

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

KEVIN ALSTON,

APPELLANT

APPELLATE CASE NO 2016-000739

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2012-GS-07-00612
& 2012-GS-07-00613

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

DECEMBER 14 AND 16, 2015

TRANSCRIPT OF PRETRIAL HEARING & TRIAL

BEAUFORT, SOUTH CAROLINA

KEVIN ALSTON

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

AND A JURY

WANDA H. ROWE, CVR-CM
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1 JUROR NUMBER 174: Okay. I didn't ask. I thought
2 you said complete --

3 THE COURT: No, you pled no contest. No worries.
4 I totally understand that. But yes, it was possession
5 of burglary tools, something like that, yes.

6 JUROR NUMBER 174: All right.

7 THE COURT: But I'll excuse you. But Thank you.
8 Okay. Appreciate it.

9 END INDIVIDUAL QUALIFICATION.

10 VOIR DIRE:

11 THE COURT: Ladies and gentlemen, I would love to
12 go ahead and pick this jury right now. Does anyone need
13 a quick five-minute break? And don't be shy. If you
14 need it, it's absolutely fine. You okay? Are you sure?
15 Fabulous. All right. Well, I got to tell you, don't
16 leave during these questionings, then.

17 But I'm going to go ahead and have the solicitor's
18 office call their first case, and the only case that we
19 have left on the docket for this week.

20 MS. LITTLETON: Thank you, your Honor.

21 This is the State versus Kevin Alston. Mr. Alston
22 is charged under Indictment Number 2012-GS-07-00612,
23 with possession of cocaine base; and 2012-GS-07-00613,
24 possession of controlled substance.

25 THE COURT: Thank you. Will you pass the

1 indictments back to me, please. Thank you.

2 Ladies and gentlemen, if you will give me your
3 attention. We are about to pull the jury in the case
4 entitled the State of South Carolina versus Kevin
5 Alston, without is charged in the bill of indictments by
6 the grand jury of Beaufort County with the offenses of
7 possession of a controlled substance, a Schedule II; and
8 possession of a cocaine base, or crack cocaine.

9 Ladies and gentlemen, I'm going to ask that the
10 attorneys who are going to be trying these cases
11 introduce themselves to you. We told Mr. Alston,
12 because the case was not starting until Wednesday, he
13 did not need to be here for jury qualification. So, he
14 is not here at this time. But if the State would go
15 ahead and introduce themselves.

16 MS. LITTLETON: My name's Katherine Littleton. I'm
17 an assistant solicitor with the 14th Circuit Solicitor's
18 Office, and this is Brian Hollen, who will be sitting
19 with me for the case.

20 THE COURT: Ms. Campbell.

21 MS. CAMPBELL: May it please the Court? Good
22 morning. My name is Trasi Campbell. I'm the chief
23 public defender for Beaufort County. Your Honor, did
24 you want me to list the other attorneys in the office
25 or?

1 THE COURT: Okay?

2 MS. CAMPBELL: Great.

3 THE COURT: Thank you all.

4 MS. CAMPBELL: Thank you so much.

5 THE COURT: Thank you.

6 Ms. Campbell, Ms. Littleton, will you come up.

7 Trasi, will you come on up just to talk. We just want
8 to be clear on the pretrial motions.

9 MS. CAMPBELL: Okay.

10 THE COURT: I'm sorry.

11 OFF-THE-RECORD BENCH CONFERENCE, OUT
12 OF PRESENCE OF JURORS. PRESENT: THE
13 COURT, MS. LITTLETON, MS. CAMPBELL.

14 END BENCH CONFERENCE

15 OFF THE RECORD 11:51 A.M.

16 PRETRIAL HEARINGS:

17 BAILIFF: All rise. Court is back in session.

18 THE COURT: Thank you. Please take your seats.

19 All right. Well, that gave me, also, the
20 opportunity, Ms. Campbell, to go through and read your
21 motion to suppress. Want to go ahead and start calling
22 witnesses?

23 MS. LITTLETON: Yes, your Honor.

24 THE COURT: Trasi, do you want to deal with this
25 first or last, this motion?

1 MS. CAMPBELL: May it please the Court?

2 THE COURT: Yes.

3 MS. CAMPBELL: Solicitor and I discussed. She was
4 suggesting that we just put up all the testimony on all
5 matters. And I was going to leave it to however you
6 wanted to proceed. The only thing I would say at the
7 outset, is that the officers need to be sequestered and
8 directed not to speak to one another about their
9 testimony.

10 THE COURT: Okay.

11 MS. CAMPBELL: However you want to proceed, your
12 Honor.

13 THE COURT: Okay.

14 MS. LITTLETON: Yes, your Honor. The thought was
15 just for expediency purposes, because there is some
16 overlap between the *Jackson v. Denno* and the suppression
17 motions on the testimony.

18 THE COURT: Okay.

19 MS. LITTLETON: But however your Honor would like.

20 THE COURT: That's fine. That's fine. Okay.
21 Gentlemen, I have to sequester you. I apologize. Who
22 are you calling first. And again, do not speak with
23 each other regarding your testimony when you're
24 finished.

25 MS. LITTLETON: The State will call Rich Menendez.

1 THE COURT: Okay.

2 MADAM CLERK: Do you solemnly swear or affirm to
3 answer all questions asked of you by this Court, so help
4 you God?

5 RICH MENENDEZ: I do.

6 MADAM CLERK: Be seated. State your name. Spell
7 it for me, please.

8 RICH MENENDEZ: My name is Rich, Richard Menendez.
9 Last name is spelled M/e/n/e/n/d/e/z.

10 SPECIAL AGENT RICHARD MENENDEZ

11 DIRECT EXAMINATION, BY MS. LITTLETON:

12 Q Special Agent Menendez, who do you work for?

13 A I currently work for South Carolina Law Enforcement
14 Division.

15 Q And who did you work for back on March 7th of 2012?

16 A At the time, I worked for Beaufort County Sheriff's
17 Office.

18 Q Okay. What were your duties there?

19 A Around that time frame, I -- I had just
20 transitioned from the drug team. I was running a
21 position technical surveillance, and I was assigned to
22 the bomb squad, also, at that time.

23 Q Great. And how long did you work at Beaufort
24 County Sheriff's Office?

25 A Since September of 2006, I believe.

1 THE COURT: Agent Menendez, on March 7th of 2012,
2 when this stop occurred, were you working patrol, or
3 what were you working that day?

4 A I was -- I was a -- working technical surveillance.
5 I actually believe I was in route to set up a system
6 somewhere --

7 THE COURT: Okay.

8 A -- when that occurred.

9 THE COURT: Was Mr. Alston known to you? Was Mr.
10 Alston known to you? At that time, did you know him?

11 A I may have known the name, --

12 THE COURT: Okay.

13 A -- but as far as --

14 THE COURT: You didn't recognize him?

15 A Recognize him? No.

16 THE COURT: Okay.

17 A Not that I -- that I recall. Having been on the
18 Drug Team, --

19 THE COURT: Right.

20 A -- information on different people --

21 THE COURT: That's why I was asking.

22 A -- you know, things like that, yes.

23 THE COURT: Okay. And at the time, your car was
24 not equipped with a video?

25 A No.

1 THE COURT: Okay.

2 BY MS. LITTLETON:

3 Q Special Agent Menendez, could you go back to March
4 7, 2012, and tell us, what were you doing around 11:00
5 a.m.

6 A Around 11:00 a.m., -- I'll get, if I can, the
7 report that you sent me. Highway 802, which is the
8 highway that goes past in front of the Parris Island
9 Gateway, in the Port Royal area, I was coming up toward
10 the intersection where the traffic like is to make a
11 right turn to McTeer Bridge. The vehicle in front of me
12 made a right-hand turn on a red like without coming to a
13 complete stop. Also had a tail light out. I followed
14 the -- the vehicle across the bridge for a safe place to
15 conduct a traffic stop. And somewhere just the other
16 side of the entrance to Cat Island, I believe I
17 initiated the traffic stop and called it in at that
18 time.

19 Q Okay. So, you pulled the driver over. What
20 happened next?

21 A As I recall, and it's been a while, I believe, when
22 I approached the driver, I identified myself; requested
23 a driver's license and the documentation. I think he
24 presented an employee I.D. card from Parris Island. I
25 want to say I reiterated about the driver's license, and

1 I think he advised me that he was suspended at the time.
2 I called, contacted Dispatch to verify that information,
3 and also ask for assistance. And I believe, at that
4 time, or shortly afterwards, I asked him to step out of
5 the vehicle, and I placed him under detention at the
6 time.

7 Q Okay. At that point, was it your intention to
8 arrest him?

9 A Driving under suspension, yes, is an arrestable
10 offense.

11 Q So, what happened after that? How quickly did the
12 K-9 unit and Kyle Strickland arrive on the scene?

13 A I don't recall the amount of time between it. I
14 know it was pretty quick. Officer Strickland and Dan
15 Martin arrived. I don't recall who was first, or if
16 they both arrived around the same time. I think it was
17 pretty close to around the same time.

18 Q Okay. And what happened once they arrived?

19 A Once they arrived, I believe Officer Strickland
20 spoke with Dan. They did the K-9 sweep. I kind of --
21 Strickland advised me he would take over the
22 investigation at that time, and I kind of step --
23 stepped back to observe and assist wherever they needed
24 assistance.

25 Q Okay. And once they had decided -- once they had

1 read him his *Miranda* rights and place him under arrest,
2 -- were you there when they read him his *Miranda* rights?

3 A I was there when Officer Strickland advised him of
4 his *Miranda* rights, yes.

5 Q Okay. And how do you do that?

6 A We carry a *Miranda* card, and our credentials are in
7 our pocket, and he read from that verbal.

8 Q Okay. And did the defendant seem to understand his
9 rights?

10 A He acknowledged them verbally.

11 Q All right. Did he respond that he wanted a lawyer?

12 A If -- if he had of, I would have note -- notated
13 that.

14 Q Okay. Did he agree to speak with you all?

15 A I'm sorry?

16 Q Did he agree to speak with you at that time?

17 A He did not speak with me. He was speaking with
18 Officer Strickland.

19 Q Okay. But he did make a statement after *Miranda*
20 was given.

21 A I believe so.

22 Q Okay. Did you threaten him?

23 A No.

24 Q Did you promise him anything?

25 A No.

1 Q Did anyone else promise him anything?

2 A Not that I know of.

3 Q Or threaten him?

4 A Not that I'm aware of.

5 Q Did he appear to be under the influence of any
6 drugs or alcohol at the time?

7 A Not that I recall.

8 Q Did he appear to have any physical or mental
9 disabilities?

10 A Not that -- that I recall.

11 Q Okay.

12 THE COURT: Sir, do you have any independent
13 recollection of the stop? Do you have an independent
14 recollection of the stop, other than what you've read on
15 your report?

16 A I recall -- until I read the report, I recall
17 making a traffic stop.

18 THE COURT: Okay.

19 A And I remember not wanting to stop on the bridge,
20 and waiting to get off the bridge to make the stop. I
21 -- Mr. Alston wasn't volatile in any way. He was very
22 cooperative. I do recall that. And having him step out
23 of the car, you know, there was no -- you know, I didn't
24 -- nothing stands out to me. It was pretty --
25 everything went pretty smooth.

1 THE COURT: Okay.

2 A You know, as far as if something would have
3 happened or he would have been volatile in a way that
4 would have sparked my memory, I don't recall that from
5 then.

6 THE COURT: Okay.

7 MS. LITTLETON: Just a moments indulgence. Nothing
8 further from us.

9 THE COURT: Ms. Campbell.

10 SPECIAL AGENT RICHARD MENENDEZ

11 CROSS-EXAMINATION, BY MS. CAMPBELL:

12 Q Officer Menendez, based upon your report --

13 MS. CAMPBELL: If I may approach, your Honor.

14 THE COURT: Of course.

15 BY MS. CAMPBELL:

16 Q I have prepared a map. How are you?

17 A Very well. How are you, Ms. Campbell?

18 Q I'm good. And if you need to refer to your report,
19 that's fine. Isn't it true that your first encounter
20 where you saw the broken tail light that you report, is
21 actually at that stop light in Shell Point? You say
22 it's at the intersection of Parris Island Gateway and
23 803 [sic] is where you spotted the blue Ford Explorer,
24 with a broken tail light. Wouldn't that be correct?

25 A Yes.

1 Q Okay. And so, wouldn't it also be correct that you
2 then followed this automobile all the way down Parris
3 Island, over the Bell Bridge, through Port Royal, past
4 the Naval Hospital, all the way up here to the stop
5 light where there's a sort of a CVS on the left, and if
6 you take a right, you go to Lady's Island, correct?

7 A Yes.

8 Q She needs a verbal answer.

9 A Oh, I'm sorry. Yes.

10 Q Okay. And actually, at this stop light here is
11 where you indicate there was some sort of rolling right
12 turn. Is that right?

13 A It was a red light, and he failed to make a stop
14 before he made his turn.

15 Q Okay. And then, you initiated, I guess, the stop,
16 which would mean you -- did you cut on the blue lights,
17 then, --

18 A Yes.

19 Q -- over by James [sic] Lane?

20 A Yes.

21 Q Correct. And so, during the period of time from
22 the tail light that you noticed, which my guess would be
23 a traffic-ticket-type of situation, correct? Broken
24 tail light.

25 A Yes. It -- it -- again, officer's discretion. And

1 it may have been I just noted the broken tail light. I
2 didn't think any -- a second violation. It's like,
3 okay, you know, noting the tail light; and then, he
4 makes a second violation; maybe I'll stop him; and we'll
5 -- I think -- I believe I gave him a warning. Did I
6 not? I don't recall.

7 Q Okay. Well, that's kind of important. So, the
8 tail light, your testimony is, in your mind, was not
9 something that you were going to stop him for. Is that
10 what you've said?

11 A I wouldn't say wasn't going to stop him for. I
12 noted it. For -- I don't know, as I said, I don't
13 recall what was going on that day. I saw the vehicle.
14 I noted it. At that point, I may have run the tag as I
15 was following him in preparation for a stop. Or I may
16 have -- it kind of -- he's got a broken tail light,
17 after the second offense, I think, you know, let me stop
18 him. It rates an encounter to warn him about the tail
19 light and/or the traffic violation. And then,
20 obviously, whenever he's suspended, then, we do have an
21 arrestable offense.

22 Q Okay. So, from the Shell Point light, all the way
23 down to the McTeer Bridge light, nothing's going on that
24 you're saying to yourself I'm going to pull this car
25 over.

1 A Not that I recall.

2 Q Okay. So, then, turning right there at the bridge,
3 you make some sort of decision to pull him over here by
4 James Green Lane. Is that correct?

5 A He made the right, running a red light.

6 Q Turning right.

7 A Turning right on a red light without coming to a
8 complete stop.

9 Q Okay. And again, you can turn right on red in
10 South Carolina, correct?

11 A After a complete stop.

12 Q Correct.

13 A Once you know -- if the traffic lane, travel lane,
14 is clear.

15 Q Okay.

16 A And that -- again, I didn't mention it, I don't
17 know if there was other vehicles in that traffic lane.
18 I just know that he didn't come to a complete stop at
19 the red light.

20 Q Okay. Now, during the period of time from the
21 Shell Point light, to the traffic stop at James Green
22 Lane over on Lady's Island, were you in communication
23 with Officer Martin via --

24 A Myself in communi --

25 Q -- your cell phone or via Dispatch?

1 A I believe Officer Strickland was in contact with
2 Officer Martin.

3 Q So, in answer to my question, then, you would
4 testify that you were not in cell phone contact or
5 Dispatch contact with Officer Martin once you started
6 following Mr. Alston. Is that your testimony?

7 A I don't recall if I was. I know that we all talked
8 a lot, so I can't tell you that I was or was not,
9 because I don't recall being in contact with him, but
10 then, again, I may have been, because it was normal for
11 us to talk amongst each other.

12 Q Specifically, do you remember contacting Officer
13 Martin and letting him know that there was a car you
14 were getting ready to stop?

15 A I don't recall that. I don't recall being the
16 officer that asked for Officer Martin. I believe
17 Officer Strickland is the one that required Officer
18 Martin, not me.

19 Q Okay. And how did Officer Strickland come to know
20 that Officer Martin might need to meet you over at James
21 Green Lane? How did he know what was going on with you?

22 A Officer Strickland arrived at the traffic stop. On
23 his way to the traffic stop, when he heard me conduct
24 the traffic stop, I believe he contacted Officer Martin.

25 Q So, if Officer Strickland --

1 A Again, I did not make that contact. You would have
2 to speak with Officer Martin. I'm speculating, but from
3 what I've seen in the report, that's when that occurred.

4 Q Well, I'm really trying not to have speculation
5 here, and I know you're doing your best to remember. Do
6 you remember contacting Officer Strickland about the
7 traffic stop with Mr. Alston in any way?

8 A I'm sure that he contacted me on the radio, or we
9 had contact on the radio once the stop was initiated.

10 Q And Officer Strickland was working for the Drug
11 Task Force, correct?

12 A Yes.

13 Q And you were working for the Drug Task Force on
14 this date, correct?

15 A I -- I may have been doing surveillance for them,
16 because what I did at the time was I maintained
17 surveillance equipment, and I was with the bomb squad.
18 I did not actively work drug cases at the time.

19 Q And when you talk about technical surveillance,
20 that was technical surveillance for the Drug Task Force,
21 correct?

22 A It would be for any of the investigative branches
23 of Beaufort County at the time.

24 Q And the Drug Task Force would be an investigative
25 branch for Beaufort County at the time, correct?

1 A That would be one, yes. Yes, but not just
2 specifically them.

3 Q And before you took over just technical
4 surveillance, you were a daily, integral part of the
5 Drug Task Force.

6 A Yes, I -- I was --

7 Q You worked intimately with these officers, correct?

8 A I was actively working drug cases prior to working
9 that position, yes.

10 Q And would it be fair to say, then, the entire time
11 that you were working with the Drug Task Force, that you
12 issued only six or seven traffic tickets ever?

13 A I don't know how many traffic tickets. I know I
14 issued numerous warnings and numerous traffic tickets.
15 Could I give you a count on that? No. I'm sure you
16 could pull my record and find out. I don't know.

17 Q And that's why I'm asking about the seven tickets,
18 cause we did.

19 A Okay.

20 Q Would that be fair?

21 A I thought it was more than that, but I guess.

22 Q Okay. Just one second.

23 Officer Menendez, you issued Mr. Alston a warning
24 ticket for what?

25 A Just re -- regarding the traffic signal, making the

1 right-hand turn on the red light.

2 Q Okay. And what about the broken tail light?

3 A I provided him a uniform traffic ticket for
4 defective tail light.

5 Q So, back at the Shell Point, when you first
6 encountered the blue Ford Explorer, that's what you
7 issued the ticket for.

8 A Yes.

9 Q The broken tail light. And you only issued a
10 warning ticket for the right-on-red, not-complete-stop.
11 Is that correct?

12 A Yes.

13 Q Okay. And it's your testimony that there was
14 absolutely no video whatever in the car, the police car,
15 that you were driving on this day, correct?

16 A That's correct.

17 Q Okay. And is that because Drug Task Force cars
18 don't have video? Is that correct?

19 A During that period of time, they did not.

20 Q Okay.

21 A I don't know if they do now, but they did not.

22 MS. CAMPBELL: That's all I have.

23 THE COURT: Anything further?

24 MS. LITTLETON: Just briefly.

25 SPECIAL AGENT RICHARD MENENDEZ

12-14-15 STATE V. ALSTON

PRETRIAL - RE-CROSS - MENENDEZ

1 RE-DIRECT EXAMINATION BY MS. LITTLETON:

2 Q Special Agent Menendez, so you decided to stop the
3 defendant because he had made two traffic violations,
4 and you felt that encountered -- that warranted an
5 encounter.

6 A Yes. Well, I noticed -- I noted the violation.
7 One is an equipment violation; one is a moving
8 violation. At which point, then, I made a determination
9 to conduct a traffic stop.

10 Q And just to clarify, this was not drug
11 interdiction; this was a routine traffic stop, correct?

12 A Yes.

13 MS. LITTLETON: Nothing further. Thank you.

14 SPECIAL AGENT RICHARD MENENDEZ

15 RE-CROSS-EXAMINATION, BY MS. CAMPBELL:

16 Q Just one more. I'd like the record to be
17 absolutely clear. Did you in any way communicate with
18 Officer Strickland and Officer Martin on this incident
19 date about the traffic stop you were conducting and
20 having them come there to help you?

21 A I do not recall having direct contact with Officer
22 Martin on the radio or cell phone. I did not -- don't
23 believe I requested him. Is there a possibility that I
24 did? Yes, because it would be normal to reach out to
25 other officers to back up on a traffic stop. But

1 specifically, I do not recall reaching out to him. I do
2 know that Officer Strickland, whenever I pulled the
3 stop, I know that we had communication. I don't know if
4 it was via the radio or via cell phone. You know, and
5 that's all I can -- I can't say anymore because I would
6 be speculating or guessing.

7 MS. CAMPBELL: Thank you.

8 THE COURT: Anything further?

9 MS. LITTLETON: Not from the State.

10 THE COURT: You may step down, sir. Thank you.

11 A Thank you.

12 THE COURT: Who are you calling next?

13 MS. LITTLETON: The State calls Dan Martin.

14 THE COURT: Okay.

15 MADAM CLERK: Place your hand on the Bible. Raise
16 your right. Do you solemnly swear or affirm to
17 truthfully answer all questions asked of you by this
18 Court, so help you God?

19 SERGEANT DAN J. MARTIN: Yes, ma'am, I do.

20 MADAM CLERK: State your full name and spell your
21 last for me, sir.

22 SERGEANT DAN J. MARTIN: Dan J. Martin,
23 M/a/r/t/i/n.

24 SERGEANT DAN J. MARTIN

25 DIRECT EXAMINATION, BY MS. LITTLETON:

1 Q Sir, what is your rank, would you say?

2 A I'm a sergeant with the Beaufort County Sheriff's
3 Office.

4 Q Sergeant. And how long have you worked for the
5 Beaufort County Sheriff's Office?

6 A This March will be eight years.

7 Q What are your duties with the office?

8 A I work as a sergeant on patrol, and I'm a K-9
9 handler.

10 Q And what dog did you handle March 7th of 2012?

11 A That would be Nero.

12 Q And how old was Nero?

13 A At that time, Nero was approximately five years
14 old.

15 Q And how long had you been with Nero?

16 A Since 2008.

17 Q And what kind of training does Nero have?

18 A He is actually a full patrol dog, which he has
19 narcotics, tracking, article search, and bite work.

20 Q And how often do you all train?

21 A We -- we train as a unit every week, every
22 Wednesday.

23 Q And what kind of training is that?

24 A We do tracking, narcotic, building search, bite
25 work, the gamut of all -- everything that they're

1 trained for.

2 Q So, on March 7, 2012, you were contacted about
3 coming out for a vehicle sniff. Is that correct?

4 A Yes, ma'am.

5 Q Who were you contacted by?

6 A At the time, it was Lance Corporal Strickland.

7 Q And it was a traffic stop that you arrived to?

8 A Yes, ma'am. They advised that they were on a
9 traffic stop, and requested my assistance.

10 Q Okay. And what happened once you got there?

11 A Once I got on scene, I evaluated the scene, what
12 was going on. I seen Lance Corporal Strickland and
13 other members of the Sheriff's Office on scene. They
14 had a gentleman at the back of his vehicle, and they
15 requested I do a K-9, free-air sniff of the exterior of
16 the vehicle.

17 Q Could you describe the K-9 sniff.

18 A Yes. What it is, is I retrieve my K-9, Nero, from
19 my patrol car. And like I do on all my sniffs, I get an
20 anchoring point on the car, which is normally the front,
21 passenger bumper. I'll start that, and I'll do a
22 clockwise direction for the first pass. And then, I'll
23 do a counterclockwise circle on this individual one on
24 the second pass. On this individual one, on the second
25 pass, once Nero came to the driver's rear door, he

1 checked the handle, and at that time, he alerted.

2 Q What does it mean to alert?

3 A The alert is the dog basically showing you that he
4 has odor in a certain area, and with -- with Nero, what
5 he does normally, is he'll sit, he'll do a head turn,
6 head and body turn, then he'll sit. Sometimes he'll
7 bark, and at that point, he'll sit at that vehicle, and
8 you can't -- the way I operate is, when I try to pull
9 him off a point, and he won't, he'll just sit, and you
10 have to drag him, basically, away from that point.

11 Q And that's what happened at the rear driver door in
12 this case?

13 A Yes, ma'am.

14 Q What happened next?

15 A At that point is when I opened the door and I
16 allowed the dog in the car. Nero jumped in the rear
17 passenger door, and if I remember correctly, he went
18 straight towards the center console area, where he began
19 to rapid sniff. And he worked that area until alerting
20 on the center console, and also the ashtray.

21 Q And what did you see on the center console. There
22 was a towel. Underneath the towel, there was a white,
23 powder substance that, at the time, I believed was
24 cocaine.

25 Q And did you do a hand search of the area?

1 A Yes. After the dog indicates inside the car, which
2 is him pinpointing the strongest point of odor inside
3 the car, I'll remove him, and put him back in my patrol
4 car. And then, the hand search was done at that point.
5 During that hand search, I found several plastic
6 baggies. On the street, we call them corner bags.
7 They're basically just sandwich bags. That stuff is
8 just stacked all the way in one corner, and you'll know
9 that's what it is, because they just tear that corner
10 off of the bag to get their substance out of it.

11 And also, like I stated, there was a towel on the
12 center console. Underneath that towel was a white,
13 powder substance. And then, there was also a cup
14 located in different part of the department.

15 COURT REPORTER: I'm sorry. *There was also a*
16 *couple?*

17 A A cup. A cup, like a drinking cup, that had
18 residue in it that we also believed was cocaine base.

19 Q At that point, what happened?

20 A I advised Lance Corporal Strickland of what was
21 located in the vehicle, and him and members of the Task
22 Force seized all other evidence that was there.

23 Q Okay. And so, Lance Corporal Strickland would have
24 collected.

25 A Yes, ma'am.

1 MS. LITTLETON: All right. Nothing further from
2 the State, your Honor.

3 THE COURT: Ms. Campbell.

4 MS. CAMPBELL: May it please the Court.

5 SERGEANT DAN J. MARTIN

6 CROSS-EXAMINATION, BY MS. CAMPBELL:

7 Q Good afternoon.

8 A Good afternoon.

9 Q Where were you when Officer Strickland contacted
10 you to come over to Lady's Island?

11 A If I remember correctly, I'd been in the Bluffton
12 area. I think I changed sides at that time. I think I
13 was working Southern Patrol.

14 Q Okay. Because you know, we subpoenaed all your
15 training records --

16 A Yes, ma'am.

17 Q -- for you and Nero.

18 A Yes, ma'am.

19 Q You're aware of that, correct?

20 A Yes, ma'am.

21 Q And are you sure you weren't over here doing a
22 training exercise with him that morning?

23 A It very -- I don't know what day that was. If
24 that's a Wednesday, I would have been doing training on
25 this side of the county.

1 Q So, do you know for sure where you were when
2 Strickland called you?

3 A Not -- not that -- not that many years ago, dear,
4 no.

5 Q And in fact, when this case originally occurred,
6 you never even issued a report in the case, correct?

7 A No, the report was issued.

8 Q Okay. The report was issued and left on an old
9 flashdrive of yours. Is that correct?

10 A Yes, ma'am, I had the report on my flashdrive.

11 Q Okay. And so, everything that was submitted was
12 lacking your report, correct?

13 A Not to my knowledge, no, ma'am.

14 Q Under the subpoena that we issued, you had to go
15 and try and find the old flashdrive that contained your
16 report. Isn't that true?

17 A I didn't have to try to find it, ma'am. I never
18 lost it, so. I had the flashdrive. You sent me to
19 Charleston to have the flashdrive read for its
20 authenticity.

21 Q Okay.

22 A Which, I do believe it passed and was showed the
23 date it was submitted.

24 Q And so, then, you submitted it in January of 2015.

25 A I may have re-submitted it, yes, ma'am.

12-14-15 STATE V. ALSTON

PRETRIAL - CROSS - MARTIN

1 Q Okay. For an incident that occurred in March of
2 2012, correct?

3 A Correct.

4 Q Okay. And you indicate that you got a call from
5 Strickland. Is that correct?

6 A Yes, ma'am.

7 Q Okay. Was that on your cell phone?

8 A Probably was, yes, ma'am.

9 Q So, you didn't go through Dispatch.

10 A I -- I -- I'm not sure, ma'am. Like I said, it's
11 almost four years ago.

12 Q And you were told where to come, correct?

13 A Yes, ma'am.

14 Q And you got there, and you make a notation that the
15 Drug Task Force was already there, correct?

16 A That would be Officer Strickland, yes, ma'am. I
17 know -- I knew he was a member of the Task Force.

18 Q And your report says other members of the Drug --
19 Beaufort County. You said, I observed Lance Corporal
20 Strickland and other members of the Beaufort County Drug
21 Task Force conducting a traffic stop on a Ford SUV,
22 correct?

23 A Yes, ma'am.

24 Q And at that time, the suspect was being detained,
25 correct?

1 A Far as -- yes, ma'am.

2 Q Okay. So, do you have any recollection of any
3 radio transmissions or cell phone calls with Officer
4 Strickland or Officer Menendez that day?

5 A No, ma'am.

6 Q Now, did you bring with you the training
7 certifications for Nero at the time?

8 A At the time of what, dear?

9 Q This incident.

10 A Did I bring my training records to the traffic
11 stop?

12 Q No, here today to the court.

13 A To the Court? To the Court. No, ma'am, I don't
14 have my traffic -- my training record.

15 Q Do you have anything to provide to this Court to
16 show that, at the incident date in time, that Nero was
17 certified properly?

18 A Not with me, no, ma'am. I'd have to have a trunk
19 to carry my training records with me.

20 Q You don't have a certification that comes annually
21 or bi-annually for the dog?

22 A Oh, yes, ma'am, we do. We have that, yes.

23 Q Okay. And you don't have that with you here.

24 A I don't have it with me, no, ma'am.

25 MS. CAMPBELL: That's all I have.

12-14-15 STATE V. ALSTON

PRETRIAL - RE-DIRECT - MARTIN

1 THE COURT: Ms. Littleton.

2 MS. LITTLETON: Very briefly, your Honor.

3 SERGEANT DAN J. MARTIN

4 RE-DIRECT EXAMINATION BY, MS. LITTLETON:

5 Q Sergeant Martin, just to clarify, you submitted
6 your report shortly after the incident.

7 A I do believe it was two days after the incident,
8 ma'am, yes, ma'am.

9 Q So, what you submitted in January of this year was
10 a re-submission of your report.

11 A Yes, ma'am.

12 MS. LITTLETON: Nothing further.

13 THE COURT: Anything further, Ms. Campbell?

14 MS. CAMPBELL: No, ma'am.

15 THE COURT: You may step down, sir.

16 A Thank you.

17 MS. LITTLETON: The State would call Kyle
18 Strickland.

19 MADAM CLERK: Put your hand on the *Bible*. Raise
20 your right. Do you solemnly swear or affirm to
21 truthfully answer all questions asked of you by this
22 Court, so help you God?

23 KYLE FISHER STRICKLAND: I do.

24 MADAM CLERK: Please be seated, and state your full
25 name and spell your last.

1 KYLE FISHER STRICKLAND: All right. my name is
2 Kyle Fisher Strickland. Last name is spelled
3 S/t/r/i/c/k/l/a/n/d.

4 KYLE FISHER STRICKLAND

5 DIRECT EXAMINATION, BY MS. LITTLETON:

6 Q Mr. Strickland, who do you work for?

7 A I'm currently self-employed. I own my own
8 business. That's what I'm doing right now.

9 Q Back on March 7 of 2012, who did you work for?

10 A Beaufort County Sheriff's Office.

11 Q And how long did you work at Beaufort County
12 Sheriff's Office?

13 A I'd say it was around probably three years.

14 Q And what were your duties in 2012, March of 2012?

15 A At that time, I was on the Drug Task Force Unit, as
16 an investigator.

17 Q On March 7, 2012, did you receive a call about a
18 traffic stop?

19 A I did. I actually spoke with Corporal Menendez,
20 Rich Menendez, and he advised me of a traffic stop that
21 he was on over on South Carolina 802, on Lady's Island,
22 involving Mr. Kevin Alston, who's present here today in
23 a black t-shirt.

24 Q Thank you. About how quickly did you arrive after
25 the traffic stop had happened?

12-14-15 STATE V. ALSTON

PRETRIAL - DIRECT - STRICKLAND

1 A I don't think it was too much longer. I'd say, you
2 know, a couple minutes.

3 Q What happened, once you arrived?

4 A When I arrived, I noticed Mr. Alston was outside
5 the vehicle. Corporal Menendez advised me as to why he
6 had stopped him. And that his license was under
7 suspension. At which time, Corporal Martin, who was our
8 K-9 unit at the time, also had him respond.

9 Q Did you contact --

10 A Yeah, I did.

11 Q Okay.

12 A Yeah. He arrived on the scene, like I said, it was
13 a short time after I'd pulled up. And I spoke with Mr.
14 Alston and told him who I was. And had Corporal Martin
15 actually do a K-9 sniff of the vehicle. And that was
16 because when he actually had Mr. Alston out, Corporal
17 Menendez, like I said, he advised me that he was under
18 suspension, as well, so.

19 Q And what happened after the dog sniff?

20 A After the dog sniff, Corporal Martin actually came
21 back to me, because we have to do -- when we go to tow a
22 vehicle, we actually do an inventory of the car. So,
23 before we did anything else, I -- when he had done the
24 vehicle sniff, he advised me that he did find some
25 contraband inside the vehicle. He said he noticed that

1 there was a white, powdery substance on the console area
2 that was suspected cocaine residue. And also, in the
3 back seat of the Ford Explorer, I believe it was, was a
4 measuring cup. Inside the measuring cup was also white,
5 powdery substance believed to be cocaine.

6 And then, at that time, I took -- we have a cocaine
7 wipe that is used to test for a cocaine-based substance.
8 It'll actually turn blue. So, I actually tested both
9 the residue in the bag and inside the cup, and it did
10 turn blue, which is an indication positive for a
11 cocaine-based substance.

12 Q Did you test with the KNICK kit on the center
13 console?

14 A Yeah, both the console and in the back, yeah.

15 Q And then, what did you do?

16 A By that time, Corporal Menendez advised that Alston
17 was, in fact, under suspension. It was confirmed
18 through our dispatch. He was placed under arrest, and I
19 advised him of his *Miranda* rights. I was unsure if
20 Corporal Menendez had done it at that time, but I know I
21 did it. And --

22 Q And how did you do it?

23 A At the time, I was carrying a *Miranda* card that was
24 given to me by the Sheriff's Office, and I read it to
25 him. He said he understood. He didn't want an attorney

1 present. He said that he didn't know about, you know,
2 any kind of cocaine being in the vehicle. When I did a
3 search of Mr. Alston's person, in his right, front
4 pant's pocket was a pill.

5 At that time, I contacted poison control and
6 described the pill to them, and they had told me it was
7 suspected oxycodone, which would be a controlled
8 Schedule II substance. So, he was charged with that, as
9 well. And I asked home about that, as well, under
10 *Miranda*, and at first, he said that he had a
11 prescription for it, but I advised him, you know, that I
12 could check, and I had a way to check to see if he did.
13 And at which time, he changed his story and saying that
14 a friend had given it to him because of a toothache.
15 So, I advised, you know, he was in violation there, and
16 proceed with a charge of possession of controlled
17 substance.

18 Q So, at that point, he was given tickets or warrants
19 for all of the charges?

20 A That's right. I believe Corporal Menendez wrote
21 him a warning for a broken tail light. He charged him,
22 I think, with the disregarding a traffic control device,
23 as well. And then, like I said, the charges were also
24 brought for the suspected cocaine and the pill, as well,
25 and the driving under suspension.

1 Q Okay. And then, was his car actually towed?

2 A Yes, it was towed. Try to find the name of the tow
3 company for you. It was towed by Duke's Towing out of
4 Beaufort County.

5 Q Great. And just to clarify about the statements
6 that the defendant made to you, at any time did you
7 threaten him.

8 A I did not.

9 Q Did you promise him anything?

10 A I did not.

11 Q Did you hear him ask for an attorney at any point?

12 A I did not.

13 Q Did you hear anyone else threaten him or promise
14 him anything?

15 A I did not.

16 Q Did he appear to be under the influence of drugs or
17 alcohol?

18 A I could not tell of him to be under the influence
19 of any drugs or alcohol at that time.

20 Q And did he appear to have any physical or mental
21 disability?

22 A Not to my knowledge.

23 MS. LITTLETON: Nothing further, your Honor.

24 THE COURT: Ms. Campbell.

25 KYLE FISHER STRICKLAND

1 CROSS-EXAMINATION, BY MS. CAMPBELL:

2 Q On this incident date, you were a member of the
3 Drug Task Force, correct?

4 A That's correct.

5 Q So was Officer Menendez, correct?

6 A Yes, he was.

7 Q Okay. How long after Officer Menendez pulled Mr.
8 Alston over did you arrive?

9 A Like I said, from what I believe, it was just a few
10 minutes. It wasn't very long. I'm -- I'm actually
11 trying to look and see if I had an exact time. I had --
12 at 1036 hours, which would be in the morning hours,
13 around that time.

14 Q Were you working that morning?

15 A I was.

16 Q Okay. Do you remember what you were doing and how
17 you got the call from Officer Menendez to come over
18 there?

19 A We were on a regular day shift. We were working --
20 myself, I was working some other -- just basically
21 riding around, working some leads on some cases that I
22 had. Not anything in reference to what Corporal
23 Menendez was doing. He -- he was on the team, but I
24 don't think he was with us really doing any type of work
25 that day. He was more of doing the technical support,

1 setting up cameras and --

2 Q He wasn't doing interdiction?

3 A No. No, ma'am.

4 Q But you were.

5 A Yeah, I was out actually -- yeah, I was out doing
6 it.

7 Q Interdiction, right?

8 A Not interdiction. I was really just working other
9 cases. We would go and check houses and that kind of
10 stuff. But no, I wasn't doing actually interdiction,
11 but.

12 Q I'm sorry. You say you would to and check houses?

13 A Check houses and ride around. I -- I -- I mean, I
14 guess, in a way, it's interdiction. I was looking for
15 drug dealers, as that was what I was employed to do.

16 Q Right.

17 A But as for a specific interdiction, I think would
18 be more of like a -- you can see them on interstates
19 doing some type of work or something like that where it
20 was like a full-blown interdiction case, and this wasn't
21 -- wasn't that, so.

22 Q Okay. Well, let's talk about this case, then.

23 When you got the call from Menendez to go there, --

24 A Um-hmm.

25 Q -- was it on your county dispatch or your county

1 cell phone?

2 A I don't know if it was -- I believe I heard him
3 actually give out the call over the radio, and I believe
4 it was by cell phone. Usually, we don't really talk a
5 whole lot over the radio after that, so.

6 Q If Officer Menendez had a car pulled over for a
7 broken tail light, and for turning right on red, what
8 did he need you for?

9 A Well, I actually --

10 Q Why were you going over there?

11 A Well, I'll explain it to you. I actually was
12 assigned more to the Northern District of Beaufort
13 County for drug work. And during some of my
14 investigations, I had learned of Mr. Alston's name
15 before. So.

16 Q So, Mr. Menendez -- so, Officer Menendez told you
17 that he had a Kelvin Alston stopped. Is that what
18 you're telling us?

19 A That's correct.

20 Q Okay. And because you knew the name, you came over
21 to the stop.

22 A That's correct.

23 Q Okay. And when, exactly, did you call for Martin?

24 A I believe it was when I was actually in route over
25 there, let him know where I was heading, and to come

1 that way.

2 Q So, what facts, then, led you to call for the dog?

3 A Well, there wasn't any actual facts, like I said,
4 other than the fact that I had information, you know,
5 that -- that he was involved in possible drug-related
6 activity. And it wasn't uncommon for me to go out, if
7 officers had people stopped, you know, that I was
8 interested in, I would go out there.

9 Q So, you had no facts about this traffic stop, other
10 than this man's name. That's what you've testified to,
11 correct?

12 A That's correct. And the fact that, you know,
13 Corporal Menendez did have him pulled for a traffic --
14 an actually traffic violation, as well as the situation
15 with his license, as well. So.

16 Q Okay. So, you're adding some things now. So, a
17 situation with his license was given to you over the
18 phone. Is that what you're telling me now?

19 A No, that came through Dispatch.

20 Q So, a driving under suspension, right? And a name.

21 A Um-hmm.

22 Q Kelvin Alston. Is there anything else you can
23 think of?

24 A That's it.

25 Q That's it? Okay. So, criminal activity, at the

1 time of the traffic stop, you can't tell us of any facts
2 that would support criminal activity during the traffic
3 stop, right?

4 A Criminal activity other than driving under
5 suspension?

6 Q You've already testified to that. Anything?

7 A No, ma'am.

8 Q His name and driving under suspension. That's it.

9 A Correct.

10 MS. CAMPBELL: Okay. That's all.

11 THE COURT: Ms. Littleton.

12 MS. LITTLETON: Thank you, your Honor.

13 KYLE FISHER STRICKLAND

14 RE-DIRECT EXAMINATION, BY MS. LITTLETON:

15 Q So, you knew about the defendant and his potential
16 history, but that wasn't why the defendant was pulled
17 over for the traffic stop, correct?

18 A That's correct.

19 Q He was pulled over because of a traffic violation.

20 A That's correct.

21 Q Thank you. And do you still have a copy of your
22 Miranda card?

23 A I may. Like I said, I've been out of law
24 enforcement, but I may have gotten rid of it.

25 Q I understand. Could you read it for us?

1 A Sure. It says:

2 You have the right to remain silent.

3 Anything you say can and will be used
4 against you in a court of law. You have
5 the right to speak to an attorney and to
6 have an attorney present during any
7 questioning.

8 If you cannot afford a lawyer, one
9 will be provided for you at government
10 expense.

11 Knowing and understanding your rights
12 as I have explained them to you, are you
13 willing to answer my questions without an
14 attorney present?

15 And this was the card.

16 Q And that's what you read to the defendant?

17 A That's correct.

18 Q And he stated he did not want a lawyer and he
19 wished to speak with you?

20 A That's correct.

21 MS. LITTLETON: Thank you. Nothing further.

22 THE COURT: Okay. You can step down, sir. Thank
23 you.

24 Anything further from the State?

25 MS. LITTLETON: Nothing further from the State,

12-14-15 STATE V. ALSTON

ARGUMENT AND RULINGS

1 your Honor.

2 THE COURT: Okay. Ms. Campbell, can we just take
3 two minutes, and then, do argument or do you intend to
4 call anyone? Your client? No? Okay. Okay. We'll
5 just take two minutes and be right back. Okay?

6 OFF THE RECORD 1:21 P.M.

7 BACK ON THE RECORD 1:51 P.M.

8 ARGUMENT AND RULINGS:

9 THE COURT: Please be seated. Ms. Campbell, any
10 argument you want to make?

11 MS. CAMPBELL: Just briefly, your Honor. First and
12 foremost, I just ask the copies of the written motions
13 that I gave your Honor be made part of the record of the
14 case.

15 ITEM IDENTIFIED AS NOTICE OF MOTION
16 AND MEMORANDUM IN SUPPORT OF MOTION
17 TO SUPPRESS EVIDENCE,
18 MARKED COURT'S PRETRIAL EXHIBIT NUMBER 1.
19 ITEM IDENTIFIED AS NOTICE OF MOTION
20 AND MOTION TO SUPPRESS EVIDENCE
21 SEIZED IN VIOLATION OF DEFENDANT'S
22 RIGHTS,
23 MARKED COURT'S PRETRIAL EXHIBIT NUMBER 2.

24 MS. CAMPBELL: At the outset, on Nero, on the dog,
25 the defendant takes the position with the State's

1 failure to produce any certification whatsoever for
2 Nero, for the dog, that they have failed to provide this
3 Court the necessary backing for you to be able to find
4 that the dog had probable -- provided the probable cause
5 basis for the search of Mr. Alston's car.

6 And so, with the State's just complete failure to
7 provide you under the case law as is required, the
8 certification on the dog, we would say that they failed
9 to meet that burden. And again, no probable cause basis
10 for the search.

11 Second, there's been --

12 THE COURT: Just so I understand, we have no
13 certification on the dog whatsoever?

14 MS. LITTLETON: Your Honor, we have logs and
15 records here. We can pass them up to the Court.

16 THE COURT: Have you given them to Ms. Campbell?

17 MS. LITTLETON: It was my understanding that --

18 MS. CAMPBELL: I have them.

19 MS. LITTLETON: -- Ms. Campbell has them.

20 MS. CAMPBELL: And my point being that the Court
21 would need them. My reading of the case law is that the
22 State is required to provide to the Court the proper
23 certification for the dog so that your Honor can make
24 the determination that the dog is suitable to provide
25 the probable cause basis for the search of the

1 automobile. And I would take the position that, during
2 the proceedings this afternoon, that, that information
3 had not been testified to nor provided to your Honor.
4 So.

5 MS. LITTLETON: I mean, your Honor, there has been
6 nothing to show that the canine is not certified, and we
7 have these here if the Court would like to review them
8 and see if they feel that Nero was qualified to search.

9 THE COURT: Now you have to reveal them to know.

10 MS. LITTLETON: Okay. We'd like to reveal them.

11 THE COURT: Okay? So, that's the first issue.
12 Okay. That's the first issue. Okay.

13 MS. CAMPBELL: Breaking it down from the testimony
14 today to the point, Officer Menendez is the officer who
15 made a traffic stop on Mr. Alston. Officer Strickland
16 is the officer who made the decision to call Officer
17 Martin. He was not the officer on the scene. He was
18 not the officer conducting the traffic stop with Mr.
19 Alston. The only factual basis -- and we don't concede
20 that he had the wherewithal to be the one to call for
21 the dog on his drive over to the traffic stop -- is that
22 he recognized a name, and that the person was driving
23 under suspension. So, that's part of our argument, as
24 well, based on the testimony today.

25 I come back to my written argument to your Honor

1 that we do not concede in any way that this was a
2 routine traffic stop. We come back to the fact that
3 this was drug interdiction; that Officer Menendez and
4 Officer Strickland were members of the Drug Task Force
5 in March of 2012; that they conducted a drug
6 interdiction stop masked as a traffic violation stop on
7 Mr. Alston. And I briefed that thoroughly for both your
8 Honor and for the State, but succinctly, Mr. Alston was
9 followed for over ten minutes before he was actually
10 blue-lighted by Officer Menendez. Based upon the
11 information that he testified to in his pretrial
12 testimony, we're at probably seven or eight miles and
13 two different incidents, which he testified today the
14 tail light, he didn't even think at that point was
15 anything significant to his mind.

16 But we, again, take the position that this was a
17 concerted effort. This was orchestrated and manipulated
18 so as to not violate the *Caballes* and the *Foreman* and
19 the -- I'm going to try to say it right -- but *Provet*
20 rules on dog sniff situations, which are, the sniff is
21 valid if it's performed during the lawful stop. We
22 don't even concede the stop was lawful, but in any
23 event, as it was manipulated. You have -- you may order
24 the dog sniff if you have reasonable suspicion of
25 criminal activity during the initial valid traffic stop.

1 And you can't extend the stop. So, in order not to
2 extend the stop, you have to have all the players in
3 place, converging at the same time in order to not
4 extend the stop.

5 And so, we would assert to your Honor that it's a
6 violation of most importantly, not just Mr. Alston's
7 *Fourth Amendment* rights under the *United States*
8 *Constitution*, but as we found, an interesting little
9 situation here with the *South Carolina Constitution*
10 giving us a broader protection and not actually being
11 addressed fully by our State Supreme Court yet. We
12 would rely on that and ask your Honor to suppress both
13 the crack cocaine and the pill that were located on Mr.
14 Alston.

15 At this time, I have no argument on the *Jackson v.*
16 *Denno* matter. At this time, I don't think it's really
17 here nor there. I do think that he would have been
18 given his *Miranda*, from what I can understand, and that
19 the statement about the prescription, he certainly was
20 advised of his rights before he made the statement.

21 Thank you, your Honor.

22 MS. LITTLETON: May it please the Court? Your
23 Honor, we would certainly argue that the stop was not
24 pretextual. Rich Menendez testified on the stand that,
25 in fact, that it was not drug interdiction. Yes, he was

1 associated with the Drug Task Force. His car didn't
2 have a camera for that reason. But he was not on drug
3 interdiction at that time. He was on his way, he
4 believes, to go install a camera somewhere or something
5 on the technical side, but he was not doing drug
6 interdiction.

7 Additionally, your Honor, Strickland did know the
8 name, Kevin Alston, but his arrival -- the traffic stop
9 was not based on the pretext of knowing the defendant's
10 name or his potential history. Strickland's arrival may
11 have been, but that does not mean that the traffic stop
12 itself was pretextual.

13 Additionally, the defendant has been found guilty
14 on the underlying charges of driving under suspension
15 and defective tail lights, which I'll pass up the
16 certified convictions to your Honor now, along with a
17 case, *State v. Snowden*, which states that -- *State v.*
18 *Snowden* states that probable cause for the stop and the
19 arrest had been determined at the point the underlying
20 offenses have -- they've been found guilty of the
21 underlying offenses.

22 So, your Honor, we would insist that this was not
23 pretextual. If it was, the Supreme Court has found that
24 pretextual stops are, in fact, allowed. The subjective
25 intentions of the officer are not relevant to whether or

1 not there was probable cause to stop the vehicle.

2 And additionally, we would argue that this was not
3 an extended stop. This was not a case of that.
4 Menendez realize that, at the point he realized the
5 defendant was driving under suspension, he intended to
6 place him under arrest, and therefore, this was not an
7 extended traffic stop.

8 Additionally, even with an extended traffic stop,
9 this is not a reasonableness inquiry. The case law says
10 that you cannot measurably extend the stop. And they
11 have testified that the canine arrived almost at the
12 exactly same time. And therefore, it did not measurably
13 extend the stop.

14 Thank you, your Honor.

15 THE COURT: Okay. All right. Well, I do find it
16 was a valid stop. Obviously, he said that there was the
17 broken tail light, which is an equipment violation.
18 Then, the driving violation.

19 Was it gratuitous? The canine was there, and I
20 think maybe Ms. Campbell has something as far as, you
21 know, they figured out so as not to reasonably extend
22 the stop, they've got all their ducks in a row and are
23 ready to go. But I think it was within the reasonable
24 amount of time period. The dog did the sniff. From the
25 sniff, that prompted the dog alert.

1 Provided that I find that Nero was a reliable dog
2 -- I haven't reviewed that yet -- but provided that is
3 the case, then, I think that does allow for them to go
4 on with the search. And also, too, it doesn't -- I see
5 at that point that, at that point, he's already under
6 arrest, from what I heard from the testimony of the
7 officers. So, he was already -- we know he was
8 detained. He was under arrest. They were going to take
9 him in. And I think I heard he also states something
10 like we're going to have to impound the car anyway, and
11 to impound the car, we're going to have to do a search,
12 as well.

13 But whether or not that's here nor there, I think
14 the alert, if the dog is good, if the dog is good, I
15 think the alert is valid, and warrants the search. I
16 think -- I think that would be an exception. I think --
17 I think it's -- I think you can do it. Okay. So, I
18 think it comes in.

19 What else do we have as far as pretrials? That's
20 it?

21 MS. CAMPBELL: That's it.

22 THE COURT: What time can you start Wednesday
23 morning?

24 MS. LITTLETON: Whenever your Honor would like to
25 start.

12-16-15 STATE V. ALSTON

BY THE COURT

1 THE COURT: What about you all be here at 9:00?
2 Okay? At 9:00? Okay. And obviously, Mr. Alston
3 remains out on -- he's on some kind of bond, P.R. or
4 something. So, that's fine.

5 Anything else?

6 MS. LITTLETON: Nothing further from the State,
7 your Honor.

8 THE COURT: All right. I'll see you all Monday.

9 **END DAY ONE, MONDAY, DECEMBER 14,**
10 **2016, 2:01 P.M.**

11 **BEGIN DAY TWO, WEDNESDAY, DECEMBER 16,**
12 **2015, 10:36 A.M.**

13 BY THE COURT:

14 BAILIFF: All rise. This Court is now in session.
15 The Honorable Carmen Mullen presiding.

16 THE COURT: Please be seated. All right. State
17 ready?

18 MS. LITTLETON: We are, your Honor.

19 THE COURT: Is the defense ready?

20 MS. CAMPBELL: Yes, sir -- I mean, yes, ma'am.

21 THE COURT: Do you need to sequester any witnesses,
22 or are we fine where we're at?

23 MS. LITTLETON: We've sent our witnesses out.
24 They're sequestered.

12-16-15 STATE V. ALSTON

BY THE COURT

1 THE COURT: Okay. Anything else we need to take
2 up? No? Bring the jury in, please.

3 BAILIFF: Ready, your Honor?

4 THE COURT: Yes, sir, we're ready to go. Thank
5 you, Tom.

6 BAILIFF: Jury's entering the courtroom, your
7 Honor.

8 THE COURT: Thank you.

9 JURORS ENTER COURTROOM 10:43 A.M.

10 THE COURT: You may be seated. Good morning,
11 ladies and gentlemen.

12 RESPONSES FROM JURORS.

13 THE COURT: Thank you for your patience. At this
14 time, we are going to go ahead and begin the trial of
15 this case. I'm going to have the clerk swear you in as
16 the jury. So, if you all would please stand and raise
17 your right hand, and when you accept the oath, say I do.
18 All right?

19 JURORS SWORN:

20 MADAM CLERK: Do you solemnly swear or affirm that
21 you shall well and truly try and true deliverance make
22 between the State of South Carolina and the accused at
23 the Bar, and a true verdict give, according to the
24 evidence and the law, so help you God?

25 RESPONSES FROM JURORS.

1 Q And you transported the entire BEST Bag from the
2 storage to the lab, correct?

3 A Right.

4 Q And you didn't tamper with or alter the BEST Bag in
5 any way.

6 A No, ma'am. It was sealed.

7 Q And you maintained the integrity of it while you
8 had custody of it.

9 COURT REPORTER: And your answer?

10 Q Right?

11 A Yeah.

12 MS. LITTLETON: Your Honor, at this time, the State
13 would move State's 1 into evidence.

14 THE COURT: Subject to your prior two objections,
15 they're in evidence.

16 ITEM IDENTIFIED AS BEST BAG AND CONTENTS
17 MARKED STATE'S EXHIBIT NUMBER 1
18 ADMITTED AS EVIDENCE.

19 MS. LITTLETON: Nothing further. Thank you.

20 THE COURT: Thank you. Ms. Campbell.

21 MS. CAMPBELL: Just very briefly.

22 JIMMY PADGETT

23 CROSS-EXAMINATION, BY MS. CAMPBELL:

24 Q I'm going to come close.

25 A Yes, ma'am. My hearing is bad. I'm sorry.

1 NOTE FROM JURORS, BY THE COURT:

2 THE COURT: All right. Ms. Campbell, I've received
3 a note from the jury. And it says, Sharon, who's Juror
4 Number 320, Sharon Urmann, says she works with the wife
5 of K-9 unit Officer Martin at Walmart. Not close
6 friends, just co-workers. Hi and bye. She noted that
7 they are, and in quotations, wrote, *good people*.

8 And obviously, the question was not asked if they,
9 you know, knew directly a spouse of someone that was
10 going to testify. You know, we asked is anyone related
11 by blood, connected by marriage, or have a close,
12 personal friendship or special relationship with any of
13 the following people. And it sounds like she is a co-
14 worker of Deputy Martin's wife.

15 MS. CAMPBELL: From our perspective, that presents
16 a terrible problem for this jury and for this Court.
17 You know, this juror did not answer truthfully, and now,
18 has interjected outside information into the jury
19 deliberation room.

20 THE COURT: Okay, I will say this, I don't think
21 she didn't answer the question truthfully, because,
22 again, the question was -- she knows Martin's wife, not
23 Deputy Martin. But I am concerned about the inserting
24 that they are good people.

25 MS. CAMPBELL: Correct. We'd ask for a mistrial,

1 your Honor.

2 THE COURT: Yes, ma'am.

3 MS. LITTLETON: Your Honor, we would argue that she
4 did not answer the question that she knew Deputy Martin
5 in any way. So, I think the assumption would be that
6 she doesn't, in fact, know him, and she doesn't seem to
7 be close friends with his wife. And your Honor, we
8 would argue that she may know his wife, but she said not
9 well. And it's not grounds for a mistrial.

10 THE COURT: All right. Wanda, will you mark this
11 note. Which is it? Number 4?

12 ITEM IDENTIFIED AS NOTE FROM

13 JURORS,

14 MARKED COURT'S EXHIBIT NUMBER 4.

15 THE COURT: Just for your all's understanding, this
16 is -- had it been disclosed during the questioning,
17 which is are you related by blood or connected by
18 marriage or a close personal friend or share a special
19 relationship with any of the following witnesses, or
20 have any professional relationship with any of the
21 following witnesses, and list it, had she disclosed it,
22 my next question would be is, have you heard anything
23 about this case. Second question would be, then, are
24 you sure you can be fair and impartial. Even if both of
25 those questions were, you know, I can be fair and

1 impartial, Ms. Campbell would have at least had the
2 knowledge that this juror had a connection with a, what
3 turns out to be an important witness in this case. And
4 she could have, with that knowledge, exercised a strike
5 on it. So, I don't think I have any choice but to grant
6 a mistrial in this case.

7 You keep it.

8 MS. LITTLETON: Thank you, your Honor.

9 THE COURT: Okay. Let's bring the juror out. No
10 one moves while the jury is here, by the way. For those
11 of you, I know you're waiting to enter some pleas.
12 Everyone just keep your seats. Okay? Thank you.

13 BAILIFF: Are you ready, your Honor?

14 THE COURT: Yes, I am.

15 BAILIFF: Jury's entering the courtroom, your
16 Honor.

17 JURORS ENTER COURTROOM 3:45 P.M.

18 COURT DECLARES MISTRIAL:

19 THE COURT: Please be seated. Mr. Foreperson, I
20 appreciate the note you sent to me. As a result of that
21 note, I'm going to declare a mistrial in this case.
22 That's why it's so important to know who knows people.
23 And the simple interjection of not just I recognize
24 that, but that they are a good person, in some way shape
25 or form verifies character, veracity, and I have no

1

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2012-GS-07-00612
& 2012-GS-07-00613

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

JANUARY 19 & 20, 2016

PRETRIAL MOTIONS AND TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

KEVIN ALSTON

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

AND A JURY

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

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1-19-16 STATE V ALSTON

VOIR DIRE

1 OFF-THE-RECORD BENCH CONFERENCE, OUT OF
2 HEARING OF JURORS. PRESENT: THE COURT,
3 MR. HOLLEN, MS. CAMPBELL.

4 THE COURT: Ladies and gentlemen, at this time, we
5 are about to begin the case entitled, the State of South
6 Carolina versus Kevin Alston, who is charged with bills
7 of indictments in this case with possession of crack
8 cocaine and possession of a controlled substance.

9 Ladies and gentlemen, there are a number of
10 questions I am required to ask you in regards to this
11 case specifically. I remind you that, under the oath
12 you took earlier this morning, you are required to
13 respond to these questions, if appropriate. Again, we
14 will do the same thing. If you need to respond, simply
15 stand; first, give me your name and juror number; and
16 then, I'll ask you to go ahead and speak.

17 Ladies and gentlemen, if, for some reason, I cut
18 you off, or I ask you to approach, please understand,
19 I'm not being rude. I just need to make sure you're not
20 going to say something that might contaminate the rest
21 of the panel. All right? So, ladies and gentlemen,
22 we're going to go ahead and begin.

23 In this case, the State is being represented by
24 Brian Hollen. If you would stand up. And also, Alex
25 Joseph. Thank you. You may be seated.

1-19-16 STATE V ALSTON

BY THE COURT

1 JURORS LEAVE COURTROOM 12:24 P.M.

2 BY THE COURT:

3 BAILIFF: Jury is clear, your Honor.

4 THE COURT: Thank you. Trasi, what pretrial
5 motions can I anticipate in the morning?

6 MS. CAMPBELL: Well, your Honor, we can take that
7 up just very briefly. I know that you've got a prior
8 appointment, but I think that, over the night, we need
9 to decide whether or not you are going to take the
10 position that your previous pretrial motions stand for
11 this trial or not.

12 The State and I have discussed it, and we would
13 look to you for how you want us to proceed. I've looked
14 at the law. I think it could really go either way in
15 your discretion. If you feel like, particularly since
16 you are the judge, it would be as if you had, you know,
17 scheduled the pretrial motions a month ahead of time,
18 made those rulings, and then, we proceeded to trial.

19 Some, you know, cases come down on the side of, no,
20 it's a mistrial; you got to do everything over again.

21 But again, however your Honor wishes to proceed is
22 fine with the defense.

23 THE COURT: Okay.

24 MS. CAMPBELL: And if we are -- I'm sorry -- and if
25 we are relying on the prior pretrial rulings, then, of

1-19-16 STATE V ALSTON

BY THE COURT

1 course, we can just make sure that, that date of the
2 previous trial is part of the record.

3 THE COURT: Transcript.

4 MS. CAMPBELL: Correct.

5 THE COURT: Did anyone get a copy of the
6 transcript?

7 MS. CAMPBELL: I do. I have a copy.

8 THE COURT: You have a copy of it?

9 SOLICITOR HOLLEN: The State has a copy, also?

10 THE COURT: I would like to see the pretrial
11 motions. I'd like to see a copy of it, and let me just
12 re-read them.

13 MS. CAMPBELL: Okay. I only got the officers'
14 testimony. Did you get a full transcript?

15 SOLICITOR HOLLEN: No. I believe I got just what
16 you got.

17 THE COURT: Okay. That's fine. Let me go ahead
18 and see that, as well, and that's fine, just to make
19 sure.

20 MS. CAMPBELL: I'll have my office make a copy and
21 deliver it to your office. Would that be okay?

22 SOLICITOR HOLLEN: I'm happy to just hand up my
23 copy, your Honor. I'll print another one.

24 THE COURT: Hand yours right here is fine. Save
25 some trees.

1-19-16 STATE V ALSTON

BY THE COURT

1 MS. CAMPBELL: I guess. And either way, we'll be
2 ready to go in the morning.

3 THE COURT: Okay. And last time, I can't remember,
4 we did sequester the witnesses. What else, other than,
5 that you can recall? No significant?

6 SOLICITOR HOLLEN: We had a *Jackson v. Denno*
7 hearing. That's -- again, the State would consent to
8 whatever your Honor decides, I guess, as far as
9 pretrial.

10 THE COURT: Okay. Okay. All right. Well, let me
11 just look and see just as far as this hearing is
12 concerned. And I'll let you all know something probably
13 by email. I presume -- I'm coming back here this
14 afternoon, and I will be here. But just be able to
15 check your emails to decide. Just, I want to
16 opportunity to take a look at this transcript again,
17 just in case there's something in there that changes my
18 mind.

19 MS. CAMPBELL: Thank you.

20 THE COURT: Absolutely. Okay. Well, we're going
21 to be at ease in this courtroom until 2:15, when Judge
22 Nettles is going to come back and pull his jury.

23 END DAY ONE, TUESDAY, JANUARY 19,

24 2016, 12:29 P.M.

25 BEGIN DAY TWO, WEDNESDAY, JANUARY 20,

1 LATOYA DAY: Thank you. Good to be here.

2 THE COURT: Thank you.

3 All right. Well, Ms. Campbell, other than, I know
4 we're still waiting on your client to arrive, and you
5 said he was just running a bit behind, are there any
6 other pretrial motions that we can put on the record? I
7 think my office emailed you both and said that I'm going
8 to stand on my motions as before regarding the stop.

9 I know I think last time, I am quite sure we
10 sequestered the witnesses in this case last time, and I
11 am going to assume that you all wish to do that again.
12 Is that correct? Or is it not necessary?

13 MS. CAMPBELL: We do wish to have them sequestered.

14 THE COURT: Okay.

15 SOLICITOR HOLLEN: I don't have any objection to
16 that.

17 THE COURT: Okay. Any other pretrial motions we're
18 concerned about? The one thing I was reminded of in
19 reviewing the transcript you provided to me yesterday,
20 Mr. Hollen, in regards to the stop is, I want to make
21 sure that, I believe, and I can't remember which officer
22 it was, but someone said, how do you know him, or how do
23 you know Mr. Alston. And I want to make sure that what
24 -- is it just from being around the community, and just,
25 you know, living here and working here. So, to make

1 sure it's just not, you know, he's of interest to us or
2 something along those lines, or not in reference to an
3 investigation. But I just want to make sure the
4 officers know that, so we don't have any problems with
5 that.

6 Any other concerns, or anything else you remember,
7 Ms. Campbell, as a potential problem?

8 MS. CAMPBELL: I do not. I can't think of anything
9 else, your Honor, other than that incident during the
10 trial itself, it was very clean, and I can't think of
11 anything that we need to address, other than, as we said
12 on the record, the Court's relying on your previous
13 pretrial rulings from the trial in December, which, I
14 think the dates were the 14th and the 15th in December,
15 and Ms. Wanda Rowe was our court reporter then, as well.

16 SOLICITOR HOLLEN: Your Honor, there is one thing I
17 would like to bring up. Just, it didn't come up the
18 last time, because everything was sealed. But at this
19 point, the evidence has been opened. I want to make
20 sure that we don't have chain issues just because of a
21 prior trial in which the evidence was -- again, I just
22 want to make sure, bring it up and make sure.

23 MS. CAMPBELL: No, that's not -- I wouldn't make
24 that an issue.

25 SOLICITOR HOLLEN: It hasn't been opened again

1-20-16 STATE V. ALSTON

GENERAL CHARGE

1 right hand, and accept the oath.

2 JURORS SWORN:

3 MADAM CLERK: Do you solemnly swear or affirm that
4 you shall well and truly try and true deliverance make
5 between the State of South Carolina and the accused at
6 the Bar, and a true verdict give, according to the
7 evidence, os help you God?

8 RESPONSES FROM JURORS.

9 GENERAL CHARGE:

10 THE COURT: Thank you. You may be seated, ladies
11 and gentlemen. What I'm going to now say to you is
12 intended to serve as an introduction to the trial of
13 this case. These remarks are not a charge on the law.
14 I'm going to charge you on the law that's applicable to
15 this case at the end of the trial, before you begin your
16 deliberations. This is simply an explanation of the
17 procedure that we follow, so you can better understand
18 what's happening during the trial of this case.

19 Now, ladies and gentlemen, the defendant in this
20 case, Mr. Alston, is charged by indictments that are
21 filed with this court with the offenses of possession of
22 crack cocaine and possession of a controlled substance.

23 Now, the indictments are simply a charge by which
24 the case is brought to this courtroom, and it's not, in
25 any sense, evidence of any of the allegations that it

1 contains.

2 Now, the defendant in this case, Mr. Alston, has
3 pled not guilty to these indictments. Therefore, the
4 State has the burden of proving each of the elements of
5 each of the indictments beyond a reasonable doubt, and
6 it's your duty, ladies and gentlemen of the jury, to
7 decide whether the State has met that burden.

8 Your purpose as jurors is to find and determine the
9 facts. You, the jury, are the sole judge of all facts
10 of this case. If, at any time, I make any comment
11 regarding the facts of this case, you must disregard it.
12 And you are only to determine the facts from the
13 testimony you're going to hear from the witness stand,
14 as well as any other evidence that's introduced to the
15 Court. And please understand that it is especially
16 important that you perform your duty in determining the
17 facts of this case diligently and conscientiously,
18 because ordinarily, there is no way to correct an
19 erroneous determination of the facts by a jury.

20 On the other hand, and with equal emphasis, the
21 same law that makes you, the jury, the judge of the
22 facts, makes me the judge of the law. I cannot tell you
23 what the facts are, and you cannot disagree with me
24 about what you think the law is, or what you think the
25 law ought to be. Your job is to take the law as I give

1 it to you and apply it to the facts as you find them.
2 And from there, render a just verdict under the oath you
3 took.

4 Now, I remind you again, you're going to hear me
5 say this repeatedly throughout the trial, you are not to
6 discuss this case with anyone, and that includes each
7 other, until you have heard all the evidence, you've
8 heard the closing arguments from the lawyers, and you've
9 heard my charge on the law in this case.

10 I remind you again, the attorneys and the parties,
11 in coming and going over the lunch hour or potentially
12 on break, if you go outside, may pass you. I've
13 instructed them not to speak to you, as you know. You
14 understand why. We just don't want anything to be
15 misconstrued, and they are to have no contact with you.

16 Additionally, ladies and gentlemen, I don't think
17 there's going to be anything in the newspaper or on the
18 news or anywhere else; but out of an abundance of
19 caution, and maybe over the lunch hour, you're somewhere
20 and there happens to be something on the T.V., or you
21 see something somewhere, again, it would be
22 inappropriate for you to hear or listen to or read it.

23 Please understand it's important that you keep an
24 open mind, and not decide any issue in this case until
25 all the evidence has been presented, again, the parties

1 have made their closing arguments, and I have instructed
2 you on the law in this case.

3 Ladies and gentlemen, it is your sole
4 responsibility to determine the guilt or the innocence
5 of the defendant, and your verdict must be based solely
6 on the evidence that's presented to you in this trial,
7 and on the law that I instruct you during and at the
8 close of this trial.

9 Now, in just a moment, the Solicitor is going to
10 make what's called an opening statement, in which he is
11 going to explain the issues in the case, or what he
12 believes to be the issues in the case. And then, also,
13 Ms. Campbell is going to make an opening statement, as
14 well, though she is not required to. I remind you,
15 ladies and gentlemen, that what these attorneys tell you
16 in their opening statements is not evidence in the case.
17 I remind you again, the evidence comes from the witness
18 stand and any other evidence that's introduced.

19 Now, I want you to know that, from time to time
20 during the trial of this case, you may hear the lawyers
21 say something like, your Honor, we have a matter of law
22 we need to take up; or I may motion them to come over
23 here and have a side Bar with me; or I may even send you
24 all back to your jury room. I want you to understand
25 something. We're not hiding anything from you.

1-20-16 STATE V. ALSTON

GENERAL CHARGE

1 Oftentimes, when I have to rule as a matter of law
2 whether or not certain testimony or evidence is
3 admitted, I may make a comment on the facts of this
4 case, and because I wouldn't want anything I do to
5 influence you in your determination of the facts, out of
6 an abundance of caution, we just do it outside of your
7 presence.

8 Now, in determining what the true facts are in on a
9 case, you must decide whether or not the testimony of
10 the witnesses is believable. It's my responsibility to
11 rule as a matter of law whether or not certain testimony
12 is admitted. But once the testimony is admitted,
13 whether or not you believe it is for you, the jury, to
14 determine.

15 In deciding whether to believe a witness, you have
16 a right to consider the interest of any witness, the
17 bias of any witness, the prejudice of any witness, and
18 you can look at the opportunity for the witnesses to
19 have seen the matters and the things about which the
20 witness is testifying. And you can also look at the way
21 the witness acts on the witness stand. You have the
22 right to consider anything that is in the record that
23 will help you evaluate the testimony of the witnesses.
24 Again, that means it is your duty to pay close attention
25 to the witnesses, to observe them, to listen to them, so

1 at the end of the case, ladies and gentlemen, you can
2 accurately remember the testimony as it was given.

3 Additionally, as I told you, I have provided, or
4 the bailiffs have provided, ink pens and pads. As I
5 told you before, those are to be left on your seat as
6 you come and go, and those are for your eyes only,
7 ladies and gentlemen. Because, as I remind you again,
8 some people are better note takers than others. And
9 again, I don't want you to rely on someone else's notes
10 just because they took notes about a particular
11 testimony. You need to rely on your own independent
12 recollection. All right?

13 Now, ladies and gentlemen, in order to preserve
14 everyone's rights, I'm going to give the parties an
15 opportunity to object to anything I've said. If not,
16 we're going to go ahead and begin the trial of this
17 case.

18 Any objections from the State?

19 SOLICITOR HOLLEN: No, your Honor.

20 THE COURT: Any objections from the defense?

21 MS. CAMPBELL: No, your Honor.

22 THE COURT: Ladies and gentlemen, we begin the
23 case. Solicitor?

24 SOLICITOR HOLLEN: Thank you, your Honor. Ms.
25 Campbell. May it please the Court?

1 THE COURT: Yes, sir.

2 OPENING STATEMENT ON BEHALF OF

3 THE STATE, BY SOLICITOR HOLLEN:

4 SOLICITOR HOLLEN: Good morning.

5 RESPONSES FROM JURORS.

6 SOLICITOR HOLLEN: On March 7, 2012, the defendant,
7 Kevin Alston, was arrested for possession of crack
8 cocaine and possession of a controlled substance.
9 Despite how anybody might try to rationalize it or
10 excuse it or explain it, possession of crack cocaine and
11 possession of oxycodone without a prescription are
12 crimes, and that's why we're here.

13 Shortly before 11:00 on that date, Rich Menendez,
14 who was with the Beaufort County Sheriff's Office at
15 that time, with South Carolina Law Enforcement Division
16 now, conducted a traffic stop on a blue Ford Explorer
17 for having a broken tail light and for ignoring a
18 traffic signal. The driver and the sole occupant of
19 that vehicle was Kevin Alston.

20 When he approached the car, he asked, as officer
21 often do, for a driver's license, registration,
22 insurance, and he was handed a Parris Island I.D. card
23 by the defendant. And at some point, he learned that
24 the defendant didn't have a valid driver's license. So,
25 couple of other deputies arrived at the scene. Sergeant

1 Dan Martin is a K-9 handler with Beaufort County, with
2 the Sheriff's Office; and Kyle Strickland, who, at the
3 time, was with Beaufort County, then, Colleton County.
4 Sergeant Martin did a dog sniff of the vehicle. He'll
5 tell you about that. He'll tell you that his dog, Nero,
6 alerted to the car. He was placed inside the car, where
7 he alerted again. This time, in the center console
8 area.

9 Discovered on the center console was a white powder
10 substance that he thought looked suspicious, so he
11 informed Deputy Strickland about this. It was
12 collected, and it was tested using what's called a KNICK
13 kit. It's basically a field test kit that they use to
14 swipe substances for the presence of any illegal drugs.
15 In this case, it turned blue, indicating that there was
16 cocaine present.

17 The defendant was arrested. He was read his
18 *Miranda* rights. He was searched. And in his pocket, a
19 pill was found. At first, after *Miranda*, he agreed to
20 speak with officers. He didn't know anything about the
21 cocaine, which, I remind you, was on top of the center
22 console, right next to where the driver would be seated.
23 The first story he told about the pill was that he had a
24 prescription for it. He lied. When he was told that
25 deputies had a way to check that kind of thing, he

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OPENING - STATE

1 immediately backtracked, and he said, oh, well, a friend
2 gave it to me for a toothache.. So, those are the facts.

3 Now, I do want to talk to you briefly about the
4 law, and the Judge already told you about this. She's
5 the judge of the law in this case. So, if she tells you
6 something differently than I do right now, by all means,
7 go with her. But what she's going to tell you is that
8 there are two types of possession. In this case, we
9 have both of them.

10 There's actual possession, where a person has
11 custody of something in their pocket, on their person,
12 that kind of thing. The oxycodone was in Kevin Alston's
13 pocket, and he lied about that, which leads you to
14 believe he knew exactly where it was; he knew he wasn't
15 supposed to have it; he knew he needed a prescription
16 for it.

17 The second is constructive possession. And that's
18 when a person has dominion and control or the right to
19 exercise dominion and control over the area where
20 something is found. Kevin Alston was the driver. He
21 was the only person in that car. He certainly had the
22 right to exercise dominion and control over that
23 cocaine.

24 And you all heard all this yesterday, the Judge
25 told you, this is going to be a short trial. We should

1 be done today. I don't want you to confuse the fact
2 that it's going to be a short trial with the fact that
3 it's not important, because it is important. It's
4 important to Mr. Alston. It's important to the State.

5 And as a representative of the State, my co-
6 counsel, Ms. Joseph, and myself have the burden of proof
7 here. The Judge already told you that. We have to
8 prove to you beyond a reasonable doubt that Kevin Alston
9 possessed those drugs. And it's a high burden, and it's
10 one that we take very seriously.

11 So, all I would ask is that you guys pay attention
12 to the witnesses. Look at the evidence, and most
13 importantly, use the common sense you guys brought with
14 you into the courtroom today. And if you do all of
15 that, I am confident that you'll find the State has met
16 its burden. And I'm confident that you'll find the
17 defendant guilty of possession of crack cocaine and
18 possession of a controlled substance. Thank you.

19 MS. CAMPBELL: May we briefly approach?

20 THE COURT: You may.

21 OFF-THE-RECORD BENCH CONFERENCE, OUT
22 OF HEARING OF JURORS. PRESENT: THE
23 COURT, MR. HOLLEN, MS. CAMPBELL.
24 REPORTER INSTRUCTED BY THE COURT TO
25 NOTE THAT, DURING BENCH CONFERENCE,

1 MS. CAMPBELL MADE AN OBJECTION TO
2 THE STATE'S OPENING STATEMENT.
3 END BENCH CONFERENCE.
4 OPENING STATEMENT ON BEHALF OF THE
5 DEFENDANT, BY MS. CAMPBELL:

6 MS. CAMPBELL: I always take notes when I listen to
7 the Solicitor speak to you, and it occurred to me, as he
8 was finishing up, that I'm sure he would like to be the
9 one to testify and give you the facts. That's not going
10 to be the case. Any time the facts are given to you
11 from the State, you have to understand that they are
12 bent to achieve their goal. So, I'm going to ask you to
13 listen carefully to who actually gives you the facts,
14 which will be the witnesses in this case.

15 As her Honor has told you, my name is Ms. Campbell.
16 I represent Mr. Alston. One of the questions you may
17 ask yourselves as we begin this process is, why am I
18 here? Why am I taking time away from my family, my
19 work, things that I need to do? And I understand that
20 question. But this journey that the fourteen of us,
21 you, me, Mr. Alston, the Court are on today is very
22 important. It may be a blip in the continuum of time.
23 However, it is very lasting what your decision is.

24 Martin Luther King said in one of his speeches, and
25 it's one of my most favorite quotes from him, and I want

1 you to carry this with you on this journey. That,
2 injustice anywhere is a threat to justice everywhere.

3 Now, we're together in a fabric that's going to be
4 woven by the fabric here in this courtroom, and justice
5 demands absolutely that, beyond question, firmly
6 convinced beyond a reasonable doubt that a man can be
7 put forth by you, who is on trial for his life and his
8 liberty as a guilty man. She will not take the man that
9 you determine is not guilty.

10 I will tell you that, in order to determine the
11 guilt or innocence of a man on trial in the United
12 States, you have tools, and the tools that you use are
13 crucial to your determination. The sharpest instrument
14 that you have in your toolbox is your ability to judge
15 the witnesses as they testify before you.

16 Each one of you was carefully selected, because you
17 brought something in your individuality to this case
18 that was important to me and to Mr. Alston. You bring,
19 and bear with you, the ability to judge these witnesses,
20 to listen to their testimony to what happened nearly
21 four years ago, to Mr. Alston. Look at their
22 mannerisms, their prejudice, their biases. You judge
23 them. Do you believe them will be your question that
24 you are asking yourselves when we finish today. Can you
25 trust what you have been told? And I encourage all of

1 you to remember the following rules of law.

2 Now, Judge Mullen will tell you quite plainly when
3 we finish, in much detail, but I'll hit on two that I
4 think are extremely important as we begin this day
5 together. The presumption of innocence, every woman,
6 every man, seated at a defense table in the United
7 States is presumed innocent, and that is no light rule
8 of law. It is the foundation upon which we live our
9 lives. Upon which this courtroom stands.

10 And I will say to you, in addition to the
11 presumption of innocence, it has been said that it is a
12 robe of innocence and righteousness that sits upon a man
13 accused by the State, the government. And that robe
14 rests upon him and is not to be removed but by the jury.
15 It stays upon his shoulders during and throughout your
16 deliberations, unless you make the decision, all twelve
17 of you, to strip it from the man's shoulders.

18 I believe the second rule that is very important,
19 and she will tell you very clearly, reasonable doubt is
20 also not something that we view lightly here. Firmly
21 convinced, looking at the evidence, discerning,
22 dissecting, digging deeper into what you are given by
23 the government, and reaching for what Martin Luther King
24 said, which is, justice. Thank you very much.

25 THE COURT: Thank you. Mr. Hollen, if you would

1 tends to -- as they stack up, it makes the totality of
2 it a problem. So, duly noted for the record, but
3 respectfully deny your motion for a mistrial at this
4 time.

5 And Mr. Hollen, are you ready to proceed with your
6 first witness?

7 SOLICITOR HOLLEN: Yes, your Honor.

8 THE COURT: Okay. All right. Let's bring the jury
9 back in, and let's put the first witness back up.

10 MS. CAMPBELL: Thank you, your Honor.

11 BAILIFF: The jury is entering the courtroom, your
12 Honor.

13 JURORS ENTER COURTROOM 10:35 A.M.

14 BAILIFF: The jury is seated, your Honor.

15 THE COURT: Thank you. Welcome back, ladies and
16 gentlemen. Mr. Hollen, call your first witness.

17 SOLICITOR HOLLEN: Thank you. The State calls Rich
18 Menendez.

19 BAILIFF: Right this way to be sworn in.

20 MADAM CLERK: Raise your right hand. Left hand on
21 the *Bible*. Do you solemnly swear or affirm to
22 truthfully answer all questions asked of you by this
23 court, so help you God?

24 AGENT RICH MENENDEZ: So help me God, I do.

25 MADAM CLERK: Thank you.

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DIRECT - MENENDEZ

1 AGENT RICH MENENDEZ, DIRECT EXAMINATION,
2 BY SOLICITOR HOLLEN:

3 Q Good morning, Agent Menendez.

4 A Good morning.

5 Q Thanks for being here today. Just briefly, who do
6 you work for?

7 A I work for South Carolina Law Enforcement Division.

8 Q And in March of 2012, who did you work for?

9 A I worked for Beaufort County Sheriff's Office.

10 Q All right. How long were you with the Sheriff's
11 Office? Do you recall?

12 A Six, six-and-a-half years.

13 Q Okay. And when did you go to SLED?

14 A About three-and-a-half years ago.

15 Q So, let's go back to the date of the incident.
16 What were you doing shortly before 11:00 a.m. on March
17 7th of 2012?

18 A I believe I was en route to either to a survey for
19 surveillance. I was assigned as a technical
20 surveillance officer at the time, and also assigned to
21 the bomb squad. I believe I was going to do a site
22 survey, or a location to recover some camera equipment
23 or something like that.

24 Q Did you have occasion to see a vehicle driven by
25 the defendant on that day?

1 A Yes, I did.

2 Q And can you tell us just a little bit about it.

3 Where you were and what you saw?

4 A If I may look at my report.

5 Q Yes, you certainly may.

6 A I was coming off of, I believe, Highway 802 onto
7 Parris Island Gateway. I observed the vehicle. I don't
8 know if it was in front of me at the time that I turned
9 onto the Gateway or not, but I know it was in front of
10 me. I observed it. It had a broken tail light at the
11 time. Continued to travel the same direction that I was
12 traveling.

13 Followed the vehicle, noted the broken tail light.
14 The driver made a turn on a red light without coming to
15 a complete stop. I waited until we were off of the
16 McTeer Bridge, which puts us in the Cat Island area,
17 initiated a traffic stop at that time. When I
18 approached the vehicle, the driver, Mr. Alston,
19 identified himself by handing me an MCRDID card, when I
20 requested a driver's license. I again asked for a
21 driver's license, proof of insurance, registration. At
22 that time, he indicated to me that his driving
23 privileges were suspended. I contacted Beaufort County
24 Dispatch to verify. Once I -- it was verified, I had
25 him exit the vehicle, which is about the same time, I

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1 believe, Officer Strickland and Officer Martin arrived.

2 Q Let's back up just a little bit. Where was the
3 vehicle when it made the right-hand turn without
4 stopping on the red light?

5 A We were in Port Royal. The traffic light before
6 you turn to go up over the McTeer Bridge, that goes down
7 on Lady's Island.

8 Q Okay.

9 A There at the corner, by the Naval Hospital.

10 Q And you chose not to -- you said you stopped the
11 vehicle on Lady's Island?

12 A Yes.

13 Q And why didn't you stop it on McTeer Bridge?

14 A Not necessarily a good place to stop a car in the
15 middle of the bridge.

16 Q Okay. So, at what point -- you said you -- he
17 handed you a Parris Island I.D.

18 A Yes.

19 Q Is that correct? And he indicated to you that his
20 driver's license was suspended?

21 A I believe he did.

22 Q At that point, did you plan on arresting the
23 defendant?

24 A Not based off of his word alone. Once I verified
25 it with Beaufort County Dispatch --

1 Q Um-hmm.

2 A -- yes.

3 Q Is driving under suspension an arrest able offense?

4 A Yes, it is.

5 Q So, after Sergeant Martin and Deputy Strickland
6 arrived, what was your role there?

7 A After Officer Strickland arrived and advised me
8 that he would be taking over the investigation at that
9 point, I was solely there for support and backup.

10 Q And so, were you present during the dog sniff that
11 Sergeant Martin did?

12 A Yes, I was.

13 Q You were on-scene?

14 A Yes, I was.

15 Q Do you recall anything specific about that?

16 A No, sir, I don't.

17 SOLICITOR HOLLEN: All right. Your Honor, I have
18 no further questions for Agent Menendez right now.
19 Thanks.

20 THE COURT: You may step down.

21 AGENT RICH MENENDEZ, CROSS-EXAMINATION,

22 BY MS. CAMPBELL:

23 Q Officer Menendez, you issued a written report in
24 this case, correct?

25 A Yes, ma'am, I did.

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1 Q And in that written report, you indicated that this
2 all took place about 11:00 a.m., correct?

3 A Yes, ma'am.

4 Q Is that correct?

5 A That's correct, yes.

6 Q Now, --

7 MS. CAMPBELL: May I approach, your Honor?

8 THE COURT: Yes.

9 BY MS. CAMPBELL:

10 Q I'm not going to ask him to step down. I think I
11 can hold it right by the witness stand.

12 THE COURT: As long as they can see, that's fine.

13 BY MS. CAMPBELL:

14 Q Officer Menendez, if you'd help the jury understand
15 the scope of what we're talking about that you just
16 testified to. I believe you testified that, when you
17 first saw Mr. Alston's Ford Explorer, that it was at the
18 stop light here, over in Shell Point? Is that correct?

19 A In that area is when I first observed it.

20 COURT REPORTER: I'm sorry, I'm sorry. *In that*
21 *area is when I first?*

22 A First observed it, saw it. Sorry.

23 Q And then, you followed Mr. Alston all the way down
24 past Parris Island, correct?

25 A Yes.

1 Q Over the Bell Bridge, correct?

2 A Correct.

3 Q Through Port Royal, correct?

4 A That's correct.

5 Q And up to the traffic light where you would turn
6 right to go to Lady's Island, correct?

7 A That's correct.

8 Q Okay. And unless you have a different count, and
9 let me know, I count, one, two, three, and then, the
10 fourth stop light is the right on red, without a
11 complete stop, correct?

12 A Yes, ma'am.

13 Q Okay. Now, approximately four miles from Point A,
14 down to Point 2, correct? Or 1 to 2, about four miles?

15 A I've never measured it, but according to your map,
16 yes, that's correct.

17 Q So, from the broken tail light, down to the rolling
18 through the right-hand stoplight there, about four
19 miles. And then, an additional almost two miles before
20 you finally stop Mr. Alston. Is that correct? Would
21 that be a fair assessment of the length of what you've
22 testified to?

23 A Yes, ma'am.

24 Q Okay. Now, from where you first saw the Ford
25 Explorer, until the beginning here of the McTeer Bridge,

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1 did you contact Dispatch?

2 A It would not have been unusual for me. Do I
3 specifically recall? I do not.

4 Q Okay. When do you recall contacting Dispatch?

5 A I know at the point that I initiated the blue
6 lights, I definitely contacted them and told them I'd be
7 stopping. It was not unusual when I was working for me
8 to run a tag before I pulled him over, to identify whom
9 I might be dealing with, or if there's any other issues
10 with the vehicle.

11 Q Okay.

12 A So, like I say, it may not -- would not be unusual
13 for me to contact them. I don't recall any specifics on
14 this stop whether I did or not.

15 Q Okay. And about the -- thank you. About the
16 vehicle that you did stop, that vehicle was registered
17 to Mr. Alston's mother. He's not the registered owner.
18 Is that correct?

19 A I believe so.

20 Q Okay. Now, you talk about, in your report, this as
21 being a traffic stop. But when you were with the
22 Beaufort County Sheriff's Department, you were not a
23 traffic cop, right?

24 A No, I was not.

25 Q Okay. And so, you're -- I mean, I understand

1 you're all sworn officers; you see something going on,
2 you know, you can interact. But really, in the scope of
3 what you were tasked to do, enforcing the traffic laws
4 was not it, right?

5 A I'm not specifically tasked with that. As of this
6 current -- as today, there are times that I will
7 initiate traffic stops, even working for SLED, if I see
8 a traffic violation.

9 Q Would I be fair and accurate if I were to say that,
10 based upon the records of your traffic stops, three or
11 four at the most during the year of 2011, 2012? That's
12 about fair?

13 A I don't recall. If it was during a year that I was
14 working technical surveillance on the bomb squad, yes,
15 minimal amount of traffic stop.

16 Q And because you're not a traffic cop, your vehicle,
17 your assigned vehicle at that time, had no audio
18 capabilities, correct?

19 A No.

20 Q It had no video capabilities, correct?

21 A That's correct.

22 Q Your communication in the assigned vehicle was your
23 Dispatch radio, correct?

24 A Yes.

25 Q And you also had at the time, issued to you a

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1 Beaufort County Sheriff's Department departmental cell
2 phone, correct?

3 A That's correct.

4 Q And part of the reason for Dispatch, which is, you
5 know, 911; but it's also for officers to communicate to
6 one another, right?

7 A Yes.

8 Q Okay. Now, isn't it true that, on this particular
9 date and time, you did not communicate with Officer
10 Strickland and Officer Martin via Dispatch. Is that
11 correct?

12 A I may have. I don't recall specifically speaking
13 with them.

14 Q Well, do you recall that you specifically
15 communicated with them on your cell phone?

16 A It would not have -- it would not have been unusual
17 not to. As with traffic stops, a lot of times, the
18 officers will communicate with each other if they're
19 close, either cell phone or radio. And it would not be
20 unusual to use the cell phone, as not to tie up radio
21 traffic, in case another officer had an emergency.

22 Q Dispatch is recorded; is it not?

23 A It is.

24 Q Cell phones, text messages are not recorded,
25 correct?

1 A I do not know.

2 Q Kevin Alston produced for you, as you indicated in
3 your report, a United States Marine Corp recruit depot
4 employee identification card, correct?

5 A That's correct.

6 Q And you identified him by that employee I.D. card
7 as that being Kevin Alston. It was a valid card showing
8 him as the individual, correct?

9 A Well, that, and contacted Dispatch with his name,
10 giving the date of birth. And then, they would -- they
11 could verify information that way, yes.

12 Q Correct. Now, Kevin Alston, when you pulled him
13 over on Lady's Island -- well, let me make this clear.
14 The vehicle that you're in is in no way marked or
15 identifiable as a Sheriff's Department vehicle, correct?

16 A Yes, ma'am. It had blue lights and sirens. But
17 until they're activated, yes, it is hard to identify.

18 Q Okay. there's not -- right.

19 A It's hard to identify.

20 Q There's not an emblem on the side.

21 A No.

22 Q And the blue lights are disclosed in the vehicle,
23 correct? I mean, they're not on top of the car, right?

24 A That's correct.

25 Q And so, generally speaking, I'm not going to know

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1 that, that's a Sheriff's Department vehicle, correct?

2 A I would assume so, yes.

3 Q But Mr. Alston, as soon as you did put on your blue
4 lights and your siren, he pulled over for you
5 immediately, correct?

6 A Mr. Alston was cooperative.

7 Q Polite, followed all your orders, correct?

8 A That's correct.

9 Q Correct. Now, is it your testimony today that you
10 did not get on your cell phone and call for Officer
11 Martin to come there?

12 A No, ma'am. My testimony is, it would not have been
13 unusual for me to. I do not specifically recall getting
14 on my cell phone or radio, and I do not believe that I
15 requested Dan Martin. I believe Officer Strickland did.

16 Q Okay. And -- well, let's get into that, then. How
17 did Strickland know to call Martin?

18 SOLICITOR HOLLEN: Objection, your Honor. Calls
19 for speculation. Corporal Strickland can testify to
20 that.

21 THE COURT: Well, if he can answer it, he can
22 answer it. If he can't.

23 BY MS. CAMPBELL:

24 A I was not part of that conversation. I did not
25 request him. I --

1 Q Okay. Well, if you didn't use Dispatch to call for
2 Strickland and Martin, how did they get there?

3 A As you said, with the radio, all of the officers
4 here, they all monitor it. If one is close to another
5 whenever a traffic stop takes place or something, if I
6 had nothing else pending going on, I would respond to
7 that area to back the other officer up on a traffic
8 stop. As far as the request for the K-9, Officer
9 Martin, that you would have to -- you would have to ask
10 Officer Strickland why he requested. Far as him
11 arriving on the scene, he may have been patrolling in
12 the area. As I said, not -- it is not unusual for an
13 officer to roll -- back up another officer on a traffic
14 stop.

15 Q And Officer Strickland at the time was also in one
16 of these unmarked Sheriff's Department vehicles,
17 correct?

18 A That's correct.

19 Q With no audio, no video, correct?

20 A Yes, ma'am.

21 Q And again, because I want to be clear. Do you just
22 have no recollection at all whether or not you got on to
23 Dispatch and communicated with these officers? Do you
24 know?

25 A I don't recall whether I had a specific

1 conversation.

2 Q But --

3 A As far as -- it is highly likely that we did
4 converse, but as far as any details if we did or not, I
5 do not have a recollection of that. I could not tell
6 you.

7 Q And again, if Dispatch had communications on this
8 date, between Strickland, Menendez, and Martin on the
9 Dispatch log, it would be recorded, and we would have
10 it, correct?

11 A I assume you would, yes, ma'am.

12 Q Okay. And you're familiar with Officer Menendez,
13 what the requirements in terms of driving on a military
14 base, correct?

15 A Yes, ma'am.

16 Q And you have to have a valid driver's license to do
17 that, correct?

18 A Yes, ma'am. But I believe -- I did testify that
19 you have to have a valid driver's license to drive on
20 base. That is to obtain a vehicle pass. You have to
21 have valid I.D. to get an I.D. to work on the base
22 whenever they're employed there. What the valid
23 driver's license for the vehicle pass, subsequent to
24 obtaining that vehicle pass, if your driving privileges
25 are removed, the base does not know about it unless the

1 individual reports it, or they happen to do a random
2 check to ensure that they still have driving privileges.
3 It's not something that's reported to the base.

4 Q You worked intimately for a period of time with
5 Officer Strickland in some of your, I guess, assigned
6 cases, correct?

7 A We worked together for a brief period of time, yes.

8 Q And you developed a relationship with Officer
9 Strickland at the Sheriff's Department in the work that
10 the two of you were doing, correct?

11 A Yes, ma'am.

12 Q Okay. You left the Sheriff's Department in 2012,
13 correct?

14 A I believe so.

15 Q And Officer Strickland also left the Sheriff's
16 Department, correct?

17 A Yes, he did. I found out later that he did.

18 Q Did you take any photos inside the Ford Explorer
19 that you stopped?

20 A I did not.

21 Q Did you take any photos of the items that you say
22 you seized from the Ford Explorer and from Mr. Alston?

23 A I did not.

24 Q I assume that you have been, through your work,
25 involved in traffic stops and investigations where the

1 items seized are photographed at the scene, laid on the
2 hood of a car, to document what has been seized,
3 correct?

4 A At that point, it's Officer Strickland's
5 investigation.

6 Q Okay. I understand that. But have you been
7 involved in those type of investigations in traffic
8 stops where the items that were seized were placed on
9 the hood of the car and photographed, to be sure you had
10 a record of what was taken from the individual, correct?

11 A We don't always photograph on the scene. Sometimes
12 we did; sometimes we did not. It depended on the
13 circumstances. But a photographic record, once the
14 evidence was obtained, was made.

15 Q Were you inside the Ford Explorer? Can you testify
16 to this jury where this particular item was found?

17 A I cannot at this time.

18 Q So, you don't know if it was found in the floor or
19 the console or the back seat, because you don't know.

20 A I conducted a traffic stop, and Officer Strickland
21 advised me that he was going to assume the
22 investigation. I -- I assisted. As far as the other
23 details, I would have to see -- look through his report.

24 Q You have a copy of your report, right?

25 A Yes, ma'am.

1 Q Okay. In your report, you do not indicate that you
2 have any idea where the items were alleged to have been
3 seized from, correct?

4 A That's correct.

5 MS. CAMPBELL: Okay. That's all I have. Thank
6 you.

7 THE COURT: Anything further?

8 SOLICITOR HOLLEN: Briefly, your Honor.

9 AGENT RICH MENENDEZ, RE-DIRECT

10 EXAMINATION, BY SOLICITOR HOLLEN:

11 Q Agent Menendez, did you seize anything in this
12 case?

13 A No, sir.

14 Q So, what was your role here?

15 A Again, I conducted a traffic stop. Officer
16 Strickland arrived on-scene. At a point, advised me
17 that he would be taking over the investigation.

18 Q So, Sergeant Martin conducted the dog sniff when he
19 got there.

20 A Yes.

21 Q And the items were not seized by you.

22 A That's correct.

23 Q Who seized them?

24 A I would assume Office Strickland.

25 Q Is it unusual -- back to the traffic stop. Is it

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1 unusual for you to follow a vehicle for a period of time
2 before you execute a traffic stop?

3 A No, it's not. Especially if the vehicle is headed
4 in that same direction I'm going in anyway.

5 Q You indicated the traffic signal that was ignored
6 was the traffic signal at the bridge, coming over Lady's
7 Island?

8 A Yes.

9 Q Is that right? And that was what ultimately led
10 you to execute the traffic stop?

11 COURT REPORTER: Your answer, please?

12 A I said, yes. I'm sorry.

13 Q Was the defendant charged with driving under
14 suspension? Do you know? If you don't know, that's
15 okay.

16 A I do not have a copy of the tickets, but since
17 that's what he was arrested for, yes.

18 Q At some point during your stop, did you learned he
19 had suspended driver's license?

20 A Yes.

21 SOLICITOR HOLLEN: Your Honor, I have no further
22 questions.

23 THE COURT: Ms. Campbell.

24 MS. CAMPBELL: Very briefly.

25 AGENT RICH MENENDEZ, RE-CROSS-

1 EXAMINATION, BY MS. CAMPBELL:

2 Q Officer Menendez, the Solicitor asked you about
3 kind of like the Officer Martin and talking about the
4 K-9. In your training, in terms of traffic stops, in
5 March 2012, were you trained and aware that you cannot
6 make a driver wait on the K-9 officer?

7 SOLICITOR HOLLEN: Objection, your Honor. We're
8 getting into the law here, and I'm not sure --

9 MS. CAMPBELL: I'm getting into his training and
10 what he knew at the time.

11 THE COURT: Okay. She can ask him what he was
12 taught or what he learned, as far as the stops and how
13 he made stops in 2012.

14 BY MS. CAMPBELL:

15 A I do not recall the specific dates, but I recall a
16 ruling to which -- regarding the holding of -- detaining
17 a person at a scene for an extended period of time in
18 order to -- just for a K-9 sniff. I do recall there was
19 a Supreme Court ruling, and there was some training that
20 we -- we had discussed on that. In this case, he was
21 under arrest for driving under suspension. That would
22 not have been an issue.

23 Q I understand what you're saying. So, you were
24 trained specifically that you were not allowed to extend
25 the traffic stop and wait on the K-9 officer, correct?

1 A Yes.

2 Q Okay.

3 A That's all.

4 A I believe they -- they established there's a
5 reasonable amount of time, yes.

6 MS. CAMPBELL: That's all. Thank you. That's all
7 I have.

8 THE COURT: Anything further?

9 SOLICITOR HOLLEN: Just briefly.

10 AGENT MENENDEZ, RE-RE-DIRECT

11 EXAMINATION, BY SOLICITOR HOLLEN:

12 Q Agent Menendez, if the occupant of a car is
13 arrested, and there is no one else on-scene, what
14 happens to the vehicle?

15 A Upon the arrest of the individual, the immediate
16 area surrounding the individual is typically searched.
17 If the vehicle is impounded, an inventory is conducted
18 before it's turned over for impound.

19 Q So, before the vehicle is towed, is it searched?

20 A Yes, it's either -- it's either inventoried, or a
21 search incident to apprehension, which is the immediate
22 area right there around --

23 COURT REPORTER: I'm sorry. *Which is the immediate*
24 *area right around?*

25 A The person that was arrested.

1 SOLICITOR HOLLEN: Nothing further, your Honor.

2 THE COURT: All right.

3 SOLICITOR HOLLEN: May I ask that Agent Menendez be
4 excused?

5 THE COURT: Any objection, Ms. Campbell?

6 MS. CAMPBELL: No, your Honor.

7 THE COURT: Agent Menendez, you are excused. Thank
8 you.

9 Ladies and gentlemen of the jury, we're going to
10 take a brief recess. I need to instruct you, ladies and
11 gentlemen, that, although you've heard the first
12 witness, you are not to discuss this case with each
13 other. Please go back, get a glass of water, whatever
14 you need, and we'll be back with you shortly. Thank
15 you.

16 BAILIFF: We're going to head on back to the room.
17 Leave your notebooks, please.

18 JURORS LEAVE COURTROOM 11:02 A.M.

19 BAILIFF: Jury is clear, your Honor.

20 THE COURT: Thank you. All right, you all. We'll
21 be at ease for fifteen minutes, so make sure you're back
22 by 11:15, and we'll go ahead and continue with the case.
23 Okay? Thank you.

24 MS. CAMPBELL: Thank you, Judge.

25 OFF THE RECORD 11:02 A.M.

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RE-RE-EXAMINATION - MENENDEZ

1 BACK ON THE RECORD 11:40 A.M.

2 BY THE COURT:

3 BAILIFF: All rise. This court is back in session.

4 THE COURT: Thank you. Please be seated. All
5 right. State ready?

6 SOLICITOR HOLLEN: Yes.

7 THE COURT: Defense ready?

8 MS. CAMPBELL: Yes, ma'am.

9 THE COURT: Thank you. Let's go ahead and bring
10 the jury in.

11 BAILIFF: The jury is entering the courtroom, your
12 Honor.

13 JURORS ENTER COURTROOM 11:42 A.M.

14 BAILIFF: The jury is seated, your Honor.

15 THE COURT: Thank you. The State will call their
16 next witness.

17 SOLICITOR JOSEPH: Your Honor, the State calls
18 Sergeant Dan Martin.

19 MS. CAMPBELL: Your Honor, may we approach?

20 THE COURT: Ma'am?

21 OFF-THE-RECORD BENCH CONFERENCE, OUT
22 OF HEARING OF JURORS. PRESENT: THE
23 THE COURT, MR. HOLLEN, MS. CAMPBELL.
24 END BENCH CONFERENCE.

25 BAILIFF: Right this way to be sworn in.

1 MADAM CLERK: Raise your right hand. Left hand on
2 the *Bible*. Do you solemnly swear or affirm to
3 truthfully answer all questions asked of you by this
4 court, so help you God?

5 SERGEANT DAN MARTIN: I do.

6 SERGEANT DAN MARTIN, DIRECT EXAMINATION,

7 BY SOLICITOR HOLLEN:

8 Q Good morning, Sergeant Martin. So, I'm calling you
9 a sergeant and you're in a uniform, so where do you
10 work?

11 A Beaufort County Sheriff's Office.

12 Q And how long have you worked at the Beaufort County
13 Sheriff's Office?

14 A Eight years.

15 Q And what are your duties at the Beaufort County
16 Sheriff's Office?

17 A I'm a patrol supervisor, along with a K-9 handler.

18 Q All right. So, as a supervisor, what,
19 specifically, do you do?

20 A Supervise the day-to-day operations of troops that
21 work on my team.

22 Q And how big is your team?

23 A Twelve.

24 Q Okay. You oversee twelve people?

25 A Yes, ma'am, give or take.

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DIRECT - DAN MARTIN

1 Q And then, as a K-9 handler, what are your duties?

2 A As a K-9 handler, I'm responsible for the upkeep,
3 training, and maintenance of one of the county's K-9's,
4 which the dog stays with you 24 hours a day, and we
5 train on a weekly basis.

6 Q All right. And what is your dog's name?

7 A Nero.

8 Q All right, Nero. So, where is Nero right now?

9 A He's out in the parking lot in a car.

10 Q And it's an air-conditioned car?

11 A Yes, ma'am.

12 Q And how long have you had Nero?

13 A I've had Nero since 2008.

14 Q And what special training do you have to interact
15 with Nero?

16 A We both -- we certify together in narcotics work,
17 tracking, criminal apprehension, article search.

18 Q So, when you say *tracking*, what does that mean?

19 A That's the -- the ability of the dog to track a
20 human suspect.

21 Q All right. And does Nero ever work on drug cases?

22 A Yes, ma'am.

23 Q And how does he work on drug cases?

24 A He -- it's day-to-day operations. When -- when I'm
25 on shift, he's the dog that anyone needs a K-9 for any

1 type of narcotics or tracking or criminal apprehension,
2 he's the dog that's called.

3 Q So, you've had Nero for eight years?

4 A Yes, ma'am.

5 Q How many drug cases has Nero worked on?

6 A Oh.

7 Q Have you worked on with him?

8 A I don't have a number, but several -- several
9 hundred a year.

10 Q Okay. So, several hundred a year.

11 A Normally, Yes, ma'am. Some years are better than
12 others.

13 Q Before we turn to the specific incident that brings
14 you to court today, can you walk me through, generally,
15 how you and Nero would work a drug case that involved a
16 car. What would you do, generally, when you arrived at
17 the scene?

18 A Normally, if I'm --

19 MS. CAMPBELL: Objection, your Honor.

20 Generalizations, I would object to. He can testify to
21 what he did in this case.

22 THE COURT: Okay. Let's go ahead and hear just
23 specifically about this case.

24 BY SOLICITOR JOSEPH:

25 Q Turning specifically with this case, isn't it -- on

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DIRECT - DAN MARTIN

1 March 7, 2012, were you on duty at that time?

2 A I was actually -- that was a Wednesday, so I would
3 have been doing my training day.

4 Q Okay.

5 A We train each -- every Wednesday.

6 Q Were you called to a scene a little before 11:00?

7 A Yes, ma'am.

8 Q And where were you called?

9 A I was called to, looks like, Lady's Island. 213,
10 Highway 802, on Lady's Island, Beaufort, South Carolina.

11 Q And is that in Beaufort County?

12 A Beaufort, South Carolina, yes, ma'am.

13 Q And when you arrived at the scene, what did you do?

14 A When I arrived, they basically requested me for a
15 K-9 sniff, free-air sniff, which is, what I'll do is,
16 I'll get out of the patrol car. I'll dispatch my dog
17 from the rear of the patrol car. And we start -- I,
18 myself, personally, I start every vehicle sniff the same
19 way. I start at the front bumper, passenger-side bumper
20 of the vehicle, and I work in a counter-clockwise
21 direction around the vehicle for the first pass. And
22 then, I will switch to a clockwise direction around, if
23 a second pass is needed.

24 On this instant, I needed a second pass. As the
25 dog was moving around, he started to rapid sniff, and he

1 got to the, I do believe it was the -- once he got to
2 the driver's door, Nero gave me an alert, which, at that
3 time, his alert was -- he would have a rapid head turn.
4 And then, he would either sit, sit and bark. But what
5 he does is, he does a sharp head -- head and body turn,
6 and then, he'll sit on the exterior of the car.

7 Q All right. So, breaking down your answer a little
8 bit, who was it that called you to the traffic stop?

9 A I believe I was called by -- at that time, Lance
10 Corporal Strickland.

11 Q Okay. And you stated that you arrived at the
12 scene, and that you did what you did at every single
13 traffic stop that involves your dog.

14 A Yes, ma'am.

15 Q Okay. And then, your dog Nero signaled. Would
16 anyone be able to recognize him signaling, or is that
17 something that you've been specially trained to
18 recognize?

19 A It's something that myself and the dog. Now, if
20 I've worked cars for several people, several of the same
21 officer, they would be able to tell what it is. But
22 it's -- it's signals that the dog gives to me that I
23 know of.

24 Q Okay. So, he signals on the outside of the car,
25 and then, what happens?

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DIRECT - DAN MARTIN

1 A Yes, ma'am. At that point, then, I will allow him
2 inside the car, and once he -- in this particular case,
3 when he got in the car, he went straight towards the
4 center console, and once again perform -- performed a
5 rapid sniff, which is him inhaling and exhaling quite a
6 bit faster than we're able to do. And then, he worked
7 his way to the center console and the ashtray area, and
8 he indicated there, which is a scratch.

9 Q Okay. So, after he indicated, what happened next?

10 A At that time, I rewarded him and removed him from
11 the car, and we conducted a hand search of the vehicle.

12 Q Okay.

13 A Okay?

14 Q Did you conduct the hand search of the vehicle?

15 A Yes, ma'am, I did.

16 Q And what did you recover, if anything?

17 A At that time I re -- the first thing I find --
18 located was several empty baggies, which, on the street
19 we call them corner bags. It's where they -- people
20 normally would put a narcotic, and then, they would just
21 -- whenever it was ready to use, whatever narcotic may
22 be, they'll just tear the bag. So, we call them corner
23 bags, because the corner is taken off of it. And then,
24 also, there was a white powdery substance that was on
25 the center console underneath a rag. And then, in the

1 rear luggage compartment was a cup that had white
2 residue that we believed to be cocaine.

3 Q Okay. And did you test any of the substances?

4 A No, ma'am.

5 Q And did you collect any of the substances?

6 A No, ma'am.

7 Q Going back to when you initially arrived at the
8 scene, is your vehicle equipped with a video camera?

9 A Yes, ma'am, it is.

10 Q Did you turn on the video camera as you searched?

11 A No, ma'am.

12 Q Sometimes do you -- do you always turn it on, or
13 are you trained to always turn it on?

14 A We have them in the car. They only initiate with
15 our blue lights. But by the time I'm called to the
16 scene, I'm normally the second or third vehicle there.
17 So, it's -- I'm not going to be able to see anything on
18 my video, because I'm going to be so far back. So, I
19 normally don't use it.

20 Q And was that the case in this particular instance?

21 A Yes, ma'am, I would say it would be.

22 Q Were you parked directly behind the vehicle, or?

23 A No, ma'am. I was probably behind another vehicle.
24 It's been four years. I can't tell you my exact
25 positioning, but I wouldn't have been right behind the

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CROSS - DAN MARTIN

1 vehicle.

2 Q Okay. And you had stated that this was a
3 Wednesday, and on Wednesday, you were at training?

4 A Yes, ma'am.

5 Q So, what does that mean? Where were you earlier in
6 the day?

7 A I was on the north side of the county. That's
8 where we were training. Probably at Earl's Body Shop,
9 or one of the various buildings, or out in the woods,
10 doing tracking work. So, we were on this side of the
11 county when we were training.

12 Q And approximately how far were you from the traffic
13 stop?

14 A It would have been -- I -- it would have been no
15 more than ten miles, give or take, where I was at, at
16 that time.

17 SOLICITOR JOSEPH: Okay. No further questions at
18 this time. Thank you.

19 MS. CAMPBELL: May it please the Court?

20 THE COURT: Yes, ma'am.

21 SERGEANT DAN MARTIN, CROSS-EXAMINATION,

22 BY MS. CAMPBELL:

23 Q Officer Martin, you issued a written report in this
24 case, correct?

25 A Yes, ma'am.

1 Q And it would be fair to say that, at the time you
2 wrote this report in 2012, that your recollection was
3 clear, correct?

4 A Yes, ma'am.

5 Q And to the best of your recollection and to the
6 accurate reporting here, when you arrived on Lady's
7 Island, Corporal Strickland was already on-scene,
8 correct?

9 A From what I remember in my report, that's how I
10 wrote it, yes, ma'am.

11 Q Lance Corporal Strickland was standing at the rear
12 of the suspect's vehicle.

13 A Yes, ma'am. I've got in front of me.

14 Q So, that's a correct statement, right?

15 A Yes, ma'am.

16 Q And you had been advised at the time that the
17 suspect, Mr. Alston, was being detained at that time.
18 He was not under arrest, correct?

19 A Far as I know, they didn't advise me of anything.
20 I -- I -- I rolled to the scene, seen what was on-scene,
21 and then, I did my job. I don't -- I don't normally
22 question what the officer is doing. They're all
23 professionals. They --

24 Q Do you have your report in front of you?

25 A Yes, ma'am, I do.

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CROSS - DAN MARTIN

1 Q The next sentence says --

2 A Um-hmm.

3 Q *Lance Corporal Strickland advised -- excuse me --*
4 *Lance Corporal Strickland advised the suspect was being*
5 *detained.*

6 A Okay.

7 Q So, the answer to my question is, yes, you were
8 advised he was being detained.

9 A If that's what's in the report, yes, ma'am.

10 Q Now, when you say you got inside of the Ford
11 Explorer, and you testified that the substance that you
12 believed to be cocaine was found under a towel on the
13 console in the car, correct?

14 A Yes, ma'am.

15 Q And so, as you are looking at this particular
16 substance, the substance was not in a bag, correct?

17 A No, ma'am.

18 Q It was loose, correct?

19 A Yes, ma'am.

20 Q Okay. And you did not touch it?

21 A No, ma'am.

22 Q Okay. What did you do with the towel when you took
23 the towel off of it?

24 A Placed it back on there.

25 Q Okay. So, you put it back on top of it, correct?

1 A Yes, ma'am.

2 Q Okay. And you secured no evidence in this case,
3 correct?

4 A No, ma'am.

5 Q So, you would have no idea where that towel is,
6 correct?

7 A No, ma'am.

8 Q Okay. Now, you're aware that I subpoenaed your
9 training records and your log of where you are with the
10 dog, correct?

11 A Yes, ma'am.

12 Q Okay. If I told you that you were not at Earl's
13 Body Shop on March 7th, but you were at the *Island*
14 *Packet/Beaufort Gazette* building, would you argue that
15 point with me?

16 A No, ma'am.

17 Q Mr. Alston was outside of his vehicle when you got
18 to Lady's Island, correct?

19 A Yes, ma'am.

20 Q Okay. And you have already testified, but I want
21 to be clear that -- because I understand how this works.
22 When you hit the blue lights, that camera comes on.

23 A Yes, ma'am.

24 Q Correct?

25 A Yes, ma'am.

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CROSS - DAN MARTIN

1 Q And in fact, it actually backtracks about thirty
2 seconds or so, so you can kind of backup and see what
3 was going on where you were, correct?

4 A About sixty, yes, ma'am.

5 Q Okay. Where did you hit the blue lights?

6 A I never did, ma'am

7 Q You never did.

8 A No, ma'am.

9 Q So, you never hit the blue lights, and you never
10 cut on your camera, correct?

11 A Correct.

12 Q Now, when you got the call to go to Lady's Island,
13 how did you get that call?

14 A Cell phone.

15 Q Okay. And who called you on your cell phone?

16 A Like I say, Lance Corporal Strickland.

17 Q Okay. And when Lance Corporal Strickland called
18 you, what was the essence of that conversation?

19 A I can't remember at this time.

20 Q And you can't remember it, and we have no record of
21 it, because it was on your cell phone, right?

22 A I would imagine, yes, ma'am.

23 Q Now, you've been a deputy how many years now?

24 A Eight with the county.

25 Q And normally, deputies communicate over the

1 Dispatch, correct?

2 A With Dispatch, yes, ma'am.

3 Q Okay.

4 A I call deputies every day on my cell phone, though.

5 Q Okay. And Dispatch is a way you that communicate
6 that is recorded, correct?

7 A Dispatch is the way that we get our calls, yes,
8 ma'am.

9 Q Okay. To answer my question, Dispatch is recorded,
10 correct?

11 A Far as I know, yes, ma'am.

12 Q Okay. Nero is not always right, correct?

13 A Excuse me?

14 Q Nero is not always correct, right? I mean, he
15 misses it sometimes. He alerts and there's nothing
16 there, right?

17 A No, ma'am, not to my knowledge.

18 Q Would you like to see your training logs --

19 A Sure.

20 Q -- and the incident reports where he's gotten it
21 wrong?

22 A Sure.

23 Q Okay.

24 MS. CAMPBELL: May I approach?

25 THE COURT: You may.

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RE-DIRECT - DAN MARTIN

1 BY MS. CAMPBELL:

2 Q I'm going to let you have an opportunity to review
3 this file. And then, see if you can answer my question
4 about getting it wrong.

5 A Okay, ma'am.

6 Q Thank you. I'm going to retrieve the folder from
7 you.

8 A I'm sorry.

9 Q So, Nero, your dog, does not always get it right,
10 correct?

11 A He doesn't al -- I don't always find dope, no,
12 ma'am. It doesn't mean the dog's wrong. It just means
13 the handler didn't find it.

14 Q So, you get it wrong.

15 A Sometimes.

16 MS. CAMPBELL: That's all I have.

17 THE COURT: Anything further?

18 SOLICITOR HOLLEN: Court's indulgence, your Honor.

19 SERGEANT DAN MARTIN, RE-DIRECT

20 EXAMINATION, BY SOLICITOR JOSEPH:

21 Q Sergeant Martin, were you there when the drugs were
22 tested?

23 A I don't remember being, ma'am.

24 SOLICITOR JOSEPH: That's all.

25 THE COURT: Ms. Campbell, nothing further?

1 MS. CAMPBELL: No, ma'am.

2 THE COURT: All right. Sergeant, you may step
3 down, sir.

4 A Thank you.

5 SOLICITOR JOSEPH: Your Honor, the State would ask
6 that he be excused.

7 MS. CAMPBELL: No objection.

8 THE COURT: Without objection, you are excused,
9 sir. Thank you. The State will call their next
10 witness.

11 SOLICITOR HOLLEN: Yes, your Honor. The State
12 calls Kyle Strickland.

13 THE COURT: And while Officer Strickland is coming
14 up, may I talk to you all quickly.

15 OFF-THE-RECORD BENCH CONFERENCE, OUT
16 OF HEARING OF JURORS. PRESENT: THE
17 COURT, MR. HOLLEN, MS. JOSEPH,
18 MS. CAMPBELL.

19 END BENCH CONFERENCE.

20 BAILIFF: Right this way to be sworn in.

21 MADAM CLERK: Raise your right hand, and put your
22 left hand on the *Bible*. Do you solemnly swear to
23 truthfully answer all questions asked of you by this
24 court, so help you God?

25 KYLE STRICKLAND: I do.

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DIRECT - STRICKLAND

1 MADAM CLERK: Thank you.

2 KYLE STRICKLAND, DIRECT EXAMINATION,

3 BY SOLICITOR HOLLEN:

4 Q Good morning.

5 A Good morning.

6 Q Mr. Strickland, what do you do for a living?

7 A I own my own personal business now.

8 Q Okay.

9 A That's what I do.

10 Q What kind of business is it?

11 A It's a local sauce product called Creek Sauce.

12 Q Okay. And before you went out on your own, who did
13 you work for?

14 A Well, my last employed law enforcement position was
15 at the Colleton County Sheriff's Office.

16 Q Okay. And before that?

17 A Was Beaufort County Sheriff's Office.

18 Q And how long were you in law enforcement?

19 A In total, it was about seven-and-a-half years.

20 Q And were you with the Beaufort County Sheriff's
21 Office in March of 2012?

22 A I was.

23 Q And were you called out to a traffic stop on that
24 date?

25 A I responded to one, yes.

1 Q You did? Okay. And do you recall where, exactly,
2 that was, or whereabouts that was?

3 A It was over on Lady's Island, on Lady's Island
4 Drive, near Cole.

5 Q And what county is that?

6 A Beaufort County.

7 Q And so, when you got to the traffic stop, could you
8 just describe a little bit about what happened.

9 A Yes. Once I arrived at the traffic stop, I spoke
10 with Corporal Menendez, who initiated a traffic stop. I
11 also spoke with Corporal Dan Martin, as well. He was a
12 K-9 officer at the time. He had advised me that there
13 was a subject there -- well, there was a subject there
14 by the name of Mr. Kevin Alston.

15 Corporal Martin had told me that he, his dog and
16 he, had discovered some white powdery substance
17 suspected to be cocaine on the center console of the
18 vehicle, and also in a glass measuring cup located in
19 the cargo area of Mr. Alston -- the vehicle that Mr.
20 Alston was driving.

21 Q And when you were given that information, what did
22 you do next?

23 A Basically, I assumed over the investigation. I was
24 able to seize the suspected cocaine. I got the cup, I
25 got the residue, and at which time, was able to go and

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DIRECT - STRICKLAND

1 speak with Mr. Alston as --

2 Q Hold on, just real quickly. What did you -- so you
3 would have collected this substance. What did you do?
4 What did you do then?

5 A Well, I field tested it, which is where you take --
6 it's called a KNICK cocaine wipe kit, and it's a Model
7 6500. And basically, essentially, what it is, is, it's
8 a wipe where you would take whatever substance you're
9 trying to, and it would leave a blue mark, which would
10 indicate a cocaine based substance. And both of those,
11 the white powdery substance did indicate a positive
12 reaction for cocaine.

13 Q Just briefly about the KNICK kits, where -- are
14 these kept in your vehicle? Where are they stored?

15 A Yes. They're individually wrapped and sealed.
16 They're provided from the Sheriff's Office, and that's
17 what we were given to use. Similar to the same
18 packaging you would find for a glass is white, where
19 you tear them open.

20 Q All right. So, on to what you did next. Did you
21 speak with the defendant?

22 A I did. I actually advised him of his *Miranda*
23 rights before any questioning, and --

24 Q How did you do that?

25 A I had a provided *Miranda* Rights card, which I would

1 read from; and I can read from it if you'd like me to.
2 I still have it.

3 Q You still have it?

4 A Yeah.

5 Q Go ahead and read for us, if you don't mind.

6 A It says, *you have the right to remain silent.*
7 *Anything you say can and will be used against*
8 *you in a court of law. You have the right*
9 *to speak to an attorney, and to have an*
10 *attorney present during any questioning.*
11 *If you cannot afford a lawyer, one will be*
12 *provided for you at government expense.*
13 *Knowing and understanding your rights as*
14 *I have explained them to you, are you willing*
15 *to answer my questions without an attorney*
16 *present?*

17 Q And after you read those to the defendant, what did
18 he indicate?

19 A Yeah, he -- he agreed to go ahead and speak with me
20 at that time.

21 Q Okay. So, what did he tell you?

22 A Well, I actually -- I asked him about the suspected
23 cocaine. And just to reiterate, too, he, Mr. Alston,
24 was under arrest at that time. And I also did a search
25 of Mr. Alston's person, and located a pill in his front,

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DIRECT - STRICKLAND

1 right pants pocket.

2 Q Okay.

3 A But about the specific cocaine, like you asked, he
4 -- he, you know, denied any knowledge of the cocaine.

5 Q All right. And what did he tell you about the
6 pill?

7 A At first, with the pill, he said that he had had a
8 prescription for it, at which time I called Poison
9 Control by telephone, where you basically describe the
10 pill, and there's markings on every pill you have, and
11 they can tell you, you know, what kind of pill it is.

12 The person over the phone identified it as a
13 Schedule II narcotic, hydrocodone, which you would have
14 to have a prescription for. So, when I revisited Mr.
15 Alston, I asked him, you know, if you have a
16 prescription, I do have a way in which we can do that.
17 And we do. He changed his story and said that a friend
18 had given it to him for a toothache. So, I said, so,
19 you don't have a prescription. And he said, no.

20 Q All right. If you could take a look, was it
21 hydrocodone, or was it -- I'm just trying to be
22 specific.

23 A It was hydrocodone. Oxycodone. I'm sorry. Let me
24 rephrase it -- codeine-base substance. But yes, it's
25 oxycodone. That's -- that's my error.

1 Q So, that's what you were told when you called
2 Poison Control.

3 A Yeah, it -- it was oxycodone. That's my error.

4 Q So, at this point, was the defendant issued any
5 tickets or citations?

6 A He -- he was. Corporal Menendez actually issued
7 him the traffic offense tickets, which was the probable
8 cause for the stop. I issued him county tickets for
9 possession of controlled substance, Schedule II,
10 oxycodone, and a county ticket for possession of
11 cocaine.

12 Q All right. Mr. Strickland, I'm going to hand you
13 -- I think it's in this bag -- and I'd ask that you not
14 show it to the jury at this time.

15 SOLICITOR HOLLEN: Your Honor, may I approach?

16 THE COURT: You may.

17 SOLICITOR HOLLEN: Excuse me.

18 BY SOLICITOR HOLLEN:

19 Q Inside there, you'll see items that are marked for
20 identification as State's Exhibits 1 and 2. If you dig
21 through there. There you go. Now, do you recognize
22 those?

23 A I do.

24 Q And how do you recognize them?

25 A Well, State's Exhibit 1 would be the suspected

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1 cocaine, white powdery substance. This is the actual --
2 an evidence bag, which has been sealed and signed with
3 my initials when it was put into temp storage. As for
4 State's Exhibit 2 would be the oxycodone pill which I
5 seized from Mr. Alston's person on that very afternoon,
6 also sealed and signed with my initials, to, you know,
7 limit any kind of tampering with evidence or anything.

8 Q Okay. So, who collected those items?

9 A I did.

10 Q And where were they collected from? I think you
11 already told us, but just wanted to be sure.

12 A Sure. The suspected powder cocaine was from inside
13 the vehicle. And then, the oxycodone pill was from Mr.
14 Alston's right, front pants pocket.

15 Q So, what -- those would have been -- did you say
16 that they were sealed?

17 A The evidence bags? Yes.

18 Q Were they sealed by you?

19 A They were sealed by me, and signed -- you sign
20 across the tape, essentially. And the tape is evidence
21 tape, and the signature goes across the tape, as well.

22 Q All right. So, what would you have done -- what
23 did you do with those items?

24 A From that point, I would actually enter them into
25 our temporary evidence holder which is locked and

1 secured at our Beaufort County Tactical Operations
2 building, to further prevent any type of tampering. And
3 that was done at the immediate, you know, end of my
4 shift, as soon as I could get to -- from the point of
5 the traffic stop to the facility.

6 Q So, at the time you sealed those items, did you
7 change them or alter them in any way?

8 A I did not.

9 Q Did you tamper with them?

10 A I did not.

11 Q While you had control of those, did you maintain
12 the integrity of those items?

13 A I did.

14 Q Corporal Strickland, what kind of -- I just want to
15 ask you about the car you were driving. We've haven't
16 gotten into it. Did you have an audio/video recording
17 device in that vehicle?

18 A I didn't. There was no -- no dash cam. It was an
19 unmarked vehicle.

20 Q Is that uncommon?

21 A Not for the -- the task force that I was assigned
22 to, it was not.

23 SOLICITOR HOLLEN: All right. Your Honor, I have
24 no further questions for Mr. Strickland right now.

25 THE COURT: All right.

1 MS. CAMPBELL: Thank you, your Honor.

2 KYLE STRICKLAND, CROSS-EXAMINATION,

3 BY MS. CAMPBELL:

4 Q Officer Strickland, you testified on direct that
5 when you arrived on-scene, that Corporal Martin told you
6 that he and his dog had discovered some drugs. Is that
7 correct?

8 A That's correct.

9 Q And so, based upon your testimony, you're telling
10 the jury that you arrived on-scene after Officer Martin.
11 Is that correct?

12 A That's correct. It was shortly after.

13 Q Okay. Now, in your training and experience, is it
14 not part of your training and experience, then, to take
15 photographs of items that you seize from vehicles, put
16 them on the hood of a car, take photographs, to show
17 what you actually took out of the vehicle on-scene?

18 A It's not a standard practice. It's -- it's -- you
19 know, it's one of those things where, looking back, I --
20 I could have taken photos of it, but I didn't.

21 Q And the item that you are telling us that you
22 seized from inside the vehicle, now, was that in a bag?
23 How was it packaged?

24 A Um, it was loosely -- loosely packaged. And then,
25 well, the -- the cocaine on the actual console was

1 loose, white powdery substance. And then, there was the
2 actual measuring cup which had the same type of residue
3 in it, as well.

4 Q Okay. Well, let me just talk about that measuring
5 cup with you for just a second. So, you're there, and
6 you're attributing this cocaine to Mr. Alston, and
7 you're also taking out of the vehicle a glass container,
8 correct?

9 A Yes.

10 Q That you believed had cocaine residue in it, right?

11 A Yes.

12 Q And in your training and experience as a law
13 enforcement officer, you have been trained how to lift
14 fingerprints, correct?

15 A That's correct.

16 Q Okay. And a glass would be an excellent place to
17 find fingerprints, correct?

18 A That's correct.

19 Q Okay. In this particular case, you did not lift
20 any prints from the glass that's sitting right next to
21 you, correct?

22 A That's correct.

23 Q Now, could you demonstrate -- well, let me ask you
24 this. When you got to the vehicle, because you've told
25 the jury you got there after Officer Martin, when you

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1 got to the vehicle, tell us what you saw, in terms of
2 where the cocaine that you're telling us was in the car,
3 where was it exactly, and what was around it?

4 A Like I said, from what I recall, the cocaine was
5 around the center console.

6 Q Um-hmm.

7 A And then, you had the glass in the back with it.
8 Inside was a carg -- it was an SUV-type vehicle.

9 Q Now, you issued a written report in this case,
10 correct?

11 A I did.

12 Q Okay. And in your written report, do you recall
13 that there was a towel in the vehicle? Was there a
14 towel in the vehicle?

15 A In my -- in my report, I don't -- I don't see a
16 towel being noted.

17 Q So, do you know if the cocaine was under a towel?

18 A I mean, yeah, once, I mean, when I go through and
19 was checking through, I mean, it could have been
20 something I moved out of the way to get to it.

21 Q Okay. And the item that was next to the cocaine
22 that may or may not have been there, because it's not in
23 your report, you would not have seized that into
24 evidence? ,

25 A No. I mean, not a towel.

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1 Q Now, you had the date and time of the offense
2 written into your incident report there, correct?

3 A Yes, ma'am.

4 Q And you placed the date and time as 3/7/12, 10:36
5 a.m., correct?

6 A Yeah, approximately 10:36.

7 Q And the date and time of when you arrested Mr.
8 Alston as 3/7/12, 10:45, correct?

9 A That's correct.

10 Q Now, Officer Strickland, you had a Beaufort County
11 Sheriff's Department-issued cell phone, correct?

12 A I did.

13 Q And you communicated with Officer Menendez and
14 Officer Martin on 3/7/2012, on that cell phone, correct?

15 A I don't recall if it was over the police radio. We
16 have a separate channel that we can use, as well, or the
17 cell phone, but I did make contact with them.

18 Q Okay. And to the best of your knowledge, having
19 been involved in law enforcement before you started the
20 shrimp sauce company, you know that Dispatch is
21 recorded, correct?

22 A Correct.

23 Q Okay. Your cell phone calls are not recorded,
24 correct?

25 A I don't know if they are or aren't.

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1 Q Okay. If we issued a subpoena to show incoming and
2 outgoing calls from the cell phone carrier, would it not
3 show up who was calling when?

4 A I'm sure it would.

5 Q Okay. And you've testified that you called Poison
6 Control from Lady's Island that day. Is that correct?

7 A I did.

8 Q And you know that for sure, though, right?

9 A I know that for sure. I mean, it was a pill, and
10 that's my standard practice, and that's what I'd have
11 done.

12 Q Okay. So, independent recollection, I think I'm
13 hearing you say that would have been your standard
14 practice. But for the purposes of testifying truthfully
15 here today, you can't say that's absolutely what you
16 did, right?

17 A I'm saying that I made a call from -- from the
18 traffic stop, yes.

19 Q Now, just to clarify, your vehicle that you were
20 in, no audio, no video recording capabilities, correct?

21 A That's correct.

22 Q Okay.

23 A It was not fitted with that.

24 Q As you've testified that Officer Martin was there
25 before you, before you arrived, do you recall testifying

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1 previously that you got on the phone with Officer Martin
2 and asked him to come over to where you were?

3 A Yeah. If you're referencing the last time that I
4 testified, I believe that I did state that it was really
5 unsure of where it was when I called him, but I did make
6 contact with him.

7 MS. CAMPBELL: May I approach, your Honor?

8 THE COURT: You may.

9 BY MS. CAMPBELL:

10 Q If I could get you to read Lines 12, 13, and 14 for
11 me, please.

12 A Line 12: *So, you did get on the phone with Officer*
13 *Martin and ask him to come over. Is that correct?*

14 14 is: *I did.*

15 Q Okay. Thank you. Officer Strickland, you were the
16 officer who seized these items you say came from the
17 vehicle and from Mr. Alston himself, correct?

18 A That's correct.

19 Q And you are the officer who weighed the alleged
20 cocaine at the scene, correct?

21 A Yes, I did.

22 Q And your report reflects that there was not enough
23 weight to what you took out of the vehicle to get a
24 reading on the scale. Is that correct?

25 A That's correct. What we have is a digital scale

1 which is similar -- you can find them in for people
2 measuring food quantities and stuff -- stuff like that,
3 and it won't go -- for the type of scale that I was
4 issued, it won't go for less than a gram, so it didn't
5 register. The cocaine base residue did not register.
6 It would have to have been measured with a higher-priced
7 scale. That would have been done by our Beaufort County
8 chemistry lab where, from the evidence lockers,
9 everything that I measure and test gets submitted and
10 test by an actual chemist and the people over at the
11 lab. I do a temporary weight, so.

12 Q Thank you.

13 MS. CAMPBELL: If I may approach, your Honor.

14 THE COURT: Of course.

15 BY MS. CAMPBELL:

16 Q Because you're the officer who seized these items,
17 you're the officer who requested they be examined,
18 correct?

19 A That's correct.

20 Q And if I may, turn them without pulling that out
21 here. Your Beaufort County Sheriff's Department cases
22 Number will be 2012-03-07-0526, correct?

23 A 2012-03-07-0526, yes.

24 Q And the lab number 2012L0196, correct?

25 A Yes.

1 Q Okay. And if you could, the BEST bag number,
2 C006553, correct?

3 A Correct.

4 Q That you've testified all about. And if you would,
5 please let the jury know where you say you located the
6 items that you put in that BEST bag.

7 A Suspect vehicle.

8 Q Thank you. No indication that any item came off
9 the person of Mr. Alston, correct?

10 A On that specific sheet, no.

11 Q The items that you submitted in the BEST bag that
12 you have there, you indicate they came from the suspect
13 vehicle, correct?

14 A That's correct.

15 Q Okay.

16 MS. CAMPBELL: That's all I have. Thank you.

17 THE COURT: Okay. Anything further?

18 SOLICITOR HOLLEN: Just very quickly, your Honor.

19 KYLE STRICKLAND, RE-DIRECT EXAMINATION,

20 BY SOLICITOR HOLLEN:

21 Q Mr. Strickland, was it unusual for you to
22 communicate with other deputies via your cell phone?

23 A No, it was not.

24 Q Would you say that was a pretty standard practice?

25 A It was.

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1 Q So, when you contacted -- do you actually recall if
2 you contacted Deputy Martin?

3 A I believe, in my actual testimony, she had asked
4 me, and when I went back and actually read my -- the
5 first line of my report, because it was four years ago,
6 yes, I did recall -- you know, didn't call him. And I
7 believe I changed my statement, but I don't know.

8 Q And just for the record, do you recognize the
9 person that you arrested that day, in the courtroom?

10 A I do. It's the gentleman in the red shirt.

11 SOLICITOR HOLLEN: Let the record reflect he's
12 identified the defendant.

13 BY SOLICITOR HOLLEN:

14 Q So, when you attempted to weigh the item, you said
15 that you couldn't get a weight on the scale you had.

16 A That's correct.

17 Q At some point, was it weighed later on, I guess?

18 A It was. It was weighed at the actual lab itself.

19 Q And is it, this forensic request form that Ms.
20 Campbell showed you, is it uncommon for you to identify
21 things, just in general?

22 A In general, no, it's not.

23 Q Where did you find that pill?

24 A The pill was in Mr. Alston's right, front pants
25 pocket.

1 Q And what did Mr. Alston tell you about that pill?

2 MS. CAMPBELL: Again, your Honor, asked and
3 answered. We've already been over this testimony.

4 SOLICITOR HOLLEN: I'm just clarifying, but I'll
5 drop it. Thank you, Mr. Strickland. No further
6 questions.

7 THE COURT: Ms. Campbell, anything further from
8 him?

9 MS. CAMPBELL: Well, very briefly.

10 KYLE STRICKLAND, RE-CROSS-EXAMINATION,

11 BY MS CAMPBELL:

12 Q The Solicitor asked you about your failure to
13 properly fill out the request form. So, I understand
14 that you say it was common that you did not do things
15 properly, correct?

16 A I would say -- I wouldn't go as far as saying
17 properly. It was -- it was a gen -- generalization of
18 where the stuff came from. I'm not going to indicate
19 that on that sheet. I've done that --

20 Q So, it wasn't important to you to indicate where
21 the items came from --

22 A Well, no, --

23 Q -- just generally?

24 A No, it was important that it was indicated in my
25 report specifically where those items came from, not so

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1 much on a sheet that goes to the lab, when I have
2 individually marked bags, so.

3 Q And it says, *the suspect vehicle*.

4 A It does say *suspect vehicle*.

5 Q And requests that you write on here the location
6 of the recovery, correct?

7 A Okay.

8 Q Thank you.

9 A Correct.

10 SOLICITOR HOLLEN: Nothing further, your Honor.

11 THE COURT: All right. Any objection to Mr.

12 Strickland being excused from the State or the defense?

13 SOLICITOR HOLLEN: No, ma'am.

14 MS. CAMPBELL: No, your Honor.

15 THE COURT: You are excused, sir.

16 A Thank you.

17 THE COURT: Call your next witness.

18 SOLICITOR JOSEPH: Your Honor, the State calls
19 Eileen Rios.

20 THE COURT: You all okay? Everyone okay? Okay.

21 BAILIFF: Right this way to be sworn in.

22 MADAM CLERK: Raise your right hand. Left hand on
23 the *Bible*. Do you solemnly swear or affirm to
24 truthfully answer all questions asked of you by this
25 court, so help you God?

1 EILEEN RIOS: I do.

2 MADAM CLERK: Thank you.

3 EILEEN RIOS, DIRECT EXAMINATION

4 BY SOLICITOR JOSEPH:

5 Q Good morning.

6 A Hi.

7 Q Ms. Rios, are you currently employed?

8 A No, I'm retired now.

9 Q And where are you retired from?

10 A Beaufort County Sheriff's Office.

11 Q And how long have you worked with worked for the
12 Beaufort County Sheriff's Office?

13 A Over 24 years.

14 Q Long time.

15 A Yeah.

16 Q So, in your most recent act, how were you employed
17 with the Beaufort County Sheriff's Office?

18 A I was an evidence technician.

19 Q What does that mean?

20 A I received and maintained evidence for the
21 Sheriff's Office.

22 Q So, it's probably safe to say that you received a
23 lot of evidence.

24 A Oh, yes.

25 Q So, do you remember every single piece of evidence

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DIRECT - EILEEN RIOS

1 that --

2 A No.

3 Q Okay. So, right in front of you, there are some
4 marked bags. I would ask that you not show them to the
5 jury, but just by looking, what has been marked State's
6 Exhibit 1 and State's Exhibit 2, do you recognize these
7 specific items?

8 A Yes.

9 Q And how do you recognize those items?

10 A They're evidence bags. And also, this is a, what I
11 would call a KPAC bag that comes back from the drug lab.

12 Q So, that bag is distinct, because that's the bag
13 that the drug lab sends back.

14 A Correct.

15 Q And who did -- did you ever receive these items as
16 part of your job?

17 A This particular case, I released it to the Drug
18 Task Force -- excuse me --, the drug lab, to be analyzed,
19 and I took it back in when they were finished with it.

20 Q Okay. And do you remember specifically who you
21 received the item from?

22 A According to the paperwork, Renita Berry.

23 Q Okay. And do you remember who you released the
24 item to, like, ultimately?

25 A To be analyzed, it was -- it was Renita Berry.

1 Q Okay. And does the package that the items have in
2 front of you, do they appear to be altered in any way or
3 tampered with?

4 A They come into evidence sealed in the BEST bag.
5 That's what the drugs are originally -- suspected drugs
6 are originally put in, is a BEST bag. The officer seals
7 it, and then, it's secured in the drug box.

8 Q And so, that doesn't appear tampered with at all.

9 A It's been open. The KPAC bag has been, you know,
10 cut open.

11 Q Okay. And is there a secondary bag inside of that
12 bag?

13 A Yes. There would be -- yes.

14 Q Does that bag appear opened?

15 A Yes, it's been cut open.

16 Q Do you yourself cut open these bags?

17 A No.

18 Q So, when they were in your custody, did you tamper
19 with them in any way?

20 A No.

21 Q And is that your practice to not open them?

22 A Correct. They come in sealed. They stayed sealed
23 until such time that they're released to the drug lab to
24 be analyzed.

25 Q As this -- these package of drugs were being

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DIRECT - EILEEN RIOS

1 transported from place to place, would anyone have
2 tampered with them or altered with them?

3 A Once they are released to the drug lab, the -- the
4 person who analyzed it would open it up. But as for
5 tampered with, no. They're -- it's held secure in
6 evidence lockup until such time that it's released to be
7 analyzed.

8 Q Okay. And then, my last question. Your name does
9 not appear on these bags at all.

10 A No.

11 Q And why is that?

12 A Once it's transferred, it's all electronic. At the
13 time, we each had our own unique password that's put
14 into the computer, who transfers it out and who they
15 transferred it to. And then, once it's brought back
16 again pass -- I have my own password, and she trans --
17 transfers it back to me.

18 Q So, without showing the jury the evidence, there
19 are some signatures on the bag. Is that correct?

20 A Correct.

21 Q But your signature is not on there?

22 A No.

23 Q And that's to be expected.

24 A Correct.

25 SOLICITOR JOSEPH: All right. Thank you very much.

1 No further questions.

2 MS. CAMPBELL: No questions.

3 THE COURT: Any objection to Ms. Rios being
4 excused?

5 SOLICITOR JOSEPH: None, your Honor.

6 THE COURT: You are excused. The State will call
7 their next witness.

8 SOLICITOR HOLLEN: Thank you, your Honor. The
9 State calls Renita Berry.

10 THE COURT: Ladies and gentlemen, do you want to
11 take a stand and stretch, you're welcome to right now.
12 End 1006, begin 1007.

13 THE COURT: Mr. Hollen, how many witnesses do you
14 have left?

15 SOLICITOR HOLLEN: Ms. Berry is it.

16 THE COURT: Very good. Thank you.

17 BAILIFF: Right this way to be sworn in.

18 MADAM CLERK: Place your left hand on the *Bible*.
19 Raise your right hand. Do you solemnly swear or affirm
20 to truthfully answer all questions asked of you by this
21 court?

22 RENITA BERRY: Yes, I do. Yes, I do.

23 RENITA BERRY, DIRECT EXAMINATION

24 BY SOLICITOR HOLLEN:

25 Q Good morning, Ms. Berry.

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DIRECT - RENITA BERRY

1 A Good morning.

2 Q We're going to do this quickly. I don't think
3 there'll be any objection as far as your competency as
4 an expert, but what are some of your background
5 information and your qualifications? How long have you
6 been with Beaufort County Sheriff's Office?

7 A I've been with Beaufort County Sheriff's Office
8 since November of 2001.

9 Q And what about education and training.

10 A Okay.

11 Q That kind of thing?

12 A I have bachelor of science degree from University
13 of South Carolina in chemistry. I also have a master's
14 degree in management from Western University. As far as
15 my training as a forensic chemist, I was employed by
16 South Carolina Law Enforcement Division, commonly known
17 as SLED, for four years as a drug chemist. And it was
18 at SLED where I received the majority of my training in
19 this area.

20 I've also been certified by the Drug Enforcement
21 Administration, also know as the DEA, as forensic
22 chemist. Throughout the years, I've attended various
23 training opportunities that focus on drug chemistry,
24 along with identifying drugs, the different types of
25 substances out there, controlled and non-controlled,

1 along with the different instrumentation used for that
2 testing.

3 Q Do you have any idea how many times you've been
4 qualified as an expert in court?

5 A It's been over ninety times.

6 Q All right. Thank you.

7 SOLICITOR HOLLEN: Your Honor, at this time, the
8 State would request that Ms. Berry be admitted as an
9 expert in forensic chemistry.

10 MS. CAMPBELL: Agreed.

11 THE COURT: Ladies and gentlemen, at this time, Ms.
12 Berry is being qualified as an expert witness in the
13 area of forensic chemistry. That allows her to give her
14 opinion and the reasons for her opinion. And that is to
15 be used and as you see appropriate, and as compared to
16 other evidence in this case. You may continue.

17 SOLICITOR HOLLEN: Thank you, your Honor. May I
18 approach?

19 THE COURT: You may.

20 BY SOLICITOR HOLLEN:

21 Q Ms. Berry, I'm going to hand you a bag here.
22 Inside there are a couple of items marked for
23 identification as State's Exhibit 1 and 2. If you
24 could, would you take a look at those items, without
25 showing them to the jury?

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DIRECT - RENITA BERRY

1 A Okay. Items 1 and 2?

2 Q Yes, ma'am. As far as the two small items there,
3 do you recognize those? They'll have different numbers
4 than your report.

5 A The State exhibits or?

6 Q They are exhibits for -- excuse me.

7 A These two. That's marked as 2. Just those two.
8 Okay.

9 Q So, do you recognize those?

10 A Yes, I do.

11 Q And how do you recognize those items?

12 A On each of the bags, you'll notice there is what we
13 call a lab number, and that's in my handwriting. And
14 you also see my initials that are on the front of the
15 bag, and also along the back. And that applies to this
16 bag, also, where you see my initials, along with the lab
17 numbers that was assigned, along with my initials in the
18 front and back of the bag.

19 Q Ms. Berry, when did you receive those items, and
20 who did you get them from?

21 A I received the items on March 14, 2012, from Eileen
22 Rios of the evidence -- she was the evidence custodian
23 at the time.

24 Q And when those items were packaged and sent to you,
25 were they opened or tampered with in any way?

1 A No. They were in sealed evidence bags. Where you
2 see the red seal, red evidence tape.

3 Q And what was the reason you were given those items?

4 A For examination, to determine what the substance --
5 what substance was provided.

6 Q And did you perform any kind of analysis on those?

7 A Yes, I did.

8 Q What were your findings?

9 A Four of the items -- this item, Item 1, for the
10 State; Item 2, based on my report; based on the testing
11 performed, cocaine base was found, weight of 0.05 grams.
12 For Item 3, for my report, Item 2, based on the State
13 exhibit, oxycodine and acetaminophen was found. It was
14 a tablet. And based on the testing, it was oxycodine or
15 acetaminophen.

16 Q In relation to those two items, the cocaine base is
17 a controlled substance?

18 A Yes, it's a Schedule II barb put 2?substance.

19 Q What about the pill?

20 A It's also a Schedule II substance.

21 Q And based on your knowledge, as far as the pill,
22 there is a prescription required to possess that?

23 A Yes, it is.

24 Q So, just to be clear, when you received those
25 items, they were sealed. Do you know who they were

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DIRECT - RENITA BERRY

1 sealed by? Can you tell that by your examination of
2 those bags?

3 A I know there are some initials across the red part
4 of the bag. K.F.J., maybe.

5 Q Those items would have been transferred from the
6 officer?

7 A Um-hmm, to evidence.

8 Q To evidence.

9 A Um-hmm.

10 Q Then, to the lab for testing?

11 A Now, according to the control bag in which all the
12 items were in, and each bag was sealed, it has a
13 signature of K. Strickland, and it says that he sealed
14 up the bag.

15 Q So, when you -- let's clarify that, too. When you
16 received those items, were they sealed inside a larger
17 bag?

18 A Yes, they were.

19 Q Okay. And that's the bag you're holding right
20 there?

21 A Yes.

22 Q And what is that called?

23 A This is called a control bag, and it's evidence --
24 you can determine -- if the bag has been tampered with,
25 there's evidence of that. So, there would be evidence

1 of that. Whereas, you would see from this -- you would
2 see some pulling along the side. The bag has to be cut
3 to be open, and you could tell if anybody's tried to
4 pull the bag apart. And in this situation, the bag was
5 intact.

6 SOLICITOR HOLLEN: Your Honor, I have no further
7 questions for Ms. Berry.

8 MS. CAMPBELL: Very briefly. May I approach?

9 THE COURT: You may.

10 RENITA BERRY, CROSS-EXAMINATION,

11 BY MS. CAMPBELL:

12 Q Good afternoon.

13 A Good afternoon.

14 Q May I just take these exhibits a second. I guess
15 what's been marked as State's Exhibit 2.

16 A Um-hmm.

17 Q What you just testified about. What you testified
18 was the, is it, acetaminophen?

19 A Oxycodone.

20 Q Oxycodone.

21 A Um-hmm.

22 Q Okay. That is -- is that a full pill or a partial
23 pill? I mean, broken in half? Yes?

24 A This is the remaining of the pill. Part of the
25 pill was analyzed. So, yes, it was a full pill at one

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1 time.

2 Q And when you break it in half and you analyze it,
3 where -- do you make a notation of that, or it's just
4 assumed that, that's how it's done?

5 A In my notes.

6 Q Okay. And the Item Number 1, State's Number 1,
7 there's some, I guess it's similar to sand. Sand in the
8 bottom of the bag, what you have indicated as cocaine
9 base, correct? Right here?

10 A Um-hmm.

11 Q Along the bottom here. Now, when you received this
12 item, it was loose, correct? I mean, wasn't in any kind
13 of packaging, right? Other than the bag the officer
14 says he put it in, right?

15 A Evidence bag containing crumbled substance.

16 Q Right. So, that -- the granular substance here
17 wasn't in anything other than the bag he put it in,
18 correct?

19 A Yes.

20 MS. CAMPBELL: Okay. That's all I have. Thank
21 you.

22 THE COURT: Anything further?

23 SOLICITOR HOLLEN: Yes, your Honor, just briefly.
24 I would ask that those Items 1 and 2 be admitted for
25 purposes of this hearing [sic].

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STATE RESTS

1 THE COURT: Objection?

2 MS. CAMPBELL: You know, subject to the prior
3 objections I had relative to the evidence in this case,
4 pertaining to some pretrial matters.

5 THE COURT: Okay. I think we need to take that up.

6 MS. CAMPBELL: Right.

7 THE COURT: We need to take that up.

8 MS. CAMPBELL: Okay.

9 THE COURT: I'm sorry, yes. Okay. Now, I
10 understand what you're saying.

11 MS. CAMPBELL: You understand what I'm saying.

12 THE COURT: Yes, exactly. Okay. As to what was
13 previously ruled upon in this trial.

14 MS. CAMPBELL: Correct.

15 THE COURT: Thank you. I appreciate that. All
16 right. Anything else?

17 MS. CAMPBELL: Not from the defense at this time,
18 your Honor.

19 THE COURT: Okay. All right. Any objection to Ms.
20 Berry being excused from anyone?

21 SOLICITOR HOLLEN: No, your Honor.

22 THE COURT: You're excused, Ms. Berry.

23 RENITA BERRY: Thank you, your Honor.

24 STATE RESTS:

25 SOLICITOR HOLLEN: Your Honor, at this time, the

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1 State would rest.

2 THE COURT: All right. Now a good time for a lunch
3 break? Yes? Okay. All right. Let's let Ms. Berry be
4 off. All right.

5 Ladies and gentlemen, we have been moving very
6 efficiently, I can tell you that, as far as this case is
7 concerned, and we will complete it today. By the clock
8 up there, it is about 20 'til 1:00. I am going to ask
9 that you all be back in the jury room at 1:45, ladies
10 and gentlemen.

11 Actually, let's do this. If you don't mind, let's
12 make it 2:00 o'clock, because I actually have some
13 hearings and some matters that I have to do, and I also
14 have some matters of law in this case. I don't want you
15 sitting around waiting on us. So, come back at 2:00
16 o'clock. We'll go ahead and we'll finish up this case.

17 I need to remind you, ladies and gentlemen, you
18 cannot discuss this case with anyone. You cannot do any
19 independent research. Simply go get a bite to eat and
20 come back.

21 It's my understanding from Jessica, your bailiff,
22 that nobody has any problems with this evening and time
23 frames, as far as no one has somewhere specifically they
24 have to go. I would anticipate that you may be in
25 deliberations at that point, so, of course, I have no

1 officers, who they believe and what they believe. So,
2 we're going to let it go to jury.

3 ITEM IDENTIFIED AS COCAINE BASE
4 MARKED STATE'S EXHIBIT NUMBER 1,
5 ADMITTED AS EVIDENCE.

6 ITEM IDENTIFIED AS PILL
7 MARKED STATE'S EXHIBIT NUMBER 2,
8 ADMITTED AS EVIDENCE.

9 DEFENDANT'S RIGHTS:

10 THE COURT: Ms. Campbell, can I now, at this point,
11 go through your client's rights with him, and do you
12 intend on putting up anyone, other than, potentially,
13 your client?

14 MS. CAMPBELL: We would have no witnesses, and I
15 believe, as occurred at the last trial, Mr. Alston has
16 made the decision not to take the stand.

17 THE COURT: Okay. And again, we'll just go over
18 your rights, sir, for the record.

19 Mr. Alston, just raise your right hand, sir. Do
20 you swear or affirm the testimony you give will be the
21 truth, so help you God?

22 DEFENDANT ALSTON: I do.

23 THE COURT: Mr. Alston, we've been here before,
24 obviously, on this case. Go ahead and put your arm or
25 hand, down, sir.

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DEFENDANT'S RIGHTS

1 DEFENDANT ALSTON: No, your Honor.

2 THE COURT: I'm sorry?

3 DEFENDANT ALSTON: No, your Honor.

4 THE COURT: You do not wish to testify?

5 DEFENDANT ALSTON: Yes, I don't.

6 THE COURT: Okay. I'm sorry, I asked it in a
7 double-negative. My mother would be furious with me,
8 being an English teacher, but and again, I understand
9 you to say that you do not wish to testify.

10 DEFENDANT ALSTON: I do not.

11 THE COURT: Very good, sir. Thank you. I
12 apologize. You may be seated, Mr. Alston.

13 Ms. Campbell, I just want to clear up for the
14 record, I apologize. When you were in front of the jury
15 and said, *subject to my earlier objection*, it was the
16 entire stop that you were objecting to, obviously.

17 MS. CAMPBELL: Correct.

18 THE COURT: And I apologize. In my head, I was
19 thinking we were talking about, if you remember in the
20 first trial, there was a bit of a painful getting the
21 evidence in and establishing what it was. And I believe
22 it was the evidence custodian at that -- I think it was
23 evidence -- whoever it was, couldn't identify the drugs
24 with this case, and that's where my mind was, and that's
25 what I thought you were referring to. We hadn't put

1 that on the record, so I was concerned. But yes, your
2 objection as to the drugs coming in was based on the
3 entire stop that you think is, you know, obviously
4 unduly long and predicated on something else. So,
5 anyway, noting that for the record, I just want to make
6 sure for the record that, that has been preserved.
7 Okay.

8 Anything else? I don't think there are any
9 objections to the charge last time when we talked about
10 it. We're pulling up the exact same one. So, anything
11 further from anybody? Anything I need to know?

12 SOLICITOR JOSEPH: Your Honor, the State, at this
13 time, would ask to reserve its time for the very closing
14 and the closing only in this case. So, we'd like to go
15 last.

16 THE COURT: Okay.

17 MS. CAMPBELL: We would object. We believe we
18 would have the right to argue last.

19 SOLICITOR HOLLEN: That's correct.

20 THE COURT: She didn't put up any witnesses, so.

21 SOLICITOR HOLLEN: That's right.

22 THE COURT: Okay. It's all right. Okay. Anything
23 else from anybody?

24 MS. CAMPBELL: Would you have me rest when we come
25 back with the jury, first thing?

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DEFENDANT'S RIGHTS

1 THE COURT: Formally. I always think it looks
2 better.

3 MS. CAMPBELL: And do we then -- would we then go
4 into our closing?

5 THE COURT: Absolutely. And then, we go into our
6 closings.

7 MS. CAMPBELL: Without the necessity of then having
8 to having to raise the whole directed verdict motion
9 again?

10 THE COURT: I'm going to note for the record that
11 you're raising all of your prior objections, --

12 MS. CAMPBELL: Okay.

13 THE COURT: -- renewing your motion for a directed
14 verdict, and I'm denying it again, based on all of the
15 same grounds, because no evidence has been put forward.

16 MS. CAMPBELL: And the motion for a mistrial raised
17 again, and denied.

18 THE COURT: Of course. All previous objections and
19 motions.

20 MS. CAMPBELL: All right.

21 THE COURT: Okay?

22 MS. CAMPBELL: Thank you.

23 THE COURT: All right. Anything else?

24 SOLICITOR HOLLEN: Nothing from the State, your
25 Honor.

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BY THE COURT

1 THE COURT: All right. Well, I have another
2 hearing for -- I have another hearing at 1:00 o'clock.
3 All right. You all, I have the jury coming back at
4 2:00. If you all would be here about a quarter 'til
5 2:00. Okay?

6 SOLICITOR HOLLEN: Yes, ma'am. Thank you, your
7 Honor.

8 THE COURT: All right? Mr. Alston, don't be late.
9 DEFENDANT ALSTON: I won't.

10 THE COURT: Thank you.

11 OFF THE RECORD 12:51 P.M.

12 BACK ON THE RECORD 1:59 P.M.

13 BY THE COURT:

14 BAILIFF: All rise. (This court is back in session.)

15 THE COURT: All right. Have you shown the
16 attorneys the verdict form?

17 Okay. Leigh Ellen has provided you both a copy of
18 the verdict form and the charge. Are there any
19 objections or additions to the charge from the State?

20 SOLICITOR HOLLEN: No, your Honor. Just the crack
21 cocaine, instead of cocaine.

22 THE COURT: Right.

23 SOLICITOR HOLLEN: But that's been noted.

24 MS. CAMPBELL: Not from the defense.

25 THE COURT: Thank you. You all ready to go?

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1 MS. CAMPBELL: Um-hmm.

2 THE COURT: Okay.

3 SOLICITOR JOSEPH: Yes, your Honor.

4 THE COURT: Who's doing the close for the State?

5 SOLICITOR JOSEPH: I am, your Honor.

6 THE COURT: Very good. All right. Whenever you're
7 ready, Rick, bring them on in.

8 BAILIFF: The jury is entering the courtroom, your
9 Honor.

10 JURORS ENTER COURTROOM 2:04 P.M.

11 BAILIFF: The jury is seated, your Honor.

12 THE COURT: Thank you. Welcome back, ladies and
13 gentlemen. I hope you all had a nice lunch. At this
14 time, we're going to hear the closing arguments from the
15 attorneys, and I am going to charge you on the law
16 that's applicable to this case, and we are going to send
17 it to you.

18 I apologize, I need to let Ms. Campbell go ahead
19 and rest for you.

20 DEFENDANT RESTS:

21 MS. CAMPBELL: Thank you. At this time, your
22 Honor, the defense rests.

23 THE COURT: Thank you. So, as I said, you're going
24 to hear closing arguments. I'm going to charge you, and
25 then, we're going to go forward. All right? If you'll

1 give the solicitor your attention, please.

2 SOLICITOR JOSEPH: Thank you. May it please the
3 Court?

4 THE COURT: Yes, ma'am.

5 CLOSING ARGUMENT ON BEHALF OF THE
6 STATE, BY SOLICITOR JOSEPH:

7 SOLICITOR JOSEPH: Opposing counsel, members of the
8 jury. On March 7, 2012, the defendant, Kevin Alston,
9 broke the law. Now, the defense wants you to believe
10 that this is part of a vast conspiracy; that the
11 defendant was targeted; he was profiled in some way; the
12 police had it out for him. This is simply not true. In
13 order for this to be true, every single police officer
14 that took the stand would have had to be lying.

15 Instead, I offer you a simpler explanation, and
16 that is that, on March 7, 2012, the defendant, Kevin
17 Alston, broke the law. He broke the law by possessing
18 crack cocaine, and he broke the law by possessing
19 oxycodone without a prescription. And his lawbreaking
20 was discovered when Officer Menendez pulled him over for
21 a traffic stop.

22 You heard today at trial that the K-9 handler,
23 Sergeant Martin, arrived at the scene soon after the
24 traffic stop happened, and along with his K-9, Nero,
25 they searched the vehicle; and that, on the second pass

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CLOSING - STATE

1 of the vehicle, the dog alerted on the outside; and
2 that, when he was let inside the vehicle, he alerted
3 again at the center console, and that's where the crack
4 cocaine was found.

5 When the defendant was arrested, he was searched,
6 and an oxycodone pill was found in his possession. Now,
7 what I'm telling you right now probably sounds a lot
8 like what my co-counsel told you at the beginning of
9 trial. That's because our story, it hasn't changed.
10 You know whose story has changed, the defendant's. When
11 he was arrested that day, at first, he said, I had a
12 prescription for that pill; I have it legally. But
13 later, when confronted with the facts, he changed his
14 story, and he said, no, I don't have a prescription. He
15 admitted to lying, and I contend that he is lying again
16 when he says that crack cocaine was not his.

17 Now, at the end of this trial, as the Judge has
18 told you and as we have told you, she's going to come
19 here, and she's going to talk to you about the law.
20 She's going to talk to you about possession, how there
21 are two types of possession. There's constructive
22 possession, and then, there's actual physical
23 possession. And we have both types of possession in
24 this case. The defendant was in actual physical
25 possession of the pill that was found in his pocket,

1 because he was the physical custodian of the oxycodone;
2 and he had constructive possession of the crack cocaine,
3 because he had dominion and control over the drugs, or
4 the right to exercise dominion and control over the
5 drugs, that were found in the vehicle, because he was
6 the sole occupant and driver of the vehicle where the
7 drugs were found.

8 The State in this case has the burden. We must
9 prove beyond a reasonable doubt that the things that
10 we're saying happened, happened. This does not mean
11 that no doubt can exist, but only that no reasonable
12 doubt can exist after the presentation of evidence. I
13 contend that the State has not only met their burden,
14 they have surpassed their burden. And I ask you to
15 review in your mind and to recall everything that you
16 have heard today and the evidence that was presented,
17 and to hold the defendant, Kevin Alston, responsible for
18 the choices that he made on March 7, 2012, and to find
19 him guilty of possession of crack cocaine and guilty of
20 possession of a controlled substance.

21 Thank you very much for your time.

22 MS. CAMPBELL: May it please the Court?

23 CLOSING ARGUMENT ON BEHALF OF THE
24 DEFENDANT, BY MS. CAMPBELL:

25 MS. CAMPBELL: Good afternoon. Madam Solicitor's

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1 -- she talks about a vast conspiracy, Well, and she
2 says, well, all of the officers would have to be lying.
3 Well, here's what we know right this minute. At least
4 two of the officers, one current, one former, are lying,
5 and we're going to get into detail about that. You
6 heard them testify. If what Martin says happened, then,
7 Strickland is lying. If what Strickland says happened,
8 then, Martin is lying. And I'll submit to you later
9 that, with that kind of lack of integrity, you can
10 strike their testimony from this case, and that leaves
11 you with Officer Menendez, who told you, I turned it
12 over to them; I didn't see anything; I didn't seize
13 anything; I didn't do anything; I did the traffic stop.

14 You know, it's been said that the truth stays the
15 same. When you match it up every time, it's always the
16 same. That's not the case here. It never has been the
17 case with this case.

18 One of our very first attorneys in the Unites
19 States and our eventual president, John Adams, 1771, he
20 said, in talking about your responsibility in this
21 matters, it's not only the juror's right but their duty
22 to find the verdict according to their own best
23 understanding, best judgment, and conscience.

24 Now, I asked you to listen, and you've done that.
25 But let's talk about your judgment of the demeanor and

1 the character and the prejudice and the bias of the
2 witnesses that were brought before you today. You may
3 ask yourselves these questions, why? Why has the State
4 of South Carolina, why do they have no audio? Why do
5 they have no video? Law enforcement officers carry
6 recorders, you know, advise him of his *Miranda* rights,
7 cut your recorder on. They have those capabilities.
8 You want to get his statement on record. Oh, yeah, I
9 knew that was there, but I knew that was there. There's
10 no record of anything that happened on Lady's Island on
11 March 7, 2012.

12 There's no Dispatch records. I guarantee you, if
13 the Sheriff's Department had a record of these guys
14 talking to one another on that day, you'd have them
15 right in here on that stand, giving you those records.
16 They don't exist.

17 Now, the time reports are off for all three
18 officers. Ask yourselves who called who. When did they
19 call? Why did they call? And why did they choose to
20 use their cell phones over the method that they're
21 supposed to communicate in? You are allowed to consider
22 both of these factors, what you received from the State
23 of South Carolina and what you did not receive from the
24 State of South Carolina.

25 Again, if they bring to you the status of the

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CLOSING - DEFENDANT

1 driver's license, no proof. The broken tail light, no
2 evidence. Officer Menendez, no longer with the
3 Sheriff's Department. You saw the extended period of
4 time that he followed Mr. Alston. He testified he was
5 polite; he followed my directives; he gave me his
6 military I.D. card, which, of course, you've got to have
7 your valid driver's license to get on base, in order to
8 obtain that and to drive lawfully there.

9 Officer Menendez writes in his report that this
10 incident occurred at 11:00 a.m. Okay. So, now, here we
11 are at Martin, and here we are at Strickland. I say to
12 you again, both their stories can't be true. Someone's
13 lying. Martin testified Strickland was there; the
14 suspect was already detained. That was in his report
15 and his testimony.

16 Now, Strickland, who is former Beaufort County
17 Sheriff's Officer, former Colleton County Sheriff's
18 Officer, now running some company making cocktail sauce,
19 he comes in here and he tells you, no, Martin was there
20 before me; he had already searched the Ford Explorer.
21 And told me, oh, I found something. Somebody's lying to
22 you today.

23 Also, when questioned, Strickland, how was it
24 packaged? Well, it was packaged -- it was loosely
25 packaged. And then, he flipped over later and said, no,

1 it was just loose. Was it under a towel? Was it --
2 where is the towel? We don't have the towel. Was there
3 a towel ever in the car.

4 And the glass container, which no one ever looked
5 at. You know, my fingerprints are all over here. Your
6 fingerprints are on the things you touch. If Kevin
7 Alston was the person who was in that car, responsible
8 for the items in that car, then, his fingerprints ought
9 to be all over the items that they say are associated
10 with the items they say they seized. There's evidence
11 sitting in that bag right there that could answer your
12 question, but the State of South Carolina has not
13 bothered to provide you.

14 Now, I will tell you that I've known Ms. Berry for
15 a long time. She's the chemist. That's what she does.
16 She's not in the street, so she's not on the scene.
17 She's just here to tell you, I analyzed this; this is
18 what I got. But I encourage you to look at the items,
19 because you will have them in the jury room, and ask
20 yourselves this question: if you are driving down the
21 highway, Beaufort County, and you've got crack cocaine
22 in your car, like is in that bag right there, and you've
23 got a pill in your pocket that you know you shouldn't
24 have, and the blue lights flash behind you, right? And
25 the officer pulls up behind you, why don't you -- it's

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1 gone. That bag that you're going to have in your
2 evidence room, whew, gone. And the pill in your pocket,
3 gone. If you knew you had those things, how easy it
4 would be that they would be gone. Think on that as you
5 begin your deliberations and throughout your
6 deliberations.

7 I have to tell you, I have great faith in this
8 room. I have great faith in you and justice and what we
9 are about, the business of today. You know, I have a
10 history major in my background, and I love Thomas
11 Jefferson. I'd like to say that his words are my words.
12 Never to be that brilliant, but he quotes by saying
13 about our trial by jury, and how integral it is to our
14 way of life. He says:

15 *The wisdom of the sages and the blood*
16 *of our heroes has been devoted to the*
17 *attainment of the trial by jury. Trial by*
18 *jury is part of the bright constellation*
19 *that leads to peace, liberty, and safety*
20 *for all of us.*

21 I was thinking, when I was listening to this
22 testimony and sitting up and taking notice of what I was
23 hearing, and I likened it to the reaction that we all
24 have -- most of us do, I think we do -- when we hear
25 music. Some of us like hip-hop. Some of us like

1 country. Some of us like jazz. I personally like
2 classical music. One of my favorite pieces of music is
3 Tchaikovsky's *Swan Lake*. And when I hear that piece of
4 music played by the orchestra, and it's flawless, it has
5 an emotional and a physical response to what I'm
6 hearing. But if there's a sour chord, if a note is off
7 key, what do we do? It's painful. It's painful to
8 listen to it. And we sit up and we take notice, because
9 the chords are off, the notes are off. It's not hitting
10 right. And I take notice, and you respond. And I say
11 to you, in this situation, something is not right. The
12 same is true for justice.

13 And remember when I began speaking to you, the
14 truth stays the same. The stories are the same. If
15 Martin is telling the truth, Strickland is lying. And
16 the reverse, if Strickland is telling the truth,
17 Martin's lying. And that matters to the integrity of
18 this room and of you, of this entire process, to have
19 them do that here. You have the right and maybe the
20 duty to completely dismiss, disregard, strike their
21 testimony in its totality. And what you are left with,
22 again, is Menendez, who seized nothing and saw nothing.

23 So, as I leave you, I say to you that, if the
24 chords are not right, if the evidence and the witnesses
25 make us sit up and take notice, then, you cannot move.

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1 Then, you, individually, cannot sway to the music that
2 the State of South Carolina is playing for you today.
3 And then, you have doubt, and it's reasonable doubt,
4 based upon what you've heard. And that requires you to
5 return a verdict of not guilty.

6 There will come a time this afternoon for you to
7 make a decision, to take a vote. And I say to you in
8 confidence that, when you tear off that slip of paper on
9 your pad, and you write down your vote, and you fold it
10 up, and you send it to your foreman, that every piece of
11 paper will read not guilty.

12 You know, it's been said that the verdict in a
13 criminal trial is like taking a gun, putting a bullet
14 in, and firing it. It can't be taken back. It can't be
15 undone. Don't pull that trigger. There is a sour note
16 here. There is a not guilty in your hands.

17 Thank you.

18 JURY CHARGE, BY THE COURT:

19 THE COURT: Mr. Foreperson, members of the jury,
20 you all have followed very patiently and listened very
21 attentively to the presentation in this case, and I want
22 to thank you all for that. It now becomes the duty of
23 the trial judge, under the constitution of this state,
24 to charge and instruct you on the law that is applicable
25 to this case. And it's your duty as jurors to accept

1 and apply the law as I will now state it to you.

2 As jurors, it is your exclusive duty to decide all
3 the issues of fact in this case. You must determine the
4 effect, the value, the weight, and the truth of the
5 evidence. Both the State of South Carolina and the
6 defendant, Mr. Alston, have the right to expect that
7 each of you will carefully consider and evaluate the
8 evidence, and apply the laws of this case to the
9 evidence. And by doing so, both the State and the
10 defendant will receive and obtain a fair and impartial
11 trial in this case.

12 Now, the State of South Carolina, by the bills of
13 indictments in this case, charge the defendant, Kevin T.
14 Alston, with the offenses of possession of crack cocaine
15 and possession of a controlled substance. I remind you
16 that the fact that the defendant was arrested, charged,
17 and indicted in this case is not evidence in this case,
18 and cannot be considered by you as evidence of guilt in
19 this case, nor does it create any presumption or
20 inference of guilt. The indictments are simply the
21 formal, written instruments which contain a charge made
22 against the defendant. They are the formal documents by
23 which the case is brought into this courtroom.

24 Now, the defendant, Mr. Alston, has pled not guilty
25 to these indictments, and that plea puts the burden on

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1 the State to prove the defendant guilty beyond a
2 reasonable doubt. A person charged with committing a
3 criminal offense in South Carolina is never required to
4 prove himself innocent. I charge you that it's an
5 important rule of law that a defendant in a criminal
6 trial, no matter what the seriousness of the charges may
7 be, will always be presumed innocent of the crime for
8 which an indictment is issued, unless guilt has been
9 proven by evidence satisfying you, the jury, of that
10 guilt beyond a reasonable doubt.

11 This presumption of innocence does not end when you
12 begin your deliberations, but it accompanies the
13 defendant throughout the trial, until you reach a
14 verdict of guilt based on evidence satisfying you of
15 that guilt beyond a reasonable doubt.

16 The presumption of innocence has been explained as
17 like being a robe of righteousness that's placed about
18 the shoulders of the defendant, and it remains with the
19 defendant until it has been stripped away by evidence
20 satisfying you of the defendant's guilt beyond a
21 reasonable doubt. The presumption of innocence is not a
22 mere legal theory. It's not just a legal phrase for
23 you. It is a substantial right to which every defendant
24 is entitled, unless you, the jury, are satisfied from
25 the evidence of the defendant's guilt beyond a

1 reasonable doubt.

2 Now, again, the State has the burden of proving the
3 defendant guilty beyond a reasonable doubt, and the term
4 *reasonable doubt* must be given its plain and ordinary
5 meaning. However, to the extent that I may define it
6 for you, a reasonable doubt is the kind of doubt that
7 would cause a reasonable person to hesitate to act in
8 the most important of their personal decisions.

9 The defendant is entitled to every reasonable doubt
10 arising in this case. If, upon issue of fact essential
11 to a conviction, you have a reasonable doubt as to how
12 that issue should be resolved, you must resolve that
13 reasonable doubt in favor of the defendant.

14 Now, some of you may have served as jurors in civil
15 cases where you were only told that it was only
16 necessary to prove that a fact was more likely true than
17 not true, and that's what we call by the greater weight,
18 or the preponderance, of the evidence. In criminal
19 cases, the State's must be more powerful than that. It
20 must be beyond a reasonable doubt. Proof beyond a
21 reasonable doubt is proof that leaves you firmly
22 convinced of the defendant's guilt.

23 Now, there are very few things in this world that
24 we know with absolute certainty, and in criminal cases,
25 the law does not require proof that overcomes every

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1 possible doubt. If, based on your consideration of the
2 evidence, you are firmly convinced that the defendant is
3 guilty of the crime or crimes charged, you must find the
4 defendant guilty. If, on the other hand, you think
5 there is a real possibility that the defendant is not
6 guilty, you must give the defendant the benefit of the
7 doubt, and find him not guilty.

8 Now, I remind you that, during this trial, you and
9 I have certain duties to perform. As the judge, it's my
10 responsibility to preside over the trial of this case,
11 and I also have the duty to rule on the admissibility of
12 the evidence that was offered in this trial. You are
13 only to consider the competent evidence that is before
14 you. If there was any testimony ordered stricken, which
15 I don't believe there was in the record, during the
16 trial, you must disregard this testimony, and you are to
17 consider only the testimony which has been presented
18 from the witness stand and any other exhibits that were
19 entered into the record.

20 Ladies and gentlemen, I have the additional duty to
21 charge the law that is applicable to this case. I am
22 the sole judge of the law, and it's your duty as jurors
23 to accept and apply the law as I will now state it to
24 you. If you have an idea as to what the law is or what
25 you think the law ought to be, you must disregard that

1 and abandon that idea, because you are sworn to accept
2 and apply the law exactly as I state it to you.

3 In every case tried in this court before a jury,
4 the jury is the sole and exclusive judge of the facts.
5 A trial judge cannot comment on or make any statement to
6 a trial jury about the facts in this case. And since
7 you, the jury, are the sole judge of the facts in this
8 case, you are not to infer from what I have said during
9 the progress of this charge, or in ruling upon the
10 admissibility of the evidence or otherwise that I have
11 an opinion about the facts of this case. The law does
12 not allow me to have an opinion about the facts of this
13 case. This is a matter solely for you, the jury, to
14 determine.

15 I remind you, ladies and gentlemen, that it's your
16 duty to determine the effect, the value, the weight, and
17 the truth of the evidence that was presented during the
18 trial.

19 Now, there are two types of evidence that are
20 generally presented during a trial. That is direct
21 evidence and circumstantial evidence. Direct evidence
22 is the testimony of a person who claims to have actual
23 knowledge of a fact, such as an eyewitness.
24 Circumstantial evidence is proof a chain of facts and
25 circumstances indicating the existence of a fact.

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JURY CHARGE

1 Crimes may be proven by circumstantial evidence,
2 and the law makes no distinction between the weight or
3 the value to be given to either direct or circumstantial
4 evidence. However, to the extent the State relies on
5 circumstantial evidence, all of the circumstances must
6 be consistent with each other, and when taken together,
7 point conclusively to the guilt of the accused beyond a
8 reasonable doubt. If these circumstances merely portray
9 the defendant's behavior as suspicious, the proof has
10 failed. The State has the burden of proving the
11 defendant guilty beyond a reasonable doubt, and this
12 burden rests with the State, regardless of whether the
13 State relies on direct evidence, circumstantial
14 evidence, or some combination of the two.

15 It is your duty to determine the credibility of the
16 witnesses who have testified in this case, and
17 credibility simply means believability. It's your duty
18 as jurors to analyze and to evaluate the evidence and
19 determine which evidence convinces you of its truth. In
20 determining the believability of witnesses who have
21 testified in this case, you may believe one witness over
22 several witnesses, or several witnesses over one
23 witness. You may believe a part of the testimony of a
24 witness and reject the remaining part of the testimony
25 of that same witness. You may believe the testimony of

1 a witness in its entirety or reject the testimony of a
2 witness in its entirety, and you may consider whether
3 any witness has exhibited to you any interest, bias,
4 prejudice, or other motive in this case. And you may
5 also consider the appearance and manner of a witness
6 while on the witness stand.

7 Now, the rules of evidence ordinarily do not permit
8 witnesses to testify to opinions or conclusions. An
9 exception to this rule exists for witnesses that we call
10 expert witnesses, a witness who, by education and
11 experience, has become an expert in some art, science,
12 or profession, may give an opinion as to the subject the
13 witness claims to be an expert in, and may also give the
14 reasons for their opinion. You should consider an
15 expert opinion given by a witness, and like any other
16 evidence, give it the weight you think it deserves.

17 If you decide that an expert witness's opinion is
18 not based on sufficient education and experience, or if
19 you decide that the reasons given in support of the
20 opinion are not sound, or that the opinion is outweighed
21 by other evidence, you may disregard the opinion
22 entirely. An expert witness's testimony is to be given
23 no greater weight than that of other witnesses simply
24 because the witness is an expert. And you do not have
25 to accept an expert witness's opinion, even if it's

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JURY CHARGE

1 uncontradicted.

2 Now, I instruct you and emphasize that the fact
3 that the defendant did not testify is not a factor to be
4 considered by you in any way in your deliberation and in
5 your consideration on the guilt or innocence of the
6 defendant. It must not be considered by you in any
7 manner whatsoever. A defendant has the constitutional
8 right to remain silent, and the assertion of this right
9 must not be considered by you in your deliberations.

10 Now, I repeat, under your oath, you are to draw no
11 conclusion whatsoever from the fact the defendant in
12 this case did not testify. The fact the defendant did
13 not testify should not even be discussed in the jury
14 room. I remind you, the burden of proof is on the
15 State, and the defendant is not required to prove his
16 innocence, and the burden of proof remains on the State
17 to prove guilt beyond a reasonable doubt.

18 Now, the defendant is charged with possession of
19 crack cocaine. That's the first charge. Therefore, the
20 State must prove beyond a reasonable doubt that the
21 defendant knowingly or intentionally possessed crack
22 cocaine. Knowingly means with knowledge, consciously,
23 not accidentally; and intentionally means willfully,
24 intending the result which actually occurs, not
25 accidentally or involuntarily.

1 Intent may be shown by acts and conduct of the
2 defendant and other circumstances from which you may
3 naturally and reasonably infer intent. To prove
4 possession, the State must prove beyond a reasonable
5 doubt that the defendant had both the power and the
6 intent to control the disposition or use of the crack
7 cocaine. And possession may be either actual or
8 constructive. Actual possession means that the crack
9 cocaine was in the actual, physical custody of the
10 defendant. Constructive possession means that the
11 defendant had dominion and control or the right to
12 exercise dominion and control over either the crack
13 cocaine itself, or the property on which the crack
14 cocaine was found.

15 Mere presence at a scene where drugs are found is
16 not enough to prove possession. The defendant's
17 knowledge and possession may be inferred when a
18 substance is found on the property under the defendant's
19 control. However, this inference is simply an
20 evidentiary fact to be taken into consideration by you,
21 along with the other evidence in this case, and to be
22 given the weight you decide it should have.

23 Now, the defendant is also charged with possession
24 of a controlled substance. The State must prove, to
25 prove that charge beyond a reasonable doubt, the

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JURY CHARGE

1 defendant knowingly or intentionally possessed a
2 controlled substance. Again, ladies and gentlemen,
3 knowingly means with knowledge, consciously, not
4 accidentally. Intentionally means willfully, intending
5 the result which actually occurs, not accidentally or
6 involuntary. And intent may be shown by acts and
7 conducts by the defendant and other circumstances from
8 which you may naturally and reasonably infer intent.

9 Once again, to prove possession, the State must
10 prove beyond a reasonable doubt the defendant had both
11 the power and the intent to control the disposition or
12 use of the controlled substance. And I again remind
13 you, possession may be either actual or constructive, as
14 I just stated prior in the charge earlier. Again,
15 actual possession means that the controlled substance
16 was in actual, physical custody of the defendant. And I
17 remind you again, mere presence at the scene where drugs
18 are found is not enough to prove possession.

19 Defendant's knowledge and possession can be inferred or
20 may be inferred when a substance is found on the
21 property under the defendant's control. However, this
22 inference is simply an evidentiary fact to be taken into
23 consideration by you, along with the other evidence in
24 the case, and it is, again, to be given the weight you
25 decide it should have.

1 Ladies and gentlemen, possession of a controlled
2 substance is a crime, unless the controlled substance
3 was attained directly from or through a valid
4 prescription, or order of a practitioner acting in the
5 course of professional practice. Now, in this state, a
6 practitioner is a physician, dentist, veterinarian,
7 podiatrist, scientific investigator, pharmacy, hospital,
8 or other person or institution licensed, registered, or
9 otherwise permitted to distribute, dispense, conduct,
10 research with respect to or administer a controlled
11 substance in the course of professional practice of
12 research in this state.

13 Mr. Foreperson and ladies and gentlemen of the
14 jury, as you retire to begin your deliberations in this
15 case, I wish to express the hope that each of you will
16 be mindful of the importance of your responsibility here
17 today. You are not called upon very often to serve as
18 jurors, and the proper performance of that duty requires
19 that each of you reach the height of freeing your mind
20 of all improper influences.

21 Ladies and gentlemen, please don't get the idea
22 that I'm trying to tell you how you should decide this
23 case. As I've already told you, under the laws of our
24 state, you, the jury, are the sole judge of the facts,
25 and it would be highly improper for me to influence you

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JURY CHARGE

1 in any way in that duty. However, ladies and gentlemen,
2 as the presiding officer of this court, I am concerned
3 that whatever verdict you reach will be the result of
4 you going back into your jury room and confining your
5 deliberations to the law and the evidence that you've
6 heard here in this courtroom, weighing it fairly and
7 impartially, as I have every confidence you will.

8 Ladies and gentlemen, your verdict must be
9 unanimous. It must be the verdict of all twelve jurors,
10 and to that end, my law clerk has prepared a verdict
11 form. Mr. Foreperson, it simply has the caption of the
12 case, *the State of South Carolina versus Kevin Alston*.
13 It has two questions, both of which you must decide
14 independently.

15 The first question just states, *as to the charge of*
16 *possession of crack cocaine, we, the jury, unanimously*
17 *find the defendant, Kevin Alston, -- and it says, check*
18 *one, either not guilty or guilty.*

19 And then, *as to the charge of possession of a*
20 *controlled substance, we, the jury, again, unanimously*
21 *find the defendant, Kevin Alston, either not guilty or*
22 *guilty.*

23 Ladies and gentlemen, please don't infer that the
24 placement of not guilty and guilty has any significance.
25 Every trial we just reverse them.

1 After that, Mr. Foreperson, when you have answered
2 those two questions, there is a line for the foreperson
3 to sign and date the form. When you have reached a
4 unanimous verdict, I would ask that you would knock on
5 your jury room door, and we will accept you back into
6 the courtroom to announce your verdict. All right?

7 Ladies and gentlemen, for the very last time, I'm
8 going to send you back to your jury room, and I'm going
9 to tell you not to begin speaking about the case. There
10 may be something further on the law that the lawyers
11 want me to charge you. If there is, I'm going to bring
12 you back in here and charge you further on the law. If
13 not, Mr. Foreperson, I'm going to send the verdict form
14 and the evidence that was entered into the trial of this
15 case, and send it back to you, and that'll be your
16 signal to begin your deliberations.

17 Ladies and gentlemen, I also have to remind you, of
18 course, some of you have taken notes in the trial of
19 this case, and I need to remind you that your notes are
20 for your own recollection and refreshing your own
21 memory. I want to make sure that you don't abandon any
22 memory you have for what someone else may have written
23 in their notes. As I told you before, some people are
24 better note takers than others. So, again, that is for
25 your recollection only. All right?

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BY THE COURT

1 Ladies and gentlemen, thank you for your patience.
2 We're going to go ahead and send you back to your jury
3 room. Thank you.

4 BAILIFF: May they bring their notebooks, your
5 Honor?

6 THE COURT: Yes, they may. Thank you.

7 BAILIFF: All bring your notebooks, please.

8 JURORS LEAVE COURTROOM 2:40 P.M.

9 BY THE COURT:

10 BAILIFF: Jury's clear, your Honor.

11 THE COURT: Thank you. Mr. Hollen, any exceptions
12 or additions?

13 SOLICITOR HOLLEN: No, your Honor.

14 THE COURT: All right. Ms. Campbell, any
15 exceptions or additions?

16 MS. CAMPBELL: No, your Honor.

17 THE COURT: All right. Do we have the evidence
18 that was entered?

19 SOLICITOR HOLLEN: Yes, ma'am.

20 THE COURT: Rick, here we go. Not all of that went
21 back that's in there. It's just the two, correct?

22 VERDICT FORM AND EXHIBITS TAKEN

23 TO JURORS 2:41 P.M.

24 ALTERNATE JURORS ENTER COURTROOM

25 2:41 P.M.

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BY THE COURT

1 THE COURT: All right. Come on out. Thank you.
2 Very well, gentlemen. I wanted to thank you for your
3 service in the trial of this case. Sorry, come on a
4 little closer. You're fine. Obviously, we didn't lose
5 any jurors, so, at this time, I'm going to go ahead and
6 release you. I'm also going to release you for the
7 remainder of the week. We are doing other matters, but
8 we don't need juries. So, we're going to dispense with
9 everything as quickly as we can and easily.

10 I will tell you, at this time, you are permitted to
11 speak about the case, if you choose to. When you go
12 home, you can talk about it. That's fine. The only
13 thing I ask is that, if you became friends with any of
14 the other jurors, I don't want you speaking with them
15 until they have reached a verdict. I don't know, ever
16 imagine that they would go overnight, but if, for some
17 reason, they did, and you speak to them, you can't
18 discuss the case.

19 I will also tell you that sometimes the attorneys
20 may want to ask you kind of your thought process. You,
21 of course, are never required to talk to them. If you
22 want to, you're free at this time. That's absolutely
23 fine. But if not, you just politely decline, and they
24 will leave you alone. Okay?

25 Gentlemen, thank you. We appreciate your service.

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VERDICT

1 You've earned it. We'll see you three years from now,
2 possibly, maybe longer. All right?

3 ALTERNATE JUROR: Okay. Thank you.

4 THE COURT: Gentlemen, Thank you. If you need a
5 work excuse, simply ask the bailiffs and they'll give
6 you one.

7 ALTERNATE JUROR: Okay. Thank you.

8 THE COURT: Bye-bye. Absolutely. Okay. Thank
9 you.

10 OFF THE RECORD 2:43 P.M.

11 BACK ON THE RECORD 4:13 P.M.

12 VERDICT:

13 BAILIFF: All rise. This court is back in session.

14 THE COURT: Thank you. Please be seated.

15 All right. It's my understanding the jury has
16 reached a verdict. Is the State ready?

17 SOLICITOR JOSEPH: Yes, your Honor.

18 SOLICITOR HOLLEN: Yes, your Honor.

19 THE COURT: Is the defense ready?

20 MS. CAMPBELL: Yes, ma'am.

21 THE COURT: All right. Bring them on in.

22 BAILIFF: The jury is entering the courtroom, your
23 Honor.

24 JURORS ENTER COURTROOM 4:14 P.M.

25 BAILIFF: The jury is seated, your Honor.

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VERDICT

1 MS. CAMPBELL: Would you like us to sit or stand?

2 THE COURT: Go ahead and sit at this moment.

3 Mr. Foreperson, I understand the jury has reached
4 a verdict.

5 MR. FOREPERSON: Yes, ma'am

6 THE COURT: Would you pass it to the bailiff,
7 please.

8 FOREPERSON: Yes, ma'am.

9 THE COURT: Thank you.

10 THE COURT: Ms. Campbell, if both of you all will
11 go ahead and stand up.

12 In the case of the State of South Carolina versus
13 Kevin Alston, as to Indictment Number 2012-GS-07-00612,
14 the charge of possession of crack cocaine, we, the jury,
15 unanimously find the defendant, Kevin Alston, guilty.

16 As to Indictment Number 2012-GS-07-00613, the
17 charge of possession of a controlled substance, we, the
18 jury, unanimously find the defendant, Kevin Alston,
19 guilty.

20 Signed by our foreperson.

21 You may be seated, Mr. Alston.

22 Ladies and gentlemen of the jury, if this is your
23 verdict, will you please indicate by raising your right
24 hand? Thank you. I notice they've all raised their
25 hands. Would you like me to poll the jury?

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BY THE COURT

1 feel very good. Your collective heads are certainly
2 better than one, and we are lucky to be in such a great
3 county; and also, to have such good people willing to e
4 here and serve. So, thank you again, and you are
5 excused.

6 JURORS LEAVE COURTROOM 4:20 P.M.

7 THE COURT: We're going to sit tight. Hang tight.
8 All right?

9 Okay. Mr. Hollen, I need his prior record. And I
10 need to know, since these charges, whether or not there
11 are any pending charges, or he's been arrested for
12 anything else. I need to know if he's ever been on
13 probation before, and how he faired. And then, I have
14 some questions for you, Mr. Alston. Okay?

15 So, Mr. Hollen, why don't you go ahead?

16 SOLICITOR HOLLEN: Yes, your Honor. I'm working on
17 it right now. We're still having issues with our
18 Internet, as we have been all day. So, we're getting
19 the sentencing sheets printed now.

20 Prior record, your Honor. In 2000, public
21 disorderly conduct. 2006, resisting arrest.

22 THE COURT: You said the first one was what?

23 SOLICITOR HOLLEN: Public disorderly conduct.

24 THE COURT: Okay.

25 SOLICITOR HOLLEN: And in 2006, there are actually

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BY THE COURT

1 two counts of resisting arrest. 2006, there is prior
2 possession of cocaine. 2012, the driving under
3 suspension and the tail light for this incident. And
4 there is also a pending 2013 possession of crack
5 cocaine. That is still --

6 THE COURT: Subsequent to this charge?

7 SOLICITOR HOLLEN: Yes, your Honor. There also
8 was, your Honor, a charge of -- it would be a federal
9 charge for possession of a stolen handgun. He's been on
10 probation twice that I have noted here. Once for the
11 2006 crack cocaine conviction. I believe he was
12 sentenced to three years, and I think he was revoked on
13 that. And then, five years, looks like federal
14 probation for that stolen firearm charge. That's
15 correct.

16 THE COURT: How did he do on probation for that?

17 SOLICITOR HOLLEN: He was revoked and sentenced to
18 21 months.

19 THE COURT: Okay.

20 SOLICITOR HOLLEN: Your Honor, Probation did
21 indicate that he was revoked in 2012 for that?

22 PROBATION AGENT TEMPEST HAUGH: For the State
23 probation, he was revoked in 2009. I'm not exactly sure
24 for the federal.

25 SOLICITOR HOLLEN: Okay. All right.

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BY THE COURT

1 THE COURT: Okay. Let me ask you this, Ms.
2 Campbell, --

3 MS. CAMPBELL: Yes, ma'am.

4 THE COURT: -- and I want you to talk to your
5 client before he answers me. I want to know, Mr.
6 Alston, if I drug test you today, whether or not you are
7 going to test positive, and positive for what?
8 Specifically, I'm looking at marijuana, cocaine, any
9 kind of cocaine base, any other type of, I guess,
10 barbiturate or any other base.

11 And the reason why I want you to talk to your
12 lawyer first is, is I want you to be truthful, because
13 if you tell me there's nothing in you and I drug test
14 you, and you are positive for something, obviously, I'm
15 going to be that much more upset. I'm looking at your
16 record. You seem to, in the past, and I don't know if
17 you still do, but you seem to have had a drug problem.
18 And it appears from your record that you appear to be a
19 user, and that is all from your record. I can tell you
20 that's what I see. So, again, that's significant to me,
21 and it makes a difference.

22 And additionally, Ms. Campbell, I need to know if
23 he's had any drug treatment.

24 MS. CAMPBELL: Did you say, your Honor, you would
25 like me to speak with Mr. Alston before I address the

1 Court's questions?

2 THE COURT: I want you to talk to -- before he
3 tells me, I want to know. And if you all -- you all can
4 back off of him a little bit, if you don't mind. He
5 isn't going anywhere. So.

6 MS. CAMPBELL SPEAKING WITH DEFENDANT
7 ALSTON.

8 MS. CAMPBELL: May it please the Court?

9 THE COURT: Yes.

10 MS. CAMPBELL: I've spoken to my client, and he
11 would like to answer your question in terms of the drug
12 screen and in terms of the last time that he had any
13 drug treatment.

14 THE COURT: Okay. Thank you. Yes, sir.

15 DEFENDANT ALSTON: Yes, ma'am. I have been doing
16 marijuana.

17 THE COURT: You have been using marijuana?

18 DEFENDANT ALSTON: Yes, ma'am.

19 THE COURT: Okay. Okay. What about drug
20 treatment?

21 DEFENDANT ALSTON: Back when I went to federal
22 prison and prior to that, maybe six years ago, in two
23 thousand and -- 2006.

24 THE COURT: Okay. What else do you want to tell
25 me, Ms. Campbell?

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BY THE COURT

1 MS. CAMPBELL: Well, your Honor, I would just like
2 to speak to, again, the man that he is today at 33,
3 versus, really, from, I would say, 2012, 2013 now, a
4 good three-plus years ago, and where he re-directed his
5 life after these incidents happened. He is gainfully
6 employed and has been; is well-respected in his
7 employment; and does a good job for his employer.

8 You know, sometimes it takes a minute for people to
9 grow into who they need to be, you know, for their
10 family and for themselves. I do believe that, as Kevin
11 stands here with me today, that he's not the same fellow
12 that encountered Officer Menendez that day, and the
13 other officers. I believe he's a different man.

14 You know, I watched the Democratic National Debate
15 the other night, and Hillary Clinton talked about, you
16 know, the avenues and the changes that need to take
17 place in our criminal justice system in terms of drug
18 treatment, rather than, you know, incarceration, and
19 what we can do to help individuals just like Mr. Alston,
20 who stands next to me today.

21 I'd ask your Honor to consider a probationary
22 sentence for him, with the requirement that he receive
23 drug counseling and assessment, to begin; and then,
24 counseling; and you know, whatever other conditions of
25 probation your Honor deems to be appropriate.

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BY THE COURT

1 I believe that taking him from his family and from
2 his job and the community wouldn't serve the purposes
3 which I think the Court wants to serve.

4 If we had a series of continuing issues since all
5 this happened, then, I could see the need for, perhaps,
6 maybe something more. But even then, as your Honor
7 said, dealing with drug use is very different. And I'd
8 just ask your Honor not to place him in custody.

9 Thank you.

10 THE COURT: Mr. Alston, what days do you work?

11 DEFENDANT ALSTON: Every day of the week, just
12 about, except on maybe Thursdays.

13 THE COURT: So, you work Monday through Friday?

14 DEFENDANT ALSTON: Just about.

15 THE COURT: Do you have sentencing sheets, or do
16 you have them printed?

17 SOLICITOR HOLLEN: Yes. Your Honor, I just got
18 them. We had to handwrite them, because we're still
19 having issues.

20 THE COURT: Mr. Alston, who is the woman in the
21 back with the baby?

22 DEFENDANT ALSTON: That's my sister.

23 THE COURT: That's your sister?

24 DEFENDANT ALSTON: Yes.

25 THE COURT: Is that your niece, or?

1-20-16 STATE V. ALSTON

BY THE COURT

1 DEFENDANT ALSTON: Yes.

2 THE COURT: And the young lady that's been here
3 throughout the trial of this case, she was here in the
4 last case, what is her relation to you?

5 DEFENDANT ALSTON: She's my girlfriend.

6 COURT REPORTER: I'm sorry, she's your?

7 DEFENDANT ALSTON: Girlfriend.

8 THE COURT: How many children do you have?

9 DEFENDANT ALSTON: Seven.

10 THE COURT: How old are they?

11 DEFENDANT ALSTON: They range from two until
12 twelve.

13 THE COURT: Do you pay child support for any of
14 those kids?

15 DEFENDANT ALSTON: Just for one. It comes out of
16 my check. But the rest of mine's just voluntary. I pay
17 for the school for my kids, for my son, a private
18 school.

19 MS. CAMPBELL: I need to put the address on the
20 sentencing sheets for the Clerk of Court, your Honor, if
21 I may.

22 THE COURT: Certainly. Certainly.

23 MS. CAMPBELL: Thank you.

24 SOLICITOR HOLLEN: May I approach? I'd like to
25 hand up a copy of the certified conviction from 2006,

1-20-16 STATE V. ALSTON

BY THE COURT

1 out of Dorchester County.

2 THE COURT: Both of these are second convictions?

3 SOLICITOR HOLLEN: The State would be seeking to
4 sentence Mr. Alston to second offense on both charges.

5 MS. CAMPBELL: And then, I'll have my client sign
6 the sentencing sheet.

7 THE COURT: Could I see Ms. Campbell and Mr. Hollen
8 up here for a minute.

9 OFF-THE-RECORD BENCH CONFERENCE.

10 PRESENT: THE COURT, MR. HOLLEN,

11 MS. CAMPBELL.

12 END BENCH CONFERENCE.

13 THE COURT: Could you ring for the deputies,
14 George. They just need to have a brief conversation
15 with their client, and I was going to let them use that
16 room right there. Is that okay with you, if you don't
17 mind?

18 DEPUTY: Okay.

19 THE COURT: And we'll just sit tight. Okay. And
20 I'll be back. Trasi, I'm going to give you roughly
21 five, ten minutes or so. Okay?

22 MS. CAMPBELL: Okay.

23 THE COURT: And I'm going to take care of
24 everything. Okay? Thank you. Okay.

25 OFF THE RECORD 4:33 P.M.

1-20-16 STATE V. ALSTON

BY THE COURT

1 BACK ON THE RECORD 4:48 P.M.

2 BY THE COURT:

3 BAILIFF: All rise. This court is back in session.

4 THE COURT: Thank you all. Please be seated.

5 Okay.

6 SOLICITOR HOLLEN: Your Honor, may I approach.

7 THE COURT: Yes.

8 SOLICITOR HOLLEN: I've got sentencing sheets. And

9 Madam Clerk went to get the recent indictment for the --

10 THE COURT: Those are the two?

11 And have you made a decision what he would like to
12 do on the second charge?

13 MS. CAPPELMANN: Yes, your Honor. I believe he
14 would like to go ahead and plead guilty to that, as
15 well.

16 THE COURT: Okay. Has he filled out the sentencing
17 sheet on that?

18 MS. CAPPELMANN: Yes, ma'am.

19 SOLICITOR HOLLEN: Yes, your Honor.

20 THE COURT: All right. Can I have it?

21 SOLICITOR HOLLEN: Madam Clerk has it while she --
22 she took it with her to get the indictment. I
23 apologize.

24 THE COURT: Okay. All right. Well, while she's
25 getting that, come on up, Mr. Alston. Come on up. All

1-20-16 STATE V. ALSTON

BY THE COURT

1 right.

2 Mr. Alston, I'm going to go through a number of
3 rights with you that you have. To begin with, you're
4 pleading guilty to another charge that was before us.
5 It is a 2013 charge for possession of -- is it cocaine
6 or crack, Ms. Cappelmann?

7 SOLICITOR HOLLEN: Crack cocaine.

8 THE COURT: Crack cocaine? Okay.

9 MR. HOLLEN NODDED HEAD.

10 THE COURT: Sir, this indictment states that you
11 did, in Beaufort County, on or about April 10th of 2013,
12 did have in your possession a quantity of crack cocaine.
13 Sir, do you understand the charge contained in this
14 indictment?

15 DEFENDANT ALSTON: Yes, your Honor.

16 THE COURT: And how do you wish to plead to it, Mr.
17 Alston, guilty or not guilty?

18 DEFENDANT ALSTON: Guilty, your Honor.

19 THE COURT: And are you pleading guilty because you
20 are, in fact, guilty?

21 DEFENDANT ALSTON: No, your Honor.

22 THE COURT: Okay.

23 DEFENDANT ALSTON: Yes, your Honor.

24 THE COURT: All right.

25 DEFENDANT ALSTON: Sorry.

1-20-16 STATE V. ALSTON

BY THE COURT

1 THE COURT: Let me ask you this. Did you have
2 crack cocaine either on you or in your constructive
3 possession on that date?

4 DEFENDANT ALSTON: Yes, your Honor.

5 THE COURT: All right. And how did the police find
6 that crack cocaine on you?

7 DEFENDANT ALSTON: On a search.

8 THE COURT: From a search?

9 DEFENDANT ALSTON: Of the vehicle, yes.

10 THE COURT: Of a vehicle. So, give me more. Did
11 they pull you?

12 DEFENDANT ALSTON: Yes, ma'am.

13 THE COURT: Okay. And wanted did they say it was a
14 traffic stop, or what did they pull you for?

15 MS. CAPPELMANN: If I may, your Honor.

16 THE COURT: Yes.

17 MS. CAPPELMANN: Actually, his girlfriend was
18 driving at the time. She, I believe, ran a stop sign,
19 and that's what predicated the stop. I believe they
20 smelled marijuana, but didn't find marijuana. They
21 found a pill bottle of someone else's name in the center
22 console with crack in it.

23 THE COURT: Okay. All right. Whose car were they
24 in?

25 MS. CAPPELMANN: I believe it was --

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BY THE COURT

1 DEFENDANT ALSTON: It was hers.

2 MS. CAPPELMANN: The girlfriend's.

3 THE COURT: Sir, in effect, was this your crack
4 cocaine?

5 DEFENDANT ALSTON: No, ma'am.

6 THE COURT: Okay. Well, I guess we're not pleading
7 guilty today.

8 DEFENDANT ALSTON: Yes, ma'am. It was mine.

9 THE COURT: That's okay. No, you already changed
10 your mind. I think you need to talk to your lawyer a
11 little bit more. We'll go ahead and do this. I'm going
12 to go ahead and -- that's okay. We can talk about
13 constructive possession. It was either his or it
14 wasn't, you know. He and I both know that. I mean, you
15 can talk legally all you want, but I want to know,
16 really, if it wasn't his or if it was hers.

17 So, with that said, I guess we'll just go forward,
18 and we'll go forward with the sentencing.

19 MS. CAMPBELL: Okay. Let's just go forward with
20 the sentencing on this, on the two charges. Okay.

21 MS. CAMPBELL: If it please the Court, your Honor,
22 Mr. Alston is explaining to me that he was confused
23 about your questions. He wants to plead guilty. He
24 accepts responsibility for the crack cocaine that was in
25 the car; that it was his crack cocaine. And he

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BY THE COURT

1 apologizes to the Court for any misstatement that he
2 had. Is that a fair statement of what you have to say
3 to the Court?

4 THE COURT: That's a lot more than what he told
5 you, Ms. Campbell.

6 MS. CAMPBELL: It's a lot -- it's a very similar to
7 what we discussed prior to coming in here, about how the
8 plea would proceed. Now, --

9 THE COURT: Let me do this, Trasi. Let me cut to
10 the chase. I don't want him to feel like he's pushed
11 into anything. I want him to feel like he's had enough
12 time to think it through. What I'm going to do is this,
13 Mr. Alston. I want you back here tomorrow morning at
14 10:00 o'clock. I'm going to let you go overnight. You
15 can go. Okay? I just want you back here at 10:00 a.m.
16 You either decide tonight, after speaking with your
17 lawyer, whether or not you want to go and plead guilty
18 to the second charge. I think you need to understand
19 all the ramifications of it. I want to make sure you
20 understand that, if you go to trial and are convicted of
21 this next charge, it is going to be a third drug
22 offense, which is going to be a significant problem for
23 you and for the rest of your life.

24 It's my understanding through your lawyers that
25 they have talked about how well you're doing and how

1 hard you've worked. And they, in fact, have shown me
2 that you've been going to HVAC school, and it appears
3 that your grades are excellent, and you're turning your
4 life around. I think there are two schools of thought
5 here. I think, at this point, since you are doing so
6 well, you might just want to put all of this behind you,
7 and the only way to do that and move forward is not to
8 have this hanging over your head. However, I will never
9 allow you to plead guilty to something that's not yours.
10 So, I think you need to sit and have a real thought, and
11 figure out whose crack that was, and come forward with
12 an honest decision.

13 I will tell you this though, that what I am most
14 concerned about all of this, even if, best case
15 scenario, I put you on probation, while you're on
16 probation, you can't smoke marijuana. It's not legal
17 here. I mean, if that's the case, you need to go to
18 another state. So, I want to make sure you understand
19 that, while you have made these great changes, you are
20 going to have to make more changes, because you cannot
21 smoke marijuana and be on probation. I just want to be
22 clear about that. So, with all of that said -- with all
23 of that said -- I would think that you would need to go
24 overnight. Be back here at 10:00 a.m. in the morning.
25 I'm going to sentence you on a minimum of the charges

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BY THE COURT

1 you were just convicted of at trial. And if you would
2 like to plead guilty at that point, you may. Or, if you
3 choose to go to trial, you're more than welcome to do
4 that, too. Okay?

5 DEFENDANT ALSTON: Yes, ma'am. Yes, sir.

6 THE COURT: Do you understand that?

7 DEFENDANT ALSTON: Yes, your Honor.

8 THE COURT: All right. I'll see you all at 10:00
9 a.m. in the morning.

10 MS. CAMPBELL: Thank you, your Honor.

11 THE COURT: Give these back to him. Give the
12 sentencing sheets back, as well.

13 And Mr. Alston, do not be late tomorrow morning.

14 DEFENDANT ALSTON: Yes, ma'am.

15 THE COURT: All right.

16 OFF THE RECORD 4:54 P.M.

STATE OF SOUTH CAROLINA
 FOURTEENTH JUDICIAL CIRCUIT
 COUNTY OF BEAUFORT
 COURT OF GENERAL SESSIONS
 CASE NUMBERS 2012-GS-07-00612, 2012-GS-07-00613
 2013-GS-07-00668

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

JANUARY 21, 2016

TRANSCRIPT OF SENTENCING

BEAUFORT, SOUTH CAROLINA

KEVIN ALSTON

DEFENDANT

B E F O R E :

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
 OFFICIAL COURT REPORTER

1-21-16 STATE V ALSTON

SENTENCING

1 BEGINNING 12:12 P.M.

2 BY THE COURT:

3 THE COURT: All right. Ms. Cappelmann, now that
4 you've had some time to talk with Mr. Alston, does he
5 wish to plead guilty to the other charge or not?

6 MS. CAPPELMANN: Yes, ma'am, he indicates to me
7 that he would like to plead guilty.

8 THE COURT: Okay. So, we have the sentencing form.
9 Is that correct? He understands he has to admit that
10 the crack cocaine was within his domain and control.
11 Does he also understand that?

12 MS. CAPPELMANN: Yes, ma'am.

13 THE COURT: All right. All right. Come on up, you
14 all. Come on up. I need them all. Which is the one
15 he's pleading to? The 2013-668?

16 SOLICITOR HOLLEN: Yes, ma'am.

17 THE COURT: Got it. All right. Let's go ahead and
18 swear him in, please, if you would.

19 MADAM CLERK: Raise your right hand. Left hand on
20 the *Bible*. Do you solemnly swear or affirm to
21 truthfully answer all questions asked of you by this
22 Court, so help you God?

23 DEFENDANT ALSTON: I do swear.

24 MADAM CLERK: Thank you.

25 THE COURT: Ms. Cappelmann, have you explained and

1 does your client understand this charge against him, the
2 possible punishment, and his constitutional rights?

3 MS. CAPPELMANN: Yes, ma'am.

4 THE COURT: Mr. Alston, as you and I both know, we
5 tried a case yesterday where you were charged with
6 possession of crack cocaine and possession of a
7 controlled substance, second drug offenses for you. As
8 you know, the jury came back and found you guilty on
9 those charges. Additionally, you have a pending, also
10 later, possession of crack cocaine offense, and you are
11 pleading guilty to that, along with my sentencing you on
12 those other two charges that you were found guilty of.

13 Do you understand all that, sir?

14 DEFENDANT ALSTON: Yes, your Honor.

15 THE COURT: All right. I just want to make sure
16 you understand that. Sir, has anyone promised you
17 anything or held out any hope of reward to get you to
18 plead guilty to this other charge today?

19 DEFENDANT ALSTON: No, your Honor.

20 THE COURT: Has anyone pressured you or threatened
21 you or told you you had to plead guilty?

22 DEFENDANT ALSTON: No, your Honor.

23 THE COURT: Mr. Alston, you have the right to have
24 a jury trial on this possession of crack cocaine, second
25 offense charge, which is a 2013 indictment. Do you wish

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SENTENCING

1 to waive your right to a jury trial and go forward and
2 have me go ahead and hear your case today and accept it?

3 DEFENDANT ALSTON: Yes, I'd like to waive my
4 rights.

5 THE COURT: All right, sir. Are you completely
6 satisfied with both your attorneys?

7 DEFENDANT ALSTON: Yes.

8 THE COURT: Have they done everything you've asked
9 them to do?

10 DEFENDANT ALSTON: Yes.

11 THE COURT: Mr. Alston, you have ten days from
12 today's date to appeal this guilty plea and the sentence
13 of this court. If you can't afford an attorney for an
14 appeal, one will be appointed for you at no cost to you,
15 but you must request it. Do you understand that?

16 DEFENDANT ALSTON: Yes, ma'am.

17 THE COURT: All right, sir. Solicitor, tell me
18 about this 2013 drug charge.

19 SOLICITOR HOLLEN: Yes, your Honor. The defendant
20 was a passenger in a co-defendant's car. It was pulled
21 over for failure to stop at a stop sign. Officers
22 approached; they smelled the odor of marijuana coming
23 from the vehicle. The passenger, who was the defendant,
24 was visibly nervous and shaking. They asked for a
25 consent to search the car, which was granted. In the

1 vehicle, in the center console, they found a
2 prescription bottle containing two small crack rocks,
3 weighing a little more than half a gram. The defendant
4 basically claimed the crack as his own, and made some
5 statements saying that he didn't want the co-defendant
6 to get in trouble or lose her job. But I believe,
7 initially, the both parties were charged, according to
8 my notes.

9 THE COURT: All right. Mr. Alston, you've heard
10 the facts as stated by the Solicitor. Was the crack
11 cocaine yours?

12 DEFENDANT ALSTON: Yes, ma'am.

13 THE COURT: I find a substantial factual basis for
14 this plea; that your decision to plead guilty has been
15 made freely, voluntarily, knowingly, intelligently, with
16 the consent of competent counsel, and actually, two
17 counsel, and I'm going to accept your guilty plea.

18 I already know what his record is, obviously.

19 SOLICITOR HOLLEN: Yes, your Honor.

20 THE COURT: Ms. Campbell.

21 MS. CAMPBELL: May it please the Court, your Honor?
22 I'd suggest to your Honor maybe an appropriate
23 sentencing that the Court could fashion for Mr. Alston,
24 given the fact that he has an excellent job, he supports
25 his children, either through court order or voluntarily,

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SENTENCING

1 with the family being at issue as well. Man of limited
2 income, but you know, is able to meet those demands. If
3 your Honor would consider something in the nature of a
4 three-year sentence, suspended upon three years
5 probation, with a review hearing after 18 months. I
6 think he's done well, and I think the next 18 months are
7 going to be dramatically impactful on his life should he
8 be given the opportunity to do probation at 33.

9 I would also suggest to your Honor that Beaufort
10 County Alcohol and Drug has an excellent assessment tool
11 and could make recommendations to Probation and Mr.
12 Alston what they think is the right program for him.

13 And so, with that said, your Honor, you know, we
14 went through some other matters yesterday relative to
15 sentencing. I won't go back into all of that again. I
16 know you consider all of that as you fashioned your
17 sentencing. Thank you.

18 THE COURT: Ms. Cappelmann, anything else?

19 MS. CAPPELMANN: I don't think I really have much
20 more to add.

21 THE COURT: Mr. Alston, anything from you?

22 DEFENDANT ALSTON: No, ma'am.

23 THE COURT: Anything from you?

24 UNIDENTIFIED: No, ma'am. Just thank you.

25 THE COURT: All right, Mr. Alston, everyone has

1 assured me that you have been doing really well, and
2 everyone that I have heard of that speaks well of you.
3 And I agree with Ms. Campbell, I think time is going to
4 tell. Either you're going to be fine -- the only
5 concern I have putting you on probation is you cannot
6 smoke marijuana when you're on probation. And so, that
7 would be a violation. So, you got to stop it. I mean,
8 it's that simple. I mean, it's just going to -- and you
9 just have to make that choice. You seem to be a very
10 disciplined person to me. So, I think you're just going
11 to have to apply that to that in your life and any other
12 substance abuse issues you have.

13 And I want you to be successful. I really want you
14 to be successful. I mean, you have seven children to
15 support. You have a lovely girlfriend. So, I am very
16 hopeful. Very hopeful.

17 I also want to tell you, Mr. Alston, as well,
18 you're kind of at a turning point at being not only 33,
19 but your criminal record. It is a little worse than I
20 originally understood it to be before we started your
21 trial. Particularly, my concern was that federal gun
22 charge that you had. You're kind of at the point now
23 where you're at the cusp. And if you get caught with
24 anything else, you're going to have some problems in
25 front of me or any other judge just because your record

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SENTENCING

1 is getting lengthy.

2 And you know, when we talk about spanning from 2006
3 to, you know, 2016 now, and you know, that's when these
4 pleas are being done, a judge is going to have a concern
5 if you ever end up back in court again. And I'm just
6 telling you that because I want to make sure you
7 understand and appreciate that, if you were to be picked
8 up another offense for something else, I don't think a
9 judge is going to be able to do what I'm doing here in
10 this position, because they will be -- if they're drug
11 offenses, they'll be third drug offenses for you.
12 You're just going to be looking at a lot, and I just
13 want to make sure you understand and appreciate that.

14 DEFENDANT ALSTON: Yes, ma'am.

15 THE COURT: Okay. On Indictment 2012-GS-07-00612,
16 it was where you were guilty on the possession of crack
17 cocaine, second offense, the sentence of this court is
18 you be committed to the Department of Corrections for a
19 period of three years. That's suspended on three years
20 probation. Also, I am asking -- I'm going to give you
21 credit for any time you may have done. I don't know how
22 long you were in. But additionally, I'm going to have
23 Probation screen you for drug and alcohol assessment,
24 and you will also be randomly drug and alcohol tested
25 while on probation.

1 And I agree, let's have a review hearing after 18
2 months, provided you've had no problems. If not, there
3 won't be much reason for it.

4 So, on Indictment 2012-GS-07-00613, the sentence is
5 that you be committed to the Department of Corrections
6 for a period of one year. That's suspended with three
7 years probation.

8 And lastly, on Indictment 2013-GS-07-00668 for
9 possession of crack cocaine, second offense, this is the
10 one you just pled guilty to, I'm going to sentence you
11 to three years. That's suspended to three years
12 probation.

13 Those are all to run concurrent to each other.
14 Good luck to you, Mr. Alston.

15 DEFENDANT ALSTON: Thank you, your Honor.

16 MS. CAMPBELL: Thank you, Judge.

17 SOLICITOR HOLLEN: Thank you, your Honor.

18 MS. CAPPELMANN: Thank you.

19 THE COURT: Thank you.

20 END PROCEEDING 12:22 P.M.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF GENERAL SESSIONS
) FOURTEENTH JUDICIAL CIRCUIT
) Warrant No. M057298,299

STATE OF SOUTH CAROLINA
vs.
KEVIN ALSTON,
Defendant.

) NOTICE OF MOTION
) AND MEMORANDUM IN SUPPORT
) OF MOTION TO SUPPRESS EVIDENCE
)

YOU WILL PLEASE TAKE NOTICE that the Defendant, KEVIN ALSTON, by and through his undersigned counsel, will move before the Presiding Judge of General Sessions Court on January 20, 2015 or as soon as this matter may be heard for an Order Suppressing Evidence Obtained in Violation of Defendant's Fourth Amendment Rights under the United States Constitution and the SC State Constitution.

FACTS

On March 7, 2012, BCSO Officer Menendez followed the Defendant's automobile for approximately 5.4 miles. At the beginning of the 5.4 miles, Officer Menendez reports that the Defendant had a broken driver's side tail light lens. At the sight of this broken tail light lens, Officer Menendez followed the Defendant for approximately 4 miles and then reports that the Defendant did not completely stop at a red light when he turned right on red. Officer Menendez then followed the Defendant for approximately 1.4 miles and signaled the Defendant to pull over. The Defendant complied. Officer Menendez reports that he made contact with the Defendant and obtained his identification information. Officer Menendez then received information from dispatch that the Defendant's driver's license was suspended. Officer Menendez reports that he then told the Defendant to get out



of the automobile at the same time as the Canine Officer, D. Martin, arrived with his canine (please note that the incident report does not contain the name of the canine nor does it contain a supplemental report from D. Martin). According to Officer Menendez, another officer assigned to the BCSO Drug Task Force (K. Strickland) arrived at the same time as the Canine Officer Martin. The Canine Officer did a sweep of the outside of the Defendant's automobile with the unnamed canine and determined that the automobile contained narcotics. Officer Strickland took over the traffic stop at that time and secured suspected crack cocaine from the console area of the automobile. At the scene, the Defendant was searched by K. Strickland and was found to possess one tablet of suspected oxycodone in his right pants pocket. The suspected crack cocaine was subsequently examined and returned from the BCSO Evidence Lab with a weight of 0.05 grams of crack cocaine and the one tablet was examined and confirmed to be oxycodone. The Defendant was arrested for Possession of Crack Cocaine, Possession of Controlled Substance Schedule II, Defective Tail Light, and Driving Under Suspension. The Defendant was also issued a Warning Ticket for Disregarding a Traffic Signal.

The Defendant issued a subpoena for the police in-car videos for the three officers listed in the incident report and BCSO returned with the information that "there are no police in-car videos from this incident".

LAW AND ARGUMENT

The Fourth Amendment of the United States Constitution provides:

The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon

probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. Amend. IV.

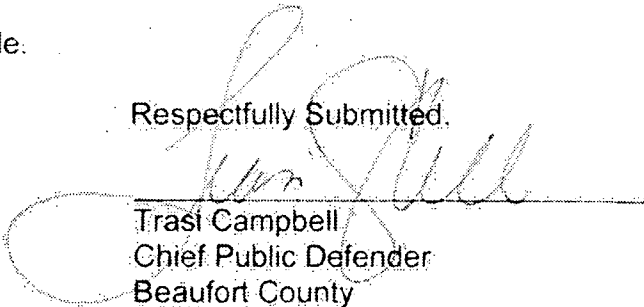
Article 1, Section 10 of the South Carolina State Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

The Defendant asserts that Officer Menendez following him for approximately 4 miles due to a broken driver's tail light lens was unreasonable and the ultimate traffic stop for allegedly failing to completely stop for a red light while turning right was pre-textual and in violation of the Defendant's rights. The Defendant asserts that the arrival of the Canine Officer and the Drug Task Force Officer just minutes after the traffic stop suggests that these officers were en route to Officer Menendez before he made the decision after 5.4 miles of following the Defendant to pull the Defendant over for two alleged traffic violations. The Defendant further asserts that based upon the lack of information relative to the identity of the canine, the State has failed to comply and will be unable to ever comply fully with the United States Supreme Court ruling in Florida v. Harris, decided February 19, 2013, and thus cannot supply the necessary required reliability certifications and training records of the canine in question which this Honorable Court must have in order to make a ruling on the Defendant's Motion to Suppress. There is no record whatsoever as to the actual canine that conducted this exterior sweep of the Defendant's automobile.

In Harris, the United States Supreme Court ruled on how a court should determine if the "alert" of a drug-detection dog during a traffic stop provides probable cause to search a vehicle. The Florida Supreme Court held that the State must in every case present an exhaustive set of records, including a log of the dog's performance in the field, to establish the dog's reliability. But, in Harris, the United States Supreme Court held that "we think that demand inconsistent with the "flexible, common-sense standard" of probable cause. Illinois v. Gates, 462 U. S. 213, 239 (1983). The training records of the canine must be submitted to the Court in order for the Court to make a determination about the reliability of the canine in drug detection cases. If there are no records and no record of the actual canine used in the sweep of the exterior of the automobile, then the State cannot produce sufficient evidence of reliability to support a finding of probable cause to search the automobile.

Respectfully Submitted,


Traci Campbell
Chief Public Defender
Beaufort County

Beaufort, South Carolina

Jan 20, 2015

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
) Indictment no.: 2012GS0700612,613

STATE OF SOUTH CAROLINA)
vs.)
) NOTICE OF MOTION AND
KEVIN ALSTON,) MOTION TO SUPPRESS
Defendant.) EVIDENCE SEIZED IN VIOLATION
) OF DEFENDANT'S RIGHTS

YOU WILL PLEASE TAKE NOTICE that the Defendant, KEVIN ALSTON, by and through his undersigned counsel, will move before the Presiding Judge of General Sessions Court on January 20, 2015 or as soon as this matter may be heard for an Order Suppressing Evidence Seized In Violation of Defendant's State and Federal Constitutional Rights.

FACTS

On March 7, 2012, BCSO Officer Menendez followed the Defendant's automobile for approximately 5.4 miles. At the beginning of the 5.4 miles, Officer Menendez reports that the Defendant had a broken driver's side tail light lens. At the sight of this broken tail light lens, Officer Menendez followed the Defendant for approximately 4 miles and then reports that the Defendant did not completely stop at a red light when he turned right on red. Officer Menendez then followed the Defendant for approximately 1.4 miles and signaled the Defendant to pull over. The Defendant complied. Officer Menendez reports that he made contact with the Defendant and obtained his identification information. Officer Menendez then received information from dispatch that the Defendant's driver's license was suspended. Officer Menendez reports that he then told the Defendant to get out of the automobile at the same time as the Canine Officer, D. Martin, arrived with



his canine (please note that the initial incident report does not contain the name of the canine nor does it contain a supplemental report from D. Martin, however on January 14, 2015 Officer Martin did submit a supplemental report in this case which identified the canine used and other matters related to Officer Martin's actions on March 7, 2012). Of note in the January 14, 2015 Supplemental Report, Officer Martin notes that the officers on scene were Drug Task Force Officers. According to Officer Menendez, another officer assigned to the BCSO Drug Task Force (K. Strickland) arrived at the same time as the Canine Officer Martin. At the behest of Officer Strickland, the Canine Officer did a sweep of the outside of the Defendant's automobile with the canine and determined that the automobile contained narcotics. Officer Strickland took over the traffic stop at that time and secured suspected crack cocaine from the console area of the automobile. At the scene, the Defendant was searched by K. Strickland and was found to possess one tablet of suspected oxycodone in his right pants pocket. The suspected crack cocaine was subsequently examined and returned from the BCSO Evidence Lab with a weight of 0.05 grams of crack cocaine and the one tablet was examined and confirmed to be oxycodone. The Defendant was arrested for Possession of Crack Cocaine, Possession of Controlled Substance Schedule II, Defective Tail Light, and Driving Under Suspension. The Defendant was also issued a Warning Ticket for Disregarding a Traffic Signal.

The Defendant issued a subpoena for the police in-car videos for the three officers listed in the incident report and BCSO returned with the information that "there are no police in-car videos from this incident". The Defendant asserts that

no video cameras is standard for Drug Task Force Police Vehicles used by the BCSO.

LAW AND ARGUMENT

The Fourth Amendment of the United States Constitution provides:

The Right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. U.S. Const. Amend. IV.

Article 1, Section 10 of the South Carolina State Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

At the outset, Defendant urges this Honorable Court to recognize that social scientists have found that local, state, and highway law enforcement agencies stop Blacks and Hispanics at higher rates than Whites across the United States, a phenomenon known as "driving while Black" or "driving while Brown" (i.e., Bejarano 2001; Cox *et al.* 2001; Engel and Calnon 2004; Langan *et al.* 2001; Harris 1999; Gaines 2006; Rojek, Rosenfeld, and Decker 2004; Schafer *et al.* 2006; Smith and Petrocelli 2001). Research has also demonstrated that racial disparities become increasingly higher for Blacks and Hispanics during post-traffic stops activities (i.e., searches, citations, and arrests) (see Engel and Johnson 2006 for an exhaustive list of studies since the 1990s).

As for the specifics of this phenomenon as it relates to the Defendant and his traffic stop on March 7, 2012 in Beaufort County, SC, the Defendant argues to this Honorable Court that the SC Constitution provides broader protections for the citizens of South Carolina in terms of the additional language on Article 1 Section 10 regarding "invasions of privacy" than the Federal Constitution. . The Defendant argues that a party asserting a provision of a state constitution offers more protection than a similar provision in the federal constitution must persuade the court and bears the burden of illustrating the broader protections for the Court. Specifically, the Defendant argues that Article 1, Section 10 of the SC Constitution is explicitly broader than that of the Fourth Amendment to the United States Constitution as it clearly recognizes an individual's right to privacy with no express limitations and places greater emphasis on privacy.

Defendant argues that he was subjected to a drug task force, racially motivated traffic stop that was pretextual and thus in violation of his state and federal constitutional rights.

Defendant argues that as the Court begins its analysis of the traffic stop in this case, the Court must acknowledge that the essence of this, and every, **pretextual traffic stop** is that the police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation unrelated to the driving. Defendant argues then that the reasonable articulable suspicion that a traffic infraction has occurred which justifies an exception to the warrant requirement for an ordinary traffic stop does not justify a stop for criminal investigation.

Defendant looks to well-reasoned case law for support of his arguments and notes that whether pretextual or not, a traffic stop is a "seizure" for the purpose of constitutional analysis, no matter how brief. *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); *Whren*, 517 U.S. at 809-10, 116 S.Ct. 1769. Defendant further notes that an ordinary traffic stop has been analogized by federal courts to investigative detention subject to the criteria of reasonableness set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) and *United States v. Botero-Ospina*, 71 F.3d 783, 786 (10th Cir.1995). And, as this Honorable Court is aware, under the Fourth Amendment to the United States Constitution, such investigative detention is permissible only if (1) "the officer's action was justified at its inception," and (2) "it was reasonably related in scope to the circumstances which justified the interference in the first place." *Terry*, 392 U.S. at 20, 88 S.Ct. 1868.

The Defendant urges this Honorable Court to find that although federal courts construing the Fourth Amendment have concluded pretextual traffic stops may be accomplished without a warrant, we (the State of South Carolina and this Honorable Court) are not bound by that result under our state constitution which provides unique and substantially greater protection to the citizens of South Carolina.

In the case at hand, the State of South Carolina asks this court to approve the use of pretext to justify a warrantless seizure during a drug interdiction investigation wrapped in the clothing of a "simple traffic law violation stop". The Defendant urges this Honorable Court to decline the State's invitation.

To date, the South Carolina Courts appear to have not been presented an opportunity to address the broader protections offered by our State Constitution versus the Federal Constitution with regard to this particular scenario. The South Carolina Supreme Court and the South Carolina Court of Appeals have relied in case law reasoning on these matters very heavily on making no distinction between Article 1 Section 10 and the Fourth Amendment as they have not truly considered that issue with regard to racially motivated/pretextual traffic stops conducted for the purposes of drug interdiction. The Defendant urges this Honorable Court to consider the matter and inherent differences in the state and federal constitutions at this time on this specific matter. Clearly, South Carolina has held that the "temporary detention of individuals by the police during an automobile stop constitutes a 'seizure' of an individual within the meaning of the Fourth Amendment." State v. Banda, 371 S.C. 245, 252, 639 S.E.2d 36, 40 (2006). However, "[t]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred."

In this case, the broken tail light lens is clearly pretext in that Officer Menendez had just over four (4) miles to stop the Defendant for the broken tail light lens and chose not to do so. Officer Menendez continued to follow the Defendant and allege a failure to come to a **complete stop** at a right on red intersection and even then did not initiate a traffic stop for almost 1 ½ miles. It seems that Officer Menendez was waiting for other drug task force officers to arrive. And, the other officers did arrive at almost the exact time of the traffic

stop. This appears to be a coordinated drug interdiction stop and not a traffic stop.

Defendant concedes that during a lawful traffic stop, an officer may "request a driver's license and vehicle registration, run a computer check, and issue a citation." State v. Jones, 364 S.C. 51, 57, 610 S.E.2d 846, 849 (Ct. App. 2005). Defendant further acknowledges that the officer may also order the driver to exit the vehicle. State v. Williams, 351 S.C. 591, 598, 571 S.E.2d 703, 707 (Ct. App. 2002); see also Pennsylvania v. Mimms, 434 U.S. 106, 110-11 (1977).

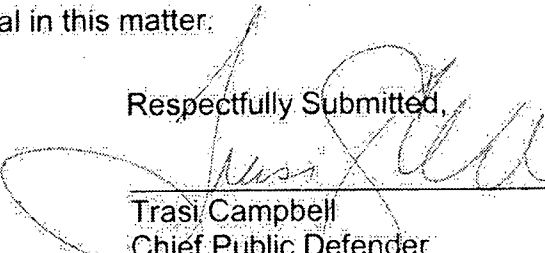
However, the Defendant argues that in this case, the initial traffic stop, which is a seizure for constitutional purposes, was without authority of law because the reason for the stop (investigation) was not exempt from the warrant requirement as the drug task force officers were coordinating a drug interdiction traffic stop. It is elementary that if the initial stop was unlawful, the subsequent search and fruits of that search are inadmissible.

Defendant also acknowledges that a lawful traffic stop can become unlawful if it exceeds the scope or duration necessary to complete its mission. State v. Pichardo, 367 S.C. 84, 98, 623 S.E.2d 840, 848 (Ct. App. 2005); see also Illinois v. Caballes, 543 U.S. 405, 407 (2005). But, Defendant also notes that an extension is permitted only if (1) the encounter becomes consensual or (2) the officer has at least a reasonable, articulable suspicion of other illegal activity. Pichardo, 367 S.C. at 99, 623 S.E.2d at 848.

In particular, Defendant notes for this Court that if an officer uses a drug dog to sniff the exterior of a defendant's car during a lawful traffic stop, the sniff does not make the traffic stop unlawful, even without any evidence of drug activity, so long as the sniff does not extend the length of the stop beyond that time necessary to complete the stop's purpose. Caballes, 543 U.S. at 407-09. But, the length of the stop in this case cannot be a factor here since it would appear that the canine officer was in coordination with drug task force officers to appear at the traffic stop prior to the traffic stop being initiated. Thus, the traffic stop was unlawful (drug interdiction masked as a traffic violation stop), violated the Defendant's state and federal rights, and thus all evidence seized was seized in violation of both state and federal law.

In conclusion, this Defendant argues that he was subjected to a racially motivated and pretextual traffic stop in violation of Article 1 Section 10 of the SC State Constitution which afforded him broader protections than the federal constitution specifically in terms of his right to privacy. Defendant respectfully requests that any and all evidence seized in violation of his state and federal rights be excluded from this trial in this matter.

Respectfully Submitted,


 Trasi Campbell
 Chief Public Defender
 Beaufort County

Beaufort, South Carolina

 , 2015


 Dec 14

WITNESSES

K. Strickland- BCSO/DTF

ARREST WARRANT NUMBER

M057299

ACTION OF GRAND JURY

True Bill

Melinda Beare
Foreperson of Grand Jury

Date: **MAY 31 2012**

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0700613

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

vs.

Kevin Alston

Indictment for

**Drugs / Poss. of other controlled sub. in Sched.
I to V - 1**

SC Code: 44-53-0370(d)(2)
CDR Code:0179

Certified - A True Copy

Pam V. Burries
Jerril Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

INDICTMENT
2012GS0700613

At a Court of General Sessions, convened on May 31, 2012 the Grand Jurors of Beaufort County present upon their oath:

Drugs / Poss. of other controlled sub. in Sched. I to V - 1

That in Beaufort County, South Carolina, on or about March 7, 2012, the Defendant, Kevin Alston, knowingly or intentionally and unlawfully did possess a quantity of Oxycodone, a Schedule Schedule II controlled substance, all in violation of § 44-53-370 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Lawrence M. Sherman

WITNESSES

K. Strickland- BCSO/DTF

ARREST WARRANT NUMBER

M057298

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0700612

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

May Term 2012

THE STATE

vs.

Kevin Alston

Indictment for

Drugs / possession of cocaine, 1st offense

SC Code: 44-53-0370(d)(3)

CDR Code:3011

Certified - A True Copy

Pam V. Burries
Jerr Ann Roseneau - Clerk of Court
Beaufort County, SC - Pam Burries

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

INDICTMENT
2012GS0700612

At a Court of General Sessions, convened on May 31, 2012 the Grand Jurors of Beaufort County present upon their oath:

Drugs / possession of cocaine, 1st offense

That in Beaufort County, South Carolina, on or about March 7, 2012, the Defendant, Kevin Alston, knowingly or intentionally did possess; or did aid, abet, attempt, or conspire to possess a controlled substance or a controlled substance analogue, to wit: cocaine; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Lawrence M. Starnes

WITNESSES

K. Strickland- BCSO

ARREST WARRANT NUMBER

M057298

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: JUL 30 2015

VERDICT

Foreperson of Petit Jury

Date: 01/20/16

INDICT

DOCKET NO. 2012GS0700612

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

July Term 2015

THE STATE

vs.

Kevin Alston

Amended Indictment for

Possession of cocaine base; less than 1 gram

SC Code: 44-53-0375(A)

CDR Code:3017

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

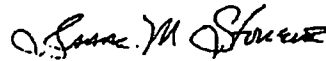
AMENDED INDICTMENT
2012GS0700612

At a Court of General Sessions, convened on July 30, 2015 the Grand Jurors of Beaufort County present upon their oath:

Possession of cocaine base; less than one gram

That in Beaufort County, South Carolina, on or about March 7, 2012, the Defendant, Kevin Alston, knowingly or intentionally did possess; or did aid, abet, attempt, or conspire to possess a controlled substance or a controlled substance analogue, to wit: cocaine base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



Solicitor

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
 STATE VS.
Kevin Alston
 AKA:
 Race: B Sex: M Age: 33
 DOB: SS#: 710-1-11-11
 City, State, Zip: Marion, SC 29526
 DL#: SID#:

INDICTMENT/CASE#: 2012 GS 07 00613
 A/W#: MO 57 299
 Date of Offense: 3/6/2012
 S.C. Code §: 44-53-370(d)(2)
 CDR Code #: 0180

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: possession of controlled substance in Schedule 5 to V, second offense

in violation of § 44-53-370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0180

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 161 928 x 11-11-11 15149
 Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed 1 years
 and/or to pay a fine of \$ 100.00; provided that upon the service of 1 days/months/years and/or payment
 of \$ 100.00; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ 100.00 plus 20% fee: \$ 20.00

Payment Terms: Set by SCDPPPS

Recipient: State Department of Corrections

*Fine:
 § 14-1-206 (Assessments 107.5 %) \$ 100.00
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ 100.00
 § 56-5-2995 (DUI Assessment) \$12 \$ 12.00
 § 56-1-286 (DUI Breath Test) \$25 \$ 25.00
 Proviso 47.9 (Public Do/Prob) \$500 \$ 500.00
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ 50.00
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea. \$ 40.00
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.40
 TOTAL \$ 288.40

PTUP

1 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. 1

May serve W/E beginning 1

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ 100.00 beginning 1

\$ 100.00 paid to Public Defender Fund

Other: 1

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk Wanda Howe

Court Reporter: Wanda Howe

SCCA/217 (03/2011)

Presiding Judge: Chubb

Judge Code: 2142

Sentence Date: 1-21-16

Certified - True Copy

Jean Ann Rosebrou - Clerk of Court
 Beaufort County, SC - Jennifer Peltroff

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
 STATE VS.
Wynn Aiston
 AKA:
 Race: R Sex: M Age: 3
 DOB: SS#
 Address: Major Rd
 City, State, Zip: St Helena SC
 DL#: SID#

INDICTMENT/CASE#: 2012-65-070412
 A/W#: 1000 MO2298
 Date of Offense: 3/1/12
 S.C. Code § 44-53-375(A)
 CDR Code #: 5017

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: possession of cocaine base, second offense

CONVICTED OF or ☐ PLEADS

in violation of § 44-53-375(A) of the S.C. Code of Laws, bearing CDR Code # 3017
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 10/928 x 10 15149
 Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years.
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:
 § 14-1-206 (Assessments 107.5%) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 47.9 (Public Def/Prob) \$500 \$ 500.00
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ 150.00
 § 50-21-114 (BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$
 Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 23.40
 TOTAL \$ 803.40

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: Review hearing after 13 months

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge:

Judge Code: 2142

Sentence Date: 1-21-16

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (03/2011)

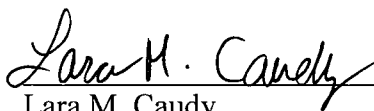
Certified - A True Copy

Jeri Ann Robeneau - Clerk of Court
 Beaufort County, SC - Jennifer Petrol

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of September, 2017.

RECEIVED
SEP 14 2017
SC Court of Appeals