitchings  
Lara M. Caudy, Esq.  
Victim Services