

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Greenville County

Honorable Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EVELYN CHRISTINE NIXON,

APPELLANT

APPELLATE CASE NO 2016-002170

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2015GS2306010,
	)	2015GS2306011
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Evelyn Christine Nixon,	)	
	)	
Defendant.	)	

October 13, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

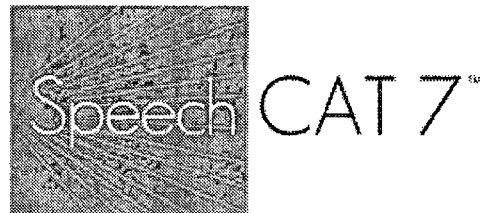
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PLAINTIFF EXHIBITS

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DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(Proceedings begin on the 13th day of October, 2016
at approximately 10:27 a.m.)

THE COURT: All right. This is, uh, the
matter of Evelyn Christine Nixon, two counts, one
for Possession of Drug Paraphernalia and Possession
of Methamphetamine, 2015-GS-23-6010 and 6011. And
it's my understanding there was a motion before we
get started. Is that right?

MR. ERWIN: Yes, Your Honor. Just to give
the Court a little bit of background, this is a
drug case with a stop and search.

THE COURT: Okay.

MR. ERWIN: Ms. Nixon is hereby asserting
that her Fourth Amendment rights were violated by
that stop and search and the burden shifts to the
State to show the admissibility of that evidence.

THE COURT: All right. Yes, sir.

MR. STEINBERG: Your Honor, I think, if I'm
correct, this is going to be a combined suppression
hearing and bench trial. There's no jury, I think.
But for time's sake, we're going to do both at the
same time.

THE COURT: Okay. All right.

MR. ERWIN: If we get there.

1 **THE COURT:** Somehow, I knew that was going
2 to be your response. All right then.

3 **MR. STEINBERG:** Thank you.

4 **THE COURT:** Let's proceed. And I assume
5 then y'all don't have any interest in doing
6 anything like an opening statement.

7 **MR. STEINBERG:** No, Your Honor.

8 **MR. ERWIN:** No.

9 **THE COURT:** And Ms. Nixon, have you had
10 ample time to talk to your attorney about -- do you
11 mind standing up for me? And I'll tell you what,
12 just raise your right hand if you don't mind.
13 (Defendant, Ms. Evelyn Nixon is first duly sworn.)

14 **THE COURT:** All right. You can put your
15 hand down. Have you had ample time to talk to your
16 lawyer about these cases?

17 **MS. NIXON:** Yes, I have.

18 **THE COURT:** And you discussed with him that
19 you had a right to have a jury trial in this
20 matter, do you know that?

21 **MS. NIXON:** Yes, ma'am.

22 **THE COURT:** He's informed me that you wish
23 to proceed with a bench trial, meaning without a
24 jury; is that right?

25 **MS. NIXON:** Yes, ma'am.

1 **THE COURT:** Is that what you want to do?

2 **MS. NIXON:** Yes, ma'am.

3 **THE COURT:** Has anybody forced you or

4 threatened you or done anything like that to get

5 you to waive your right to a jury trial here today?

6 **MS. NIXON:** No, ma'am.

7 **THE COURT:** Are you under the influence of

8 drugs or alcohol here today?

9 **MS. NIXON:** No, ma'am.

10 **THE COURT:** Okay. And has anybody promised

11 you anything to get you ---

12 **MS. NIXON:** No, ma'am.

13 **THE COURT:** --- to give up your right to a

14 jury trial? And that's what you want to do?

15 **MS. NIXON:** Yes, ma'am.

16 **THE COURT:** And you agree with her decision?

17 **MR. ERWIN:** Yes, ma'am. I do.

18 **THE COURT:** All right then. All right.

19 We're ready to proceed.

20 **MR. STEINBERG:** Thank you, Your Honor. The

21 State's first witness will be Deputy Judson

22 Belding.

23 **JUDSON BELDING**

24 having first been duly sworn, testifies as follows:

25 **THE CLERK:** Thank you. You may be seated.

1 Would you please state your name for the record?

2 **THE WITNESS:** Judson Belding.

3 **THE CLERK:** Thank you.

4 **DIRECT EXAMINATION**

5 **BY MR. STEINBERG:**

6 **Q** Deputy Belding, please tell the Court where you
7 were on the night of February 18th of 2015 at
8 approximately 9:30.

9 **A** Yes, sir. I was patrolling uniform patrol in
10 the area of Poe Mill, specifically Shaw Street.

11 **Q** And were any other officers in the patrol area
12 with you?

13 **A** Yes, sir. Deputy Corneroli and I were
14 patrolling the area.

15 **Q** And this area near Shaw Street, is it a high
16 crime area?

17 **A** Yes, sir. From my experience, it is.

18 **Q** All right. Let's talk about your experience
19 during your -- how long have you been a police officer?

20 **A** Two and a half years.

21 **Q** And during this time, how long have you been in
22 the Buncombe Street and Shaw Street and Poe Mill area?

23 **A** The entire duration.

24 **Q** During this evening, did you observe any
25 particular residences or houses for suspected drug

1 activity?

2 **A** Yes, sir. There was, uh, -- at number ■ Hamby
3 Street, there's five apartments. Particularly, apartment
4 number ■ there was a subject living there who goes by
5 the name of Raymond Jordan. His street name is Dirty.
6 And I previously arrested him on distribution of drug
7 charges. I knew that he moved his address after he got
8 out of jail and was back distributing drugs again.

9 **Q** And did you see a Dodge Caravan at that
10 location?

11 **A** I did.

12 **Q** At that time that you saw it there, did you
13 know Ms. Nixon? Had you dealt with her?

14 **A** I do not know her.

15 **Q** Did you know if she was the driver of that
16 vehicle?

17 **A** Not at that time.

18 **Q** During that same night, did you happen to see
19 that same Dodge Caravan in the Buncombe and Shaw Street
20 area?

21 **A** Yes, sir.

22 **Q** And what was it doing and what caused you to
23 pay attention to it?

24 **A** It was traveling on Shaw Street towards
25 Buncombe Road. I observed it had a tail light on the

1 passenger side that was broken and emitting white light
2 through to the rear of the vehicle.

3 Q Is that a violation of South Carolina law?

4 A It is.

5 Q And Buncombe and Shaw and everything involved
6 in this case, this all happened within Greenville County?

7 A Yes, sir.

8 Q And when you saw this vehicle that had a broken
9 light, broken tail light and light emitting, what did you
10 do?

11 A I initiated a traffic stop by signaling blue
12 lights and siren.

13 Q Okay. Does your vehicle, at that time -- did
14 your vehicle, at that time, have a video camera?

15 A It had one, but we did not have videotapes.

16 Q And do you now have a video -- do you now have
17 digital video?

18 A Yes, sir. Last week, they installed new
19 digital videos.

20 Q Okay. And in addition to the lense, was there
21 anything else involving the vehicle that caused you
22 concern?

23 A Yes, sir. I had previously seen it parked out
24 front of Dirty's apartment or where I knew him to be
25 staying at. It had a shattered out rear passenger

1 window.

2 Q Okay. And why did this concern you at this
3 particular location, this area of town?

4 A From my experience, there's numerous criminal
5 activities ongoing essentially. And it raised my
6 suspicions that this vehicle could be stolen.

7 Q So you hit your blue lights and your sirens.
8 Did she stop for your alert?

9 A Yes, sir. Almost abruptly.

10 Q Okay. And where did she pull in to?

11 A The second I signaled her to stop through my
12 lights and siren, she immediately, what I would consider,
13 shot left into 1490 Buncombe Road. It's a Super Saver
14 gas station. And it was -- she didn't pull into a
15 parking spot or what I would consider a designated
16 parking area. She just kind of stopped about 10 feet to
17 the right of the gas pump where she would be unable to
18 pump gas towards Buncombe Road.

19 Q And when you stopped your vehicle, did you
20 attempt to speak with her and what was her reaction?
21 When she got out of the car, what did she do?

22 A Upon my car coming to a complete stop, I opened
23 my door and got out. As I was getting out, she had
24 already opened her door and exited her vehicle. It
25 appears she was trying to get to the store before I could

1 make contact with her.

2 Q Did you, in fact, intercept her? And if so,
3 what happened then?

4 A I did -- I made it clear to her that I needed
5 to talk to her due to a traffic violation. She turned
6 around and acknowledged me. Took a few steps back
7 towards me.

8 Q And let's talk about her car for a second.
9 When she got out of the car, did she close the door?

10 A No, sir.

11 Q Where were the keys to the car?

12 A In the ignition.

13 Q Was that 9:30 at night?

14 A Yes, sir.

15 Q You remember what the weather was that was in
16 your report?

17 A Yes, sir. I remember it was 18 degrees
18 Fahrenheit and there was 11 mile an hour winds.

19 Q Did you find the fact that she left the door
20 open at this location and under the circumstances
21 unusual?

22 A Very much so.

23 Q And from leaving the car door open, did you see
24 anything that caused you concern inside the vehicle
25 itself?

1 **A** Yes, sir. I observed on the floorboard in the
2 front of the van that she was in had the two bucket seat
3 style without the center console between them. I
4 observed what appeared to be the bowl of what I know to
5 be a meth pipe or a glass pipe, the kind they use to
6 smoke methamphetamines.

7 **Q** Had you already seen similar drug paraphernalia
8 in your experience?

9 **A** Yes, sir.

10 **Q** To be fair to the defendant, did you later on
11 determine that it was not, in fact, a meth pipe?

12 **A** Yes, sir. That item was not. It was some type
13 of plastic bowl-shaped container.

14 **Q** But at the time, did you believe it was a meth
15 pipe?

16 **A** Yes, sir. From where I was standing, it
17 appeared to be glass meth pipe.

18 **Q** In dealing with Ms. Nixon, did you then get her
19 driver's license and identification and registration?

20 **A** Yes, sir.

21 **Q** And in a normal traffic stop, would you have
22 allowed a citizen to stay in their own vehicle?

23 **A** Absolutely.

24 **Q** In this particular case, were there any other
25 factors causing you not to let her get back into the

1 vehicle?

2 **A** Yes, sir. I believe I'd seen probable cause of
3 a crime being committed inside the vehicle.

4 **Q** Okay. In addition to seeing what you believed
5 at the time was a meth pipe, did you have any other
6 concerns with Ms. Nixon's behavior or Ms. Nixon's actions
7 or your observations?

8 **A** Yes, sir. There was a combination of things.
9 Number one, from my experiences, upon a traffic stop, any
10 person trying to distance themselves from a vehicle is a
11 suspicion that there is some sort of contraband or crime
12 or some reason they are trying to distance themselves
13 from the vehicle. A second thing would be the shattered
14 out window and the fact that she left the door open with
15 the keys in the ignition, told me at the time that she
16 didn't particularly care to keep the vehicle secure. And
17 my suspicion is that the vehicle was probably stolen
18 because if she's willing to leave it at that intersection
19 with the keys in it and the driver door open, she has no
20 concern for what happens to the vehicle.

21 **Q** And you already answered the temperature. Do
22 you remember what the wind speed was at this date?

23 **A** Yeah, it was 11 miles an hour.

24 **Q** Did you inform her what her status was? For
25 example, did you tell her she was under arrest or

1 detained or free to go? What language did you use at the
2 time?

3 **A** I told her that I will be detaining her due to
4 the investigation I would need to conduct.

5 **Q** Did you tell her that she was not under arrest?

6 **A** I specifically did say those words.

7 **Q** Did you handcuff her and, if so, what was your
8 reason for handcuffing her?

9 **A** Uh, due to all the circumstances of her exiting
10 the vehicle upon the stop, her -- the way she was
11 speaking with me was what I would consider combative. I
12 saw what I believed to be a meth pipe on the floorboard
13 of the vehicle, which gave me probable cause to search
14 the vehicle. And due to the temperature outside and all
15 those circumstances, I felt that detaining her into
16 handcuffs and securing her in my back seat would be the
17 best option so she wouldn't have to be cold while I
18 searched her vehicle.

19 **Q** In addition to searching the vehicle, what else
20 -- what other things do you have to do during a typical
21 traffic stop that takes time?

22 **A** Typically check the driver's license of the
23 defendant for the status, check for warrants, check their
24 NCIC, confirm the vehicle information, insurance
25 information.

1 **Q** Again to be fair to Ms. Nixon, was she a
2 licensed driver allowed to drive this vehicle?

3 **A** It turned out to be, yes.

4 **Q** You said some language earlier that her
5 behavior was not consistent with the typical motoring
6 public. In your opinion, did you think she was more
7 nervous than the typical person that you pull over for a
8 traffic violation?

9 **A** In my experience, I would say that she was less
10 than pleased with my encounter with her.

11 **Q** Okay. And when you handcuffed her and you told
12 her this, before you put her in the vehicle, did you
13 attempt to pat her down?

14 **A** Yes, sir.

15 **Q** Please tell the Court what the difference is
16 between a pat down and a full search.

17 **A** A pat down is a, uh, open handed pat of the
18 outside of the clothing without manipulating any objects
19 inside of the clothing and without going into any
20 compartments of the clothing.

21 **Q** Was it required of you to pat her down before
22 you put her on the back seat of your patrol car?

23 **A** Yes.

24 **Q** And even outside of your requirements, did you
25 think it was appropriate to pat her down?

1 **A** Yes, sir. Due to my reasonable suspicion
2 during the traffic stop and then department policy.

3 **Q** When you patted down her pants pockets, do you
4 remember which pants pocket, what did you find in this
5 area? What did you first notice in this area?

6 **A** In her front right pants pocket, I immediately
7 felt what I knew to be a glass meth pipe.

8 **Q** Were you touching her private areas or her
9 pocket at this time?

10 **A** Just the pocket.

11 **Q** And how did she react when you observed this
12 item or felt this item?

13 **A** She immediately became what I would call
14 combative.

15 **Q** You say you call combative, please describe her
16 physical actions during the pat down process.

17 **A** Okay. Immediately upon touching what I knew to
18 be a glass pipe commonly used to ingest methamphetamines,
19 I -- she turned around on me and immediately became --
20 started screaming and kicking, kicking at me. She told
21 me that I was violating her rights. I asked her to turn
22 back around towards my patrol car, but she did not comply
23 with this verbal command. I told her a second time that
24 she needed to turn around or I would have to make her
25 comply with my commands. I did have to physically turn

1 her around by grabbing her arm. She continued trying to
2 turn around and kicking at me with her heels once I did
3 get her turned around. And she told me that nothing in
4 her pockets belonged to her because she had a job and did
5 not do drugs.

6 Q At that point, had you already removed the meth
7 pipe from her pocket?

8 A No, sir.

9 Q What happened after she made this statement
10 about nothing on her belonged to her?

11 A After she made that statement, she had somewhat
12 calmed down. I asked her if I could remove the contents
13 of her pockets. She told me yes.

14 Q What did you pull out of her right front
15 pocket?

16 A Out of her right front pocket, I removed a
17 glass meth pipe, a razor blade and a small bag containing
18 a clear crystal substance which field tested positive for
19 methamphetamine.

20 Q And, obviously, the meth pipe concerned you.
21 What concern does the razor blade have for you?

22 A Safety.

23 Q Are razor blades used in the use or
24 distribution of methamphetamines?

25 A They can be used. They are often found -- they

1 are often found in proximity to methamphetamines and
2 crack cocaine.

3 Q I'm going to show you some items right here.
4 It's already opened Item JBB-2. Please tell the Court
5 what JBB-2 is and is that your initials on it.

6 A Item JBB-2 is five items which I classified as
7 miscellaneous drug paraphernalia. To be exact, it is one
8 razor blade, folding knife, a pack of razor blades, an
9 empty pill container, a glass meth pipe and a plastic
10 corner baggie.

11 Q And for the court's benefit, what is a corner
12 baggie and have you ever seen a corner baggie with
13 legitimate use in the past?

14 A A corner baggie is if you take a sandwich bag,
15 for example, and put loose sand, for example, put sand in
16 the corner of it. Then you tear off the corner and twist
17 it and tie it to hold the contents. That would be what I
18 would call a corner baggie.

19 Q Have you ever seen them for legitimate use?

20 A I've never seen it used for anything, but
21 carrying narcotics.

22 Q And the object I'm holding in my right hand,
23 what is this?

24 A That would be a glass pipe used for smoking
25 methamphetamines.

1 **Q** Have you ever seen a pipe like that for
2 legitimate use, for example, smoking tobacco of any sort?

3 **A** Never.

4 **MR. STEINBERG:** I'm going to mark this for
5 identification at this point.

6 **THE COURT:** All right. Mark for ID as
7 State's Exhibit number 1 as a group.

8 **MR. ERWIN:** You're not putting it in right
9 now, so that is fine.

10 **THE COURT:** All right. You want to mark it
11 as a group as State's Exhibit Number 1 marked for
12 identification purposes only.

13 (State's Exhibit 1, drug paraphernalia, is marked
14 for identification purposes.)

15 **BY MR. STEINBERG:**

16 **Q** And how did she react when you pulled these
17 items out of her pocket?

18 **A** Just as she had previously said that nothing in
19 her pockets belonged to her.

20 **Q** And did you pull anything out of her other
21 pocket or her left front pocket?

22 **A** Yes, in her front left pocket is where I
23 located the plastic corner baggie.

24 **Q** I'm going to hand you in a second JBB-1, which
25 I'll have marked as State's Exhibit 2 for identification

1 only.

2 **THE COURT:** All right.

3 (State's Exhibit 2, drugs, is marked for
4 identification purposes.)

5 **BY MR. STEINBERG:**

6 **Q** Please look in this location and look and pull
7 out what's in there and tell me what you have recovered
8 from her pocket.

9 **A** It's a very small ziplock bag containing a
10 clear crystal substance. This small bag is what came out
11 of her pocket.

12 **Q** To be clear, the larger bag is something that
13 you have provided. The smaller bag was what was found
14 inside of her?

15 **A** Correct.

16 **Q** Following the discovery of the small amount of
17 methamphetamines, did you arrest her for possession of
18 meth and for drug paraphernalia?

19 **A** Yes, after I removed them from her pockets.

20 **MR. STEINBERG:** Beg the Court's indulgence.

21 **THE COURT:** Certainly.

22 **MR. STEINBERG:** Please answer any of opposing
23 counsel's questions.

24 **THE COURT:** Yes, sir.

25 **MR. ERWIN:** Thank you, Your Honor.

CROSS-EXAMINATION**BY MR. ERWIN:****Q** Officer Belding?**A** Yes, sir.**Q** All right. So I know that the prosecutor talked about this, but in February of this year, when you made this stop, you had a camera in your car?**A** That was February of last year.**Q** Excuse me. Last year, you had a camera in your car, right?**A** Yeah.**Q** And what you were saying is you did not have any VHS tapes, right?**A** Yes, sir. The county had none to provide.**Q** And, obviously, you didn't have a body camera or anything like that, right?**A** No, sir.**Q** You didn't take any pictures in this investigation?**A** No, sir. I was not issued a camera.**Q** Okay. Uh, I don't know if we're going to hear from her or not, but there was another officer involved in this, right?**A** There was a male.**Q** Right. He did not have a camera in his car?

1 **A** No, sir.

2 **Q** He didn't take any pictures?

3 **A** No, sir.

4 **Q** Okay. He didn't have a body camera?

5 **A** No, sir.

6 **Q** Okay. So, uh, you and Mr. Steinberg were
7 talking about the Poe Mill area as a high crime area,
8 right?

9 **A** More specifically, that intersection where we
10 came to a stop.

11 **Q** Shaw Street and what's the --

12 **A** Buncombe Road.

13 **Q** Buncombe and Shaw?

14 **A** That's the --

15 **Q** That's the high crime area we're talking about
16 here, right? Okay.

17 **A** Yes, sir.

18 **Q** When you say as a police officer this is a term
19 that you guys use, high crime area, can you kind of
20 explain what you mean by that?

21 **A** Yeah, specifically to this intersection or Poe
22 Mill in general. The reason I would call it a high crime
23 area is, one, due to the high crime volume, the number of
24 reports, the crimes against persons, crimes against
25 property, the amount of drug activity, the arrests that I

1 personally made involving drug activity, the cases that I
2 have worked for crimes against people and crimes against
3 property.

4 **Q** Okay. So you find in your experience that
5 there's a lot of crime?

6 **A** However many square feet are in Poe Mill, I go
7 there way more than anywhere else.

8 **Q** All right. When you talk about high crime
9 areas, let me ask you does the sheriff's office have a
10 map where they show what's a high crime area and what's
11 not?

12 **A** Specifically, no. It would be up to the
13 experience of the individual deputies working the areas.

14 **Q** So high crime area is like what you say it is,
15 right?

16 **A** Yeah.

17 **Q** Okay. Just for example, if you were to go from
18 Shaw and Buncombe and head, I guess, east, cross over
19 Rutherford Road in the north Main area over there -- you
20 with me?

21 **A** Yeah.

22 **Q** Is that where it shifts to not being a high
23 crime area basically?

24 **A** I can't say for sure. That becomes city
25 jurisdiction.

1 Q All right. Heading north from there, if you go
2 to, like, Furman or something like that, that is not a
3 high crime area, right?

4 A Correct.

5 Q All right. And so you are saying Poe Mill high
6 crime area, is it the highest crime area in Greenville?
7 Do you, like, rank them? Is there any sort of hierarchy?

8 A I only work a certain area within the county.

9 Q Right.

10 A I'm more familiar with that area, sir.

11 Q Is that area Poe Mill or are there other
12 neighborhoods that you work?

13 A There's other neighborhoods.

14 Q Like what?

15 A Poe Mill all the way up to Cherrydale and to
16 Furman University out to the county line.

17 Q Okay. So that sort of path that we just took,
18 going from high crime to not high crime, that's sort of
19 your area?

20 A Yeah.

21 Q Okay. All right. So you saw -- let's start at
22 the house, Dirty's house on Hampton Street, right?

23 A Uh-huh.

24 Q Okay. You testified that you had previously
25 seen a Dodge Caravan that you think matched Ms. Nixon's

1 car at that residence, right?

2 A Correct.

3 Q Did you see it -- I generally don't know the
4 answer to this question. Did you see it earlier that
5 night or did you see it on another time?

6 A I don't understand what you --

7 Q Okay. You testified that you had previously
8 seen what you thought was the same Dodge Caravan at
9 Dirty's residence parked out front, right?

10 A Correct.

11 Q Was that the same night that you pulled Ms.
12 Nixon over or was it that you had seen it on another day?

13 A It was the same night.

14 Q It was the same night you had seen that car
15 there?

16 A Yes, sir.

17 Q Okay. Did you follow the car leaving Dirty's
18 or did you just pass it later?

19 A Passed it later.

20 Q Okay. All right. So you passed the car. You
21 see that it has a broken tail light?

22 A Yes, sir.

23 Q And that is the reason that you initiated a
24 traffic stop?

25 A Correct.

1 Q Because there is a traffic violation going on,
2 so you have to make a stop?

3 A Correct.

4 Q And you said when you hit the blue lights, she
5 turns into the gas station immediately, you said?

6 A Yes.

7 Q Right? Now, earlier, you testified that she
8 didn't park in a parking place, right?

9 A Correct.

10 Q You said she pulled sort of in the middle of
11 the parking lot, right?

12 A Between the gas pumps and Buncombe Road.

13 Q Okay.

14 A The center area there.

15 Q All right. Would you say that she pulled up to
16 a gas pump?

17 A I would say that's the most accurate way to
18 describe it, but she could not have pumped gas from where
19 she stopped.

20 Q Okay.

21 A If that makes sense.

22 Q All right. And without going through the whole
23 rigamarole, since we don't have the jury, would you just
24 agree with me that that is not in your police report?

25 A Which part?

1 Q Uh, she was more than 10 feet away and couldn't
2 reach it and all that. In fact, your report said she
3 pulled up to a gas pump, right?

4 A Give me one second.

5 Q It does say up to a gas pump. Nothing about
6 being 10 feet away or not being able to pump, right?

7 A Correct.

8 Q All right. So she pulls up to a gas pump, gets
9 out of the car as you are pulling up behind her, right?

10 A I'm already there, but yeah.

11 Q You're already there. She's heading towards
12 the gas station, towards the building, away from her car?

13 A Yeah.

14 Q Right? Door's open. When you first -- and you
15 let her know that you needed to speak to her, right?

16 A My blue lights should have done that, but yes,
17 I also --

18 Q Did you verbally tell her that you needed to
19 speak to her? You did, right?

20 A Yeah.

21 Q Okay. When you said that, how far away are you
22 from her car?

23 A Closer than she was to it.

24 Q Okay. Let's just kind of, just so the court
25 has sort of a frame of reference, are you closer to her

1 car than I am standing to you right now?

2 A Yes.

3 Q You're closer to the car. So is this about
4 right?

5 A Yes.

6 Q So we'll call it five or six feet?

7 A Okay.

8 Q You're this close to the car, right?

9 A Sure, five feet.

10 Q Okay. Driver's side door is open?

11 A Correct.

12 Q All right.

13 A The driver door is open.

14 Q You saw what you thought at the time was a
15 crack pipe, right?

16 A A glass meth pipe.

17 Q Okay.

18 A They are different.

19 Q Okay. How are they different?

20 A A crack pipe is simply a glass stem. It's more
21 cylindrical.

22 Q Uh-huh.

23 A The meth pipe has that same characteristic, but
24 it has a large round bowl on the end of it.

25 Q Okay. So which one did you think this was?

1 **A** A meth pipe.

2 **Q** You thought it was a meth pipe?

3 **A** Yes, sir.

4 **Q** Uh, we'll just kind of cut to the end here. It

5 was not a meth pipe?

6 **A** It turned out not to be.

7 **Q** It was not a crack pipe?

8 **A** No.

9 **Q** It was a plastic container, right?

10 **A** It was a plastic little bowl-shaped container,

11 yes, sir.

12 **Q** So, did you -- and I know you said you didn't

13 have a camera. You didn't take any pictures of that

14 container?

15 **A** No.

16 **Q** You didn't collect that container?

17 **A** No.

18 **Q** It's not in evidence. You don't have it here

19 today?

20 **A** No.

21 **Q** It's not sitting down in P&E or anything like

22 that. We have no idea where it is. Right?

23 **A** She might. I don't.

24 **Q** Well, you don't, right?

25 **A** No, I don't.

1 Q Okay. Uh, so, uh, you -- so at that point, you
2 have asked her for -- you asked her for her driver's
3 license?

4 A Correct.

5 Q And you do that because you want to make sure,
6 one, that she is licensed to drive?

7 A Correct.

8 Q And two, you are starting an investigation as
9 to whether she is legally allowed to drive this car, is
10 it stolen, is it not registered or that kind of thing,
11 right?

12 A Correct.

13 Q All right. So -- and that's when you see the
14 pipe?

15 A Yes.

16 Q Or excuse me, plastic container.

17 A Yeah.

18 Q Okay. Uh, so, uh, at that point, you put her
19 -- she's in detention, right? She's detained?

20 A She was. I hadn't told her that yet.

21 Q Right, but you knew she was. That's what you
22 were doing, you were detaining her, right?

23 A Yes, sir.

24 Q Not arresting her, detaining her.

25 A Correct.

1 **Q** Okay. And you're detaining her to investigate
2 what exactly?

3 **A** I believed I had probable cause to search the
4 vehicle also due to her actions.

5 **Q** So you are detaining her to investigate what
6 exactly?

7 **A** I hadn't checked any information on her through
8 the Department of Motor Vehicles, through warrant search
9 or NCIC and probable cause to search the vehicle.

10 **Q** To search the vehicle, right?

11 **A** And all its occupants.

12 **Q** Right.

13 **A** It falls under the same case law.

14 **Q** Oh really? Do you know the name of that
15 case ---

16 **A** I don't.

17 **Q** --- just for the Court's information?

18 **A** I don't.

19 **Q** All right. Uh, okay, so, uh, -- so you have
20 her detained now and, uh, you -- what serious crime do
21 you think is happening at that point?

22 **A** Possession of drug paraphernalia, possibly
23 operating a stolen vehicle.

24 **Q** Okay. And the facts that you have available to
25 you at that moment are the broken tail light, the broken

1 window, the maybe possibly crack or meth pipe on the
2 floor of the car, right? And she's not in the car.

3 A Yeah, her immediate actions distancing herself
4 from the vehicle.

5 Q Okay. So now it's -- now we're in detention
6 and we're talking to her. You said -- you talked about
7 that it was cold that evening, right?

8 A It was very cold.

9 Q It was like 9:30. It's dark, obviously, in
10 February, right?

11 A It was cold.

12 Q Uh, you said it was 18 degrees Fahrenheit and
13 the wind was blowing at 11 miles an hour.

14 A Correct.

15 Q What website did you use to look up those
16 numbers?

17 A The Weather Channel.

18 Q Okay. And that's how we know it's not 10 or
19 12. It's 11, right?

20 A That's what it said at that time.

21 Q That's what the website said at that time?

22 A Uh-huh.

23 Q Okay.

24 A The Weather Channel.

25 Q Okay. So you have a -- you had a detention --

1 an investigative detention going on and I think what you
2 told the prosecutor was you can't -- you didn't think you
3 could put her back in her car because you felt there was
4 drug paraphernalia there.

5 A Correct.

6 Q And you couldn't -- you said you couldn't have
7 the detention in the street right there or in the parking
8 lot.

9 A I was trying to be kind to her and not her be
10 cold.

11 Q Oh, okay. So did she say that she was cold?

12 A No.

13 Q She didn't? Did she ask to be placed in your
14 car or did she ask can we go somewhere else or anything
15 like that?

16 A No.

17 Q No. You felt she might be cold and so you put
18 her in her -- into your car, right?

19 A Correct.

20 Q Okay. Okay. So now, you put her in your car
21 which means, by department policy, that you need to frisk
22 her, right?

23 A Yes.

24 Q Okay. All right. So you frisked her to make
25 sure she didn't have anything illegal on her?

1 **A** Just weapons.

2 **Q** Just weapons. Did you think she had a gun?

3 **A** No.

4 **Q** Did you think she had a knife?

5 **A** Possibly.

6 **Q** Okay. What articulable facts -- give me -- why
7 did you think she had a knife?

8 **A** With my experience in the Buncombe Shaw area, I
9 know that females, in general, in the area, I would say
10 100 percent of the time, always have a knife on them.

11 **Q** Okay. So you -- you thought that she had a
12 knife because high crime area, this specific high crime
13 area, right?

14 **A** From my experience with females in that
15 specific area.

16 **Q** I'm just going to -- I'm just going to -- we're
17 going to take it one step at a time. We're just going to
18 lay it down here. High crime area is one, right?

19 **A** Sure.

20 **Q** And female is the other one, right? And you
21 coupled that with your experience?

22 **A** Okay.

23 **Q** You agreeing with me?

24 **A** Yeah.

25 **Q** And that made you think she might have a knife?

1 **A** On top of all the other circumstances we just
2 discussed for the ---

3 **Q** Sure.

4 **A** --- last 10 minutes.

5 **Q** Sure. Oh, I can keep going longer if you want
6 to.

7 **A** That's fine.

8 **Q** Okay. So you talked about the innocent
9 motoring public. That's what you talked about when you
10 were talking to the prosecutor, right?

11 **A** I mentioned it.

12 **Q** Yes. And you did not think that Ms. Nixon fell
13 into that category?

14 **A** Not upon her immediate actions.

15 **Q** And that was because of the way she behaved,
16 right? She tried to avoid you a little bit?

17 **A** Yes.

18 **Q** All right. So before you put her in the car --
19 just get back on the timeline here. Before you put her
20 in the car, you're going to frisk her, right?

21 **A** Pat down the exterior clothing.

22 **Q** Right. Yes.

23 **A** Okay, yes.

24 **Q** Because you believe she has a weapon?

25 **A** Amongst other circumstances.

1 Q Okay. So you pat down her clothing and you
2 feel something in her pocket, right?

3 A Correct.

4 Q And instantly, you know that is a --

5 A Glass meth pipe.

6 Q Right. Okay. When you put your hands on her,
7 when you start to frisk her, what did she say?

8 A That nothing in her pockets belonged to her
9 because she had a job and did not do drugs.

10 Q Before that. Immediately when you put your
11 hands on her.

12 A She said I was violating her rights.

13 Q She said you were violating her rights. Okay.

14 MR. ERWIN: Court's indulgence for one
15 second.

16 THE COURT: Certainly.

17 (Brief pause.)

18 MR. ERWIN: I have no further questions.

19 THE COURT: All right.

20 MR. STEINBERG: Very briefly.

21 REDIRECT EXAMINATION

22 BY MR. STEINBERG:

23 Q This incident happened in the night time. Your
24 blue lights, were they working?

25 A Yes, sir.

1 **Q** Was there any reason she could not have seen
2 your blue lights?

3 **A** Blindness would be the only thing I could think
4 of.

5 **Q** And did she tell you -- once you actually
6 confronted her and made her talk to you about the traffic
7 stop, did she say why she was walking away from you
8 instead of engaging you for the traffic stop?

9 **A** No, sir. The only thing she said was so does
10 this mean you want my driver's license.

11 **Q** And one more question about the weather. You
12 said you obtained this from your computer system. Was --
13 in your experience and your own recollection, was it
14 pretty cold out that night?

15 **A** I was very cold, sir.

16 **Q** Okay. Thank you. That's all the questions I
17 have.

18 **RECROSS EXAMINATION**

19 **BY MR. ERWIN:**

20 **Q** You didn't arrest her for failure to stop for a
21 blue light; did you?

22 **A** No, sir.

23 **MR. ERWIN:** All right. I have no further
24 questions.

25 **THE COURT:** All right.

1 **MR. STEINBERG:** We have no further questions
2 at this time for this deputy.

3 **THE COURT:** All right. Sir, you can step
4 down.

5 **MR. STEINBERG:** Your Honor, the next witness
6 would be Deputy Joseph Corneroli.

7 **JOSEPH CORNEROLI**
8 having first been duly sworn, testifies as follows:

9 **THE CLERK:** Thank you. You may be seated.
10 Please state your name for the record.

11 **THE WITNESS:** Joseph Corneroli.

12 **THE CLERK:** Thank you.

13 **DIRECT EXAMINATION**

14 **BY MR. STEINBERG:**

15 **Q** Deputy Corneroli, please tell the court, uh,
16 how long you been a law enforcement officer.

17 **A** Since January of 2014.

18 **Q** Okay. And are you familiar with this patrol
19 area, the Buncombe area, the Shaw Street area and all the
20 roads nearby?

21 **A** I am familiar with it.

22 **Q** What was your involvement in this case?

23 **A** Basically, I arrived on the scene as a back up
24 officer for Deputy Belding. Routinely, if we hear
25 someone get out on a traffic stop or a suspicious person,

1 especially the area that he was in, then one of us will
2 head over there and we will assist in whatever way
3 needed.

4 Q You heard other reference to a street. I don't
5 recall the street off the top of my head, but had you
6 seen this same vehicle that Ms. Nixon was driving earlier
7 that night?

8 A I did.

9 Q And where was it?

10 A It was at ■ Hammett Street. I couldn't tell
11 you what department I was parked in front of, but it was
12 at ■ Hammett Street.

13 Q And how far is Hammett Street from the Buncombe
14 Shaw intersection?

15 A Less than a mile.

16 Q By the time you pulled up, how far into the
17 traffic stop had Deputy Belding gone before you had
18 arrived?

19 A From where I was coming out of, I believe I was
20 coming out of the First Avenue alley, which is across the
21 street. I could see when he activated his blue lights
22 and when she pulled into the gas station. That's when I
23 drove up.

24 Q You made a statement a few minutes ago because
25 of this side of town, you always back up a traffic stop.

1 Let's talk about this side of town. Have you, yourself,
2 made arrests in this area?

3 A Yes.

4 Q You made drug arrests in this area?

5 A Absolutely.

6 Q Would you consider it a high crime area?

7 A I would consider it the center of crime in
8 Greenville County.

9 Q Have you taken reports of stolen vehicles in
10 this area in addition to drug cases?

11 A I have.

12 Q Did your vehicle have a videotape, a video
13 camera at the time?

14 A It had a camera, but the camera did not work.

15 Q Was that unusual for sheriff's office cameras
16 at that time to not be working?

17 A No, that is absolutely normal.

18 Q Now what system do you have as of, I guess,
19 last week?

20 A As of last week, I have a new Arbitrator HD
21 digital camera in the car.

22 Q Very good. Were you present during the
23 conversation with Ms. Nixon that Deputy Belding had?

24 A I was present for part of it.

25 Q Do you recall her demeanor and how she was

1 reacting?

2 **A** I do.

3 **Q** And how was it compared to the normal driving
4 public?

5 **A** I would not put her in the same category as the
6 normal motoring public. She did not want to be there.
7 She did not want to be in contact with law enforcement.

8 **Q** So the jury can -- the judge can understand,
9 where were you physically during this traffic stop? Were
10 you standing next to Belding or were you farther away?

11 **A** I was farther away. I pulled my vehicle in
12 behind his. The entire duration of the stop wasn't very
13 long.

14 **Q** Okay. So you never went to her vehicle? You
15 did not search her vehicle yourself?

16 **A** I did not. I believe once the vehicle was
17 towed, I did inventory on it and that was it.

18 **Q** Okay. Would you agree that it was very cold
19 and windy that night?

20 **A** Yes.

21 **Q** Were you present when the items were taken out
22 of her pocket?

23 **A** I was.

24 **MR. STEINBERG:** That's all the questions I
25 have for this witness.

1 Please answer opposing counsel's questions.

2 **CROSS-EXAMINATION**

3 **BY MR. ERWIN:**

4 **Q** All right. So you didn't initiate the traffic
5 stop?

6 **A** I did not.

7 **Q** You did not initiate the Terry stop or
8 investigative detention?

9 **A** No. I was strictly there as a backup officer.

10 **Q** You didn't initiate the Terry frisk or the pat
11 down, right?

12 **A** No.

13 **Q** Okay. And the plastic container that was in
14 Ms. Nixon's car, uh, did you collect that for evidence?

15 **A** I did not.

16 **Q** Did you take a picture of it?

17 **A** I did not.

18 **MR. ERWIN:** Okay. I have no further
19 questions.

20 **THE COURT:** Mr. Steinberg, anything else?

21 **MR. STEINBERG:** Your Honor, I have no further
22 questions.

23 **THE COURT:** Sir, you can step down.

24 **MR. STEINBERG:** And I'm not sure how opposing
25 counsel would like to do this. We can argue the

1 suppression issue or we can just -- however counsel
2 wishes to handle it.

3 **MR. ERWIN:** I think we better go ahead and
4 argue the suppression issue.

5 **THE COURT:** All right. Since it's your
6 motion, do you want to begin? And I will certainly
7 let you reply. But it's up to you.

8 **MR. ERWIN:** Yeah, I will, Judge. And just
9 with -- in mind -- I know I do not need to tell the
10 Court this, but just for the record, the burden is
11 on the State to prove the admissibility. So I'll
12 probably talk about it in general, but if there are
13 any specific exceptions that come up in the
14 Solicitor's argue, I will be replying specifically.

15 **THE COURT:** Oh, certainly. All right.

16 **MR. ERWIN:** So, uh, -- and, Judge, I'll tell
17 you, you and I have known each other for a while.
18 I'm not a law guy. I'm a facts guys. I have my law
19 guy here, so I may be turning to him for cites and
20 stuff like that.

21 **THE COURT:** That's perfectly fine.

22 **MR. ERWIN:** So what we have here is a -- they
23 are your classic traffic stop, Terry stop, Terry
24 frisk situation.

25 **THE COURT:** Yeah.

1 **MR. ERWIN:** And every step of that
2 investigation requires something to go from one
3 phase to the next. For the traffic stop, obviously,
4 you need just some type of traffic violation. In
5 this case, there is a broken tail light. There's no
6 pictures or anything, but we don't really have --
7 there's no reason for us to dispute that that's what
8 happened. So I will concede that this was a valid
9 stop. Okay.

10 Where we start to have problems is with the
11 next two phases of the investigation. Under *Terry*
12 and the cases that go off of that, in order to
13 initiate a *Terry* stop, or investigative detention as
14 the officers described, what they would need to have
15 is reasonable suspicion that a serious crime has
16 taken place, that criminal activity was going on.
17 Uh, and, you know, Judge, I would argue at that
18 point that they did not have that.

19 The, uh, -- we have -- I mean, we have a high
20 crime area. We have that. The Supreme Court of our
21 state, just recently, decided in *State v. Anderson*
22 -- *State v. Anderson*, which is 415 S.C. 441 -- Your
23 Honor, if you'd like a copy ---

24 **THE COURT:** Sure.

25 **MR. ERWIN:** --- I'll give you mine.

1 **THE COURT:** Thank you.

2 **MR. ERWIN:** Mr. Steinberg was trial counsel
3 on this one ---

4 **THE COURT:** Oh, okay.

5 **MR. ERWIN:** --- so I think maybe he's got it.

6

7 **THE COURT:** Okay.

8 **MR. ERWIN:** So, in that case, basically what
9 we're seeing here is that the high crime area alone
10 is not enough for a Terry stop. In that case, what
11 we had was a Terry stop that happened on the
12 periphery of a search warrant being searched, that's
13 outside the scope of the search warrant for a stop
14 that was happening kind of just right outside where
15 the search warrant was happening. And the officers
16 testified about, you know, high crime areas. The
17 area itself gives us suspicion that there's drug
18 activity going on. And the court in that case said
19 that that is not enough for a Terry stop. You don't
20 get to have an investigative detention just because
21 of where you are.

22 **THE COURT:** Okay. I'm with you on that.

23 **MR. ERWIN:** Okay. So -- and while that is a
24 factor, it's a small factor. It's just a little
25 piece of it, I believe is what the Court's saying

1 here.

2 **THE COURT:** No, I -- no, I'm -- oh, well,
3 you're talking about the court in this.

4 **MR. ERWIN:** Yes, yes.

5 **THE COURT:** I was looking at it. No, I'm not
6 saying anything at this point.

7 **MR. ERWIN:** In that case.

8 **THE COURT:** Okay.

9 **MR. ERWIN:** I believe, you know, the officer
10 kind of -- the facts that were attested to and what
11 the -- his reasonable suspicion sort of is a little
12 confusing, one is it's a high crime area, it's that
13 we saw her car at this drug house earlier, which I
14 will point out that there's no evidence about when
15 earlier was. We know it was that same night. It
16 doesn't sound like they followed her from that drug
17 house. Really -- you know, we don't have anything
18 that says other than it was a similar car, that that
19 was actually the car.

20 **THE COURT:** Right. Right.

21 **MR. ERWIN:** Okay. So on the one hand, that's
22 the reasonable suspicion. The officer was also
23 trying to say that it's a search incident to arrest
24 sort of based on the pipe that he saw in the car.

25 **THE COURT:** So if I under -- let me be clear

1 that our understanding of the facts is the same.

2 **MR. ERWIN:** Sure.

3 **THE COURT:** I just want to make sure. The
4 officer activates his blue lights. She pulls into a
5 gas station and stops.

6 **MR. ERWIN:** Right.

7 **THE COURT:** Whether close to the pump or not
8 close to the pump. And then she very quickly gets
9 out.

10 **MR. ERWIN:** Uh-huh.

11 **THE COURT:** Not running from the car ---

12 **MR. ERWIN:** Right.

13 **THE COURT:** But gets out as if she's going
14 into the convenience store.

15 **MR. ERWIN:** Uh-huh.

16 **THE COURT:** Leaves her door open.

17 **MR. ERWIN:** Right.

18 **THE COURT:** And the officer is able to see
19 something that looks like a meth pipe or he believes
20 could be a meth pipe or to be a meth pipe ---

21 **MR. ERWIN:** Right.

22 **THE COURT:** --- and then detains her ---

23 **MR. ERWIN:** Right.

24 **THE COURT:** --- at that point. So my
25 question is this -- and I know we added in -- I know

1 we added in facts, and it could have been factors
2 certainly. But the fact that he saw this thing in
3 her car -- I guess he's saying in plain view -- that
4 he believed to be this meth pipe or the fact that he
5 blue-lighted her, but although she stopped her
6 vehicle, she didn't stop, wouldn't those be enough
7 to detain her -- uh, to detain her for questioning
8 there?

9 **MR. ERWIN:** It would, Your Honor, if, uh, --
10 it would, Your Honor, if, uh, first of all, if we
11 accept that the officer seeing the crack pipe in the
12 car is a good faith, you know, uh, probable cause
13 situation. Judge, I would actually argue that it's
14 not and if the Court were to accept that as a good
15 faith, uh, exception that what he thought he was
16 doing was right, that presents a series of problems.
17 One of them being the idea that, first of all, the
18 good -- again, I'm going first here, so I'm just
19 kind of bringing up the exceptions predicting.

20 **THE COURT:** No, no, fine. And again, we'll
21 talk about it --

22 **MR. ERWIN:** Maybe this isn't even the
23 direction the Solicitor is going. But, you know, if
24 we're going to accept that as sort of a good faith
25 exception that he was acting on information that he

1 believed to be good, that necessarily doesn't fit in
2 my view with the case law of this good faith
3 exception.

4 **THE COURT:** What about that combined though?
5 And I will -- I will tell you -- I will tell you
6 that it gives me pause certainly that we don't have
7 a picture of this thing, whatever it was, for me to
8 be able to independently judge.

9 **MR. ERWIN:** Uh-huh.

10 **THE COURT:** It gives me pause. But my
11 concern is this question about the "she stopped her
12 vehicle, but then walked away".

13 **MR. ERWIN:** Right.

14 **THE COURT:** I think if this was out on a road
15 somewhere, we'd all agree that if she stopped and
16 left her vehicle and just kept on walking that that
17 might be -- you know, taken in another context, we
18 would say she didn't stop.

19 **MR. ERWIN:** Sure. And, Judge, just to that
20 issue, I guess I would say that she pulled into a
21 gas station. The officer says immediately when I
22 turned on my lights, she turns left. I would argue
23 that she was already going there, or perhaps was
24 already going there and turning left as the lights
25 comes on. She gets out of the car. She's heading

1 into the gas station. She turns -- as soon as he
2 makes himself known to her, she says, so do you want
3 my license. Perhaps the officer perceives this as
4 her running away or trying to put distance. But I
5 think the facts -- it's a possible interpretation
6 that's she's going into the gas station and as soon
7 as he says, hey, I need to talk to you, she turns
8 and says, okay, do you need my driver's license and
9 immediately is then part of this conversation.
10 She's not running away.

11 **THE COURT:** But isn't it fair to assume that
12 the officer would be reasonable in believing that
13 she was running away that she hadn't stopped? I
14 mean, I'm really asking you these questions because
15 I want to hear argument on this. I really do.

16 **MR. ERWIN:** I would say, Your Honor, that
17 that is a possible interpretation of the facts that
18 we have here, but I would also argue that there are
19 equally possible interpretations that she pulled
20 into the gas station and then saw him. And, you
21 know, we're talking about, you know -- look, yeah,
22 I'll concede that that's a reasonable -- that is one
23 reasonable interpretation of the facts here and that
24 that potentially could add on to the analysis of is
25 there a -- I mean, that could be an articulable fact

1 that goes to reasonable suspicion that criminal
2 activity was taking place. I guess ultimately what
3 I'm arguing is that that's kind of wishy-washy and
4 we're already talking about small pieces of factors.
5 There's nothing big yet.

6 I guess the big thing would be the crack pipe,
7 the fathom crack pipe that we saw in the car.
8 That's where I was getting into the whole mistake
9 thing, which maybe we'll come back around to that
10 later. I think that might make a little more sense
11 if the Solicitor actually raises that exception.

12 **THE COURT:** Okay.

13 **MR. ERWIN:** And I'll tell you, Judge, just
14 sort of -- I'll go ahead and, you know, pull back
15 the curtain here. This is the way I see this case.
16 Good traffic stop. Totally fine. Nothing wrong
17 with it. Terry stop? Uh, maybe. Kind of. I think
18 you could argue it each way. The frisk is where
19 I've got the real problem. That's where, I think,
20 we go into a whole 'nother level and I think we have
21 crossed the line from maybe, I don't know, I guess
22 you could argue it either way to, like, this is not
23 okay.

24 **THE COURT:** Okay. All right.

25 **MR. ERWIN:** That's sort of where I was going.

1 **THE COURT:** I -- yeah. And I'm sorry. I
2 stopped you with questions about that. Well, let's
3 move on.

4 **MR. ERWIN:** Okay.

5 **THE COURT:** Let's move on to this frisk.

6 **MR. ERWIN:** Okay.

7 **THE COURT:** And so there is some testimony
8 that the officer's going to put -- and I'm going to
9 give you plenty of time to reply to whatever Mr.
10 Steinberg says.

11 **MR. ERWIN:** Sure.

12 **THE COURT:** The officer's going to put her in
13 his vehicle because it's cold. I guess maybe
14 there's a broken out window maybe -- in her car.
15 Maybe that's what the point is. I don't know. But
16 he's going to put her in his car for some reason.

17 **MR. ERWIN:** Uh-huh.

18 **THE COURT:** I mean, at that point, let me
19 just ask you this. Do you think he was justified in
20 placing her in his patrol car just based on the fact
21 that, let's say, gives reasonable suspicion to
22 believe that she had not stopped for a blue light?

23 **MR. ERWIN:** I do not, Your Honor.

24 **THE COURT:** Okay. Okay.

25 **MR. ERWIN:** I do not think that the

1 reasonable suspicion of criminal activity taking
2 place that if we -- which I'm not, but if we were to
3 concede that it was justified a Terry stop, I do not
4 think that justifies putting her into the car. And
5 in fact --

6 **THE COURT:** You think he had probable cause
7 to arrest her for failing to stop for a blue light?

8 **MR. ERWIN:** I do not, Your Honor. I believe
9 that if he did, he would have either testified to
10 such or would have done that. You know, --

11 **MR. STEINBERG:** Your Honor, I could speak.
12 The State's not going to assert that. I don't want
13 to make more of an issue on that argument.

14 **THE COURT:** Okay.

15 **MR. ERWIN:** Well, there you go. So if he
16 didn't have probable cause for that, he certainly
17 may have -- may have had probable cause to search
18 her car. May have. He did not have probable cause
19 to put her in the cop car, nor did he have probable
20 cause to -- excuse me, reasonable suspicion that
21 would allow him to Terry frisk her.

22 **THE COURT:** What about this phrase that the
23 United States Supreme Court -- excuse me -- South
24 Carolina Supreme Court uses sometimes when they talk
25 about, hey, there's this nexus, that we recognize

1 the nexus between drug activity and weapons?

2 **MR. ERWIN:** Yes.

3 **THE COURT:** And do you think having
4 potentially thought that there was something in her
5 vehicle to smoke meth, potentially, potentially
6 thought that, uh, she was at a drug -- known drug
7 house earlier in the evening, do you think that's
8 enough to have given them the reason to frisk her?

9 **MR. ERWIN:** I don't, Your Honor. I think
10 that what the -- what the law actually requires is
11 articulable facts that rise to reasonable suspicion
12 that she was armed and dangerous. Okay. So I agree
13 that, oftentimes, the court talks about this nexus
14 between drugs and guns. And while I have a lot of
15 problems with that, that is what the Court has to
16 say.

17 So we're going to set that -- and, you know,
18 let's talk about what we don't have here. We don't
19 have a drug dealer. We don't have a drug operation.
20 I mean, this is -- when the Court is talking about a
21 nexus between drugs and guns, they're talking about
22 the sort of violence that's adherent in the selling
23 and trafficking of drugs. And we don't have any of
24 that here. We have, at best, the belief that there
25 is a drug user.

1 **THE COURT:** Okay.

2 **MR. ERWIN:** And let's not lose sight of the
3 fact that there was no gun. Let's not lose sight of
4 that. But the bottom line is, the nexus between
5 drugs and guns, I don't think this falls into that.

6 Even if it did, Your Honor, I do not think that
7 that gives them the ability to or the right to -- to
8 pat her down unless he sees, in that moment, there's
9 a bulge, that could be a gun; there's a bulge, that
10 could be a knife; or, you know, I think I saw her
11 put something in her pocket. That could be a gun.
12 That could be a knife. I think when we're talking
13 about articulable facts that lead to a reasonable
14 suspicion, it's got to be more than, well,
15 (Indiscernible.)

16 **THE COURT:** I got you.

17 **MR. ERWIN:** And basically, that's what it
18 came down to in this case. His testimony was that
19 it's this high crime area, highest crime area,
20 whatever and that she's a female and that that means
21 she probably had a knife. I mean, he said he did
22 not think she had a gun period. I asked him that
23 question directly. He said he did not think she had
24 a gun.

25 **THE COURT:** Right.

1 **MR. ERWIN:** So we're talking about a knife
2 now. The two reasons he thought that she had a
3 knife were: bad neighborhood and she's a girl. I do
4 not think that that passes muster, Your Honor. I
5 think what happens here is the officer is using the
6 policy of the sheriff's department, if we're going
7 to put her in the car, we have to search her. I've
8 got to put her in the car because it's cold. That's
9 all pretense for a search.

10 If we could justify that search, otherwise we
11 could say, you know, hey, I thought she had a gun.
12 Here's why I thought she had a gun. Or I thought
13 she had a knife and here's why I thought she had a
14 knife. That is better than she's a girl in a bad
15 neighborhood. Then, perhaps they would have a good
16 search here. But I think that's where we go off the
17 rails. I think that that moment when he decides to
18 frisk her is where we cross over from constitutional
19 behavior, maybe questionable constitutional
20 behavior, to absolutely not constitutional behavior
21 on the part of the government in searching her in
22 that way.

23 **THE COURT:** What about the testimony, if I'm
24 remembering it right, that she was acting in a very
25 belligerent way?

1 **MR. ERWIN:** Well, first of all, she's acting
2 before -- the way I would characterize what the
3 officer was describing before was that she was
4 acting nervous, skittish. She didn't want to have
5 contact with law enforcement is what he said.

6 **THE COURT:** Uh-huh.

7 **MR. ERWIN:** First of all, I argue that pretty
8 much everybody when they have contact with law
9 enforcement acts that way. And then even if we do
10 have that, even if we say, okay, I don't think
11 that's enough to cross into a frisk. The
12 belligerent behavior, the yelling, the
13 combateness, the pushing him away, that happens
14 after he puts his hands on her.

15 The moment that that happens, when he puts his
16 hands on her pockets to feel what she's got in
17 there, he is beyond the Fourth Amendment at that
18 point. At that point, frankly, that reaction is
19 natural. She is -- the first thing that she said is
20 you're violating my rights. I would argue that he
21 was and that she was right about that. And that
22 while, you know, maybe the right thing to do would
23 be to calmly go along, it's certainly understandable
24 that that's when he crossed the line from, you know,
25 I'm a little nervous about this to this is a

1 problem. That's kind of what I'm arguing here is
2 that that moment is the problem.

3 **THE COURT:** I got you. All right. All
4 right. All right. Thank you.

5 All right. Mr. Steinberg?

6 **MR. STEINBERG:** Thank you, Your Honor. So
7 the court understands, I'm not arguing that just
8 this being a high crime area and the suspect being a
9 female justifies the search. It's a combination of
10 a number of factors although some of them are
11 actually dispositive. For example, if you believe
12 that the officers are allowed to rely on the
13 suspected meth pipe, that alone allowed this to
14 occur. There is a combination of things.

15 Let's start from the when the officers see this
16 vehicle at a known drug house. That alone is not
17 enough. The fact that they are good officers,
18 they're going to be looking at this car. They see
19 this car driving by, they are going to stare at it.

20 So they do a traffic stop, which is,
21 admittedly, a good traffic stop. This happens in
22 the nighttime. This happens in not the most high
23 crime area, but a very high crime area. There's no
24 jury here. I'm not going to spend time on
25 belaboring this trial. This is Buncombe and Shaw.

1 **THE COURT:** Got you.

2 **MR. STEINBERG:** My witnesses said this is the
3 epicenter of crime. I can't give you personal
4 testimony, but the officers themselves told you how
5 important this area is to law enforcement patrol.
6 So in a high crime area, you have a vehicle that has
7 a suspicious quality to it. It has a broken out tail
8 -- a broken out passenger window. That alone is not
9 necessarily reasons, but it's going to cause
10 officers to have concerns. Until they are concerned
11 and assured this vehicle is a properly licensed
12 vehicle and owned by this person, they're going to
13 have concerns about it because of the broken out
14 window.

15 This is one of the more -- again, I will say
16 this is dispositive. You have a vehicle that --
17 well, makes a wrong turn, it parks, not exactly in a
18 spot. The suspect gets out of the car despite the
19 fact the fact that blue lights are stopping it.
20 Everyone is then required to deal with the officer.
21 You can't walk away. You can't choose I elect not
22 to deal with this officer who has blue lights right
23 behind me and is parked right behind me.

24 Then this is the kicker, Judge. You heard the
25 temperature, 18 degrees. You heard the wind speed,

1 11 miles per hour. This defendant leaves her car
2 door open. You heard the testimony from Deputy
3 Belding. She leaves the keys in the car in a high
4 crime area at night as she walks away.

5 The officers would not only be inquisitive,
6 they would be particularly lazy officers if they did
7 not follow up on this. Their safety and security
8 and, uh, -- levels should all go sky high at this
9 moment. Why is this person walking away from
10 officers, leaving their car under these
11 circumstances with the car door open?

12 That leaves us to the officers getting her out
13 or talking to her. The officer, because of the open
14 car door, sees a meth lab, sees a meth pipe. The
15 officer is very clear. He said it turns out it was
16 not a meth pipe. But the officers had been allowed
17 since the Leon decision, *U.S. versus Leon*, and more
18 recently with the *U.S. versus Herring* decision, to
19 make a mistake, a reasonable mistake. In fact, in
20 the *Herring* decision, to determine that the officers
21 were possibly negligent, but their negligence was
22 not sufficient to say the evidence should be thrown
23 out.

24 Here, my officer was in no way negligent. The
25 officer was doing everything he's supposed to. He's

1 going to have to run the license, the registration,
2 the insurance, the warrants, whatever else he has to
3 run, and he's concerned there is a meth pipe in the
4 vehicle. He's allowed to have that. He's
5 experienced. He's arrested people for drug charges
6 before. The fact that it turns out it's not doesn't
7 mean that he was wrong in having that concern.

8 She is nervous. He decides he has to put her
9 in the car for all these factors. Anyway, he does
10 pat her down. He finds both a knife and some
11 paraphernalia and a small amount of drugs. So,
12 Judge --

13 **THE COURT:** What about this idea that he puts
14 her in his car, rather than in her car as a pretext
15 to doing the frisk?

16 **MR. STEINBERG:** The officer said I can't put
17 her in her car. He has all these suspicions. It's
18 possible at this point he's -- who would put
19 somebody in their car? They might drive away.
20 Second of all, he had a suspicion that there was a
21 meth pipe in the vehicle. He can't put her back in
22 that vehicle. He shouldn't leave her out there. He
23 said it was a courtesy. It was courteous, a female,
24 18 degrees, to not put her out on the street, to let
25 -- not put keep her on the street, to put her in the

1 patrol car.

2 He says he pat her down. He says two things.
3 He says it's not just policy. He says policy and
4 for all the factors that we've already talked about
5 for the last few minutes. These factors do concern
6 -- show an officer has concern. Even if there was
7 no patrol car for the deputy to put her into, this
8 officer has a concern.

9 All these factors, the meth pipe possibility
10 and, of course, again I have to stress leaving this
11 car door open and walking away with the keys in the
12 car, that there was, frankly, no good reason. But
13 the officer sees a case where there's no good
14 reason, he's got to say something. There's a bad
15 reason. When we see there's a possible bad reason
16 like this, I think he's appropriate for patting her
17 down looking for evidence of a weapon or something
18 that could be used against him. That is essentially
19 the State's case.

20 **THE COURT:** Okay. Tell me again. Let's go
21 back over. What were the reasons that he believed
22 at that point? Let's just say he was going to put
23 her in his car. Let's just say he was just going to
24 do a pat down other than putting her in the car
25 because it's cold, what are the reasons that he had

1 to believe that she was armed such that he could pat
2 her down and do a weapons pat down?

3 **MR. STEINBERG:** He sees this car earlier in
4 the night on -- at -- I forgot the street name. A
5 nearby street name. Your Honor already mentioned
6 there's a nexus between drugs and weapons. These
7 officers are familiar with that. So we have her
8 leaving this, driving through a very high crime
9 area.

10 The officer is still, at this point, concerned
11 that it's a possible stolen vehicle because he has
12 not run the plates. He has not run the warrants.
13 He has a broken window. We had a person leaving
14 this car that has a broken window that leaves the
15 car door open with the key in the ignition. Would
16 the -- would a wise person leave a car in this
17 location at night time with blue lights behind her
18 and walk away? Or is that going to send up,
19 frankly, flairs for an officer to say, "hey, look at
20 this? This is concerning. This is not a typical
21 traffic stop. This is a person that's having some
22 other issues going on. She's walking away from me.
23 I've got blue lights behind her."

24 Who would leave their car -- just ask yourself,
25 Your Honor, just like I would ask the jury. Who

1 would leave their car with the car door open with
2 the keys in the ignition? Again, it's parked
3 somewhat oddly. Again, the officer does see the,
4 uh, -- what he believe at the time to be -- she is
5 nervous. She's not combative yet, but she is
6 nervous at this point.

7 And those factors would cause an officer to
8 say, regardless of even if you didn't have -- let's
9 say he's on walking patrol, he needs to pat her
10 down. Any officer under these circumstances knows
11 that I'm not going to deal with someone when they
12 are walking away under these circumstances with the
13 car door open. And again, can't put her back in her
14 own car because of the possibility of, hey, it might
15 be stolen. It might not be her car and he sees what
16 he believes to be mistakenly a meth pipe on the
17 floorboard.

18 **THE COURT:** All right. Thank you.

19 **MR. STEINBERG:** Thank you, Your Honor.

20 **THE COURT:** Yes, sir.

21 **MR. ERWIN:** Yeah, I'm not going to drag you
22 back through the whole thing. I just want to kind
23 of point out a couple of things that we have
24 different opinions than the prosecutor about. He
25 talked about the idea that the officer thought he

1 saw this pipe -- and this is where I was going with
2 the good faith thing. I'm glad he said the case
3 name because I forgot it. It was *Leon* and *Herring*,
4 right? Okay.

5 The idea here is that the officer has -- it's
6 okay that the officer relies on something that turns
7 out to be wrong in making the search, right? In
8 *Leon*, the situation -- what I'm doing here is I
9 think that we have a factual difference in this case
10 from what happened in both of those cases. In the
11 *Leon* case, we have a case where an officer makes a
12 traffic stop, looks on his computer or calls -- I
13 don't know what year it is. He looks at his
14 computer. He calls in. The word that he gets is
15 that there is a, uh, search warrant on this person.
16 He does the search, finds something illegal, turns
17 out later that that was a mistake. There was no
18 search warrant.

19 **THE COURT:** Okay.

20 **MR. ERWIN:** Okay. Uh, in *Herrington*, uh,
21 yes, same idea. But what the officer is relying on
22 is information that he got from a police clerk in
23 another county, right? So in both of those cases,
24 what you have is a police officer who is relying on
25 information, bad information, that they got from a

1 third party. From an entirely different person.
2 That they relied on it, because they have no reason
3 to doubt that it would be wrong. It turns out that
4 information was wrong and the search would not have
5 been justified had they known that. You can't blame
6 the officer for searching, right? Okay.

7 In this case, what you have is an officer who
8 made his own mistake and is, therefore, relying on
9 his own mistake. Right? That's factually different
10 from those cases. I think that's important for a
11 couple of reasons. First of all, it's mainly -- and
12 both of these reasons sort of fall under the
13 umbrella of burden shifting here, Judge. It would
14 be a little easier to find that this was a good
15 faith mistake, if we had some evidence of that fact,
16 alright, other than just the officer's own
17 testimony.

18 If we had, you know, if we had that bowl in
19 evidence or a picture of it or something to say,
20 look, this is a reasonable mistake, this is good
21 faith. You can see how -- you can show the court.
22 This is good faith. Then maybe they would have met
23 their burden to show, because the burden is on the
24 State to prove admissibility here. Their burden is
25 that this was good faith, that this was Leon and

1 under those cases, this is a reasonable mistake. We
2 don't have any evidence of that other than the
3 officer's own testimony, which was the original
4 mistake. Same officer.

5 Then the second reason, Judge, that that's the
6 difference between the cases that's important is
7 that you're running into a situation. It's almost
8 like a public policy problem where you have -- if
9 all the officers have to do to justify a bad search
10 is testify that I goofed and I thought that it was a
11 pipe and it wasn't, then we'd never have a good
12 search. We would never have a bad search. I mean,
13 if it were that easy to fix, then this argument
14 would never -- we would never even have this
15 argument. It would be -- it would be cut off at the
16 beginning every time.

17 Judge, I argue that we can't let that happen.
18 There has to be some burden on the State to show
19 that it was good faith. Whether it was through a
20 third party or if it's the officer's own mistake,
21 there really needs to be something shown that this
22 is a good faith mistake. That's basically my
23 argument as to the *Leon* and, uh, -- I said
24 *Herrington*, but it's actually *Herring* cases that Mr.
25 Steinberg was referring to.

1 **THE COURT:** Uh-huh.

2 **MR. ERWIN:** You know, when we're talking
3 about the reasonable suspicion that she was armed
4 and dangerous, I think that's all -- it keeps coming
5 back to the drugs. It keeps coming back to the
6 drugs. We have -- we may have seen that van at a
7 drug house earlier, maybe. But we didn't follow it
8 away from the drug house. We didn't make a note of
9 it. It's just that we think we saw a similar van at
10 the drug house earlier. And we have a crack pipe
11 that turns out not to be a crack pipe. That's our
12 drug connection there. And that's it. That being
13 the overwhelming part of -- the big articulable
14 facts that they have for this frisk. I just don't
15 think it's enough.

16 Everything else, the fact that it was a bad
17 neighborhood, the fact that she was a female, that
18 certainly does not arise. I think that this big,
19 sort of drug nexus thing is dubious and they
20 shouldn't get credit for that nexus when in the
21 moment when they are making the search that nexus
22 didn't really exist.

23 Now, obviously, I'll concede that there were
24 drugs found. That's never the point of these Fourth
25 Amendment cases. The point is what happened before.

1 **THE COURT:** Sure.

2 **MR. ERWIN:** And basically, Judge, that would
3 be -- that's our argument. I would ask you to find
4 that the search was unconstitutional under the
5 Fourth Amendment and, therefore, that the drugs and
6 the paraphernalia that were the fruit of this search
7 are not admissible. (Brief pause.)

8 And Judge, just to kind of get the record
9 straight as to that last argument I made, that if we
10 remove this nexus of drugs and guns, that what they
11 have does not rise to reasonable suspicion that she
12 was armed and dangerous for this frisk.

13 I will point to a couple of cases, the *Robinson*
14 v. *State*, South Carolina Supreme Court case 407 S.C.
15 169 and also *Blassingame*, also a South Carolina
16 Supreme Court case, 338 S.C. 240. In both of those
17 cases, you have suspects who match descriptions from
18 burglaries or robberies or something like that.
19 That's what puts it over the edge. In this case, we
20 don't have anything like that. It puts it over the
21 edge that they were armed and dangerous. In this
22 case, we don't have anything like that.

23 **THE COURT:** All right. I think Mr. Steinberg
24 wants to say something, but I'm going to give you
25 the last word.

1 **MR. ERWIN:** Sure.

2 **THE COURT:** Okay. Yes.

3 **MR. STEINBERG:** Thank you, Your Honor. Just
4 addressing the factual issues, as far as the not
5 having the suspected meth pipe, I guess it would be
6 great, but when an officer, at the time, actually
7 sees what he knows at that point to be non-evidence,
8 I would say that's actually asking too much. Sure,
9 it would be great for all of us to have here. I
10 don't think the officer out on the street should be
11 expected to seize something that he knows is, in
12 fact, not evidence.

13 Also, as to the idea that the officers can just
14 say they see something, the court should not just
15 assume that officers will tell a falsehood. That
16 should never been the standard here. The idea that
17 the officer will elect to say I saw a meth pipe, the
18 officer is not -- we should not assume that the
19 officer is going to tell a falsehood. The officer
20 said I saw a round bowl or what I thought to be a
21 meth pipe. He told you his experience. He knows
22 what meth pipe, even explained --

23 **THE COURT:** I don't think that's what Mr.
24 Erwin is arguing necessarily. I don't think he -- or
25 at least I didn't interpret it as what he was

1 arguing that the officer is not telling the truth,
2 but because the burden is on the State, simply just
3 his word doesn't meet that burden. Instead, there
4 needed to be something to corroborate that. I think
5 that was what his argument actually was.

6 **MR. STEINBERG:** I don't think they're asking
7 anything more than corroboration. You've heard all
8 these other facts.

9 **THE COURT:** Okay.

10 **MR. STEINBERG:** It was very clear that it
11 was, in fact, not what I assumed it was going to be.
12 As far as some of the case law that was discussed,
13 in those cases, that involved negligence. There
14 were officers actually -- other police personnel did
15 something wrong.

16 In this case, I would argue the officer, in
17 fact, did not make a mistake. When he looked and he
18 sees a possible meth pipe, he is not making a
19 mistake. The fact that it turns out it is not does
20 not mean the officer was wrong for presuming it. He
21 was not wrong in believing at that time what it was.
22 Even if you exclude the -- we prepared this case for
23 trial with the understanding that Your Honor either
24 might go along in good faith or might not, but there
25 are other factors. Again, it is not simply the case

1 where the officers have a female in a high crime
2 area.

3 Ask yourself, Your Honor, just like the jurors
4 have asked, if you're an officer in these
5 circumstances, the car being stopped the way it was,
6 where it was, walking away, he has got an open car
7 door. This officer is going to have some
8 suspicions. The fact that it is this neighborhood,
9 the fact that they had seen this car, there's
10 argument that it might not have been this car. The
11 officer said it was this car. They said they saw
12 this car. It is sufficiently identifiable that they
13 were able to determine that it was the same car that
14 they saw at the drug house earlier.

15 I'm not going to belabor the facts. I just ask
16 Your Honor to consider all the facts in the totality
17 as the cases, for example, some of the cases that
18 opposing counsel has raised also say it has to be a
19 number of facts. The courts have said we're moving
20 away from just high crime. This is way more than
21 just high crime. This is a combination of factors.
22 The courts have said you have to look at the
23 totality of all the factors before you make a
24 determination. That's all I have, Your Honor.

25 **THE COURT:** All right. Anything else, Mr.

1 Erwin?

2 **MR. ERWIN:** Judge, I've made all my legal
3 arguments. I would just say that the officers, you
4 know, the argument that any officer would do, an
5 officer's got to do this to keep himself safe. He's
6 got to do this to investigate crime. Fine. Sure.
7 Officer's got to do what they have to do to protect
8 themselves and feel like they're doing the right
9 thing. That's their job and that's their decisions
10 to make.

11 Our job, your job and decisions to make is
12 whether what comes out of that is something that can
13 be used to convict Ms. Nixon of a crime. Can't go
14 back in time and make this not happen. I'm
15 certainly not going to question their judgement in
16 the moment. I'm not a cop. I don't know what you
17 have to do. But I do think that the evidence that
18 was collected as a result of these actions is
19 inadmissible because they were unconstitutional
20 searches. That's it.

21 **MR. STEINBERG:** Nothing else, Your Honor.

22 **THE COURT:** All right. Well, I don't lose
23 fact of what -- lose sight of the fact that this is
24 something that not only affects Ms. Nixon, but also
25 affects these officers and how they do their jobs.

1 I'm mindful of that when I say this. But I
2 appreciate the good arguments on both sides. It's a
3 -- this is a, uh, tough legal issue.

4 I want to take a few minutes with it. I want
5 to take a look at a couple of cases you mentioned
6 and I want to reread a case that you mentioned, Mr.
7 Steinberg. I will tell you this. I can do one of
8 two things. If y'all want to hang around and hope
9 that I can read pretty fast, I'm happy to do that.
10 If y'all want to come back at 2:00, I know the
11 officers probably have other places to be, but I
12 don't know if you're finished with that. If y'all
13 can come back at 2:00, it does not matter to me,
14 whichever y'all want to do.

15 **MR. ERWIN:** I'm fine with coming back at
16 2:00, Your Honor. But if you want us to hang
17 around, that's fine too.

18 **MR. STEINBERG:** Your Honor, uh, either one.
19 We can do either one. We can come back at 2:00 if
20 that's easiest for Your Honor. I am not going to --
21 because this is a joint suppression and bench trial,
22 I'm not going to have Deputy Corneroli stay.

23 **THE COURT:** Sure.

24 **MR. STEINBERG:** Deputy Belding will come back
25 at 2:00.

1 **THE COURT:** Sure. Okay. All right. I'll
2 tell you what, then let's plan to reconvene at 2
3 o'clock. That will give me plenty of time to take a
4 look at it. I appreciate your willingness to come
5 back, Deputy Belding, at 2:00 and everyone's
6 willingness to come back at 2:00. All right. Uh,
7 thank y'all.

8 **MR. ERWIN:** Thank you, Your Honor.

9 **MR. STEINBERG:** Thank you, Judge.
10 (Recess is taken.)

11 **THE COURT:** Well, uh, I want to thank you
12 both again for excellent arguments on both sides.
13 You gave me lots to think about during the break.

14 Uh, in thinking about the circumstances in
15 their totality, I will note that I think this --
16 this one is a close call. Truthfully, it's a close
17 call. However, uh, taking all the facts, uh, and
18 looking at them in their totality, I do find that
19 the officer, uh, could have had reasonable suspicion
20 to believe that the defendant in this case could be
21 armed, and thus was justified in the frisk search.

22 I take into consideration the situation,
23 beginning with the fact that the officer had seen
24 the car or a car he believe was the car at a similar
25 -- or at a drug location and then saw the car later

1 stopped, the unusual behavior that he testified
2 about leaving the car, leaving the car door open and
3 seeing what he believed to be drug, uh, related
4 paraphernalia in the car. I do note -- I do note,
5 even though the State didn't put forward this
6 argument that from the State's view of the facts,
7 from the State's rendition of the facts, excuse me,
8 I do think that the officer could probably -- that
9 he probably did have probable cause at that point to
10 arrest her and detain her for failure to stop for a
11 blue light. But the State did not pursue that,
12 thus, I don't take that into consideration. I just
13 do note it, and the fact that he searched her
14 because he needed to detain her for some period of
15 time while he ran the tag because he believes the
16 car could be stolen in light of all circumstances.

17 Furthermore, I do note -- although they are
18 small factors, I do note the area in which this
19 happened, the time of day in which it happened and,
20 uh, the fact that he believed that there was drug
21 activity going on, the nexus, as we discussed
22 between, uh, -- that our Supreme Court's noted
23 between drug activity and weapons.

24 So in light of all the circumstances, I do find
25 -- I think we already talked about the stop and the

1 detention and moved on from that to the frisk
2 itself. I do find under the totality of the
3 circumstances that he did have reason to believe
4 that she -- or he could have reason to believe that
5 she was armed and it was reasonable for him to do so
6 and he put forward specific facts to support that.
7 And therefore, although it was not without pause, I
8 respectfully deny your motion to suppress.

9 **MR. ERWIN:** Thank you, Your Honor.

10 **THE COURT:** Yes, sir. It's kind of a long
11 rambling way to say that. All right. What do we
12 want to do next?

13 **MR. STEINBERG:** Judge, the only thing I think
14 we have to do is the State will call Deputy Belding
15 up and he will simply introduce the evidence and the
16 State will rest at that point.

17 **THE COURT:** All right.

18 **MR. STEINBERG:** The State calls Deputy
19 Belding.

20 **THE COURT:** And sir, you're still under oath.

21 **JUDSON BELDING**

22 having previously been sworn, testified as
23 follows:

24 **DIRECT EXAMINATION**

25 **BY MR. STEINBERG:**

1 **Q** You are already under oath, Deputy.

2 **THE COURT:** We have some microphone issues.

3 **BY MR. STEINBERG:**

4 **Q** Deputy Belding, we're not going to belabor
5 this. State's Exhibit Number 1, you've already
6 identified as the drug paraphernalia?

7 **A** Correct.

8 **MR. STEINBERG:** Okay. The State would move
9 this, subject obviously to opposing counsel's
10 objections.

11 **MR. ERWIN:** And I do object, Your Honor.

12 **THE COURT:** All right. Go ahead.

13 **BY MR. STEINBERG:**

14 **Q** The same thing for State's Exhibit number 2,
15 JBB01, the crystal substance, please identify what the --
16 what this was.

17 **A** The clear crystal substance in the baggie found
18 in her pocket was submitted to a lab analysis. The
19 results were .22 grams of methamphetamine.

20 **MR. STEINBERG:** The State does move State's
21 Exhibit number 2 into evidence.

22 **MR. ERWIN:** And again, I object subject to my
23 prior --

24 **THE COURT:** Certainly. Of course. And those
25 are admitted as State's 1 and 2.

1 (State's Exhibits 1 and 2 are admitted into the
2 record.)

3 **MR. STEINBERG:** Thank you. The State has no
4 further questions.

5 **MR. ERWIN:** No questions, Your Honor.

6 **MR. STEINBERG:** In light, Your Honor, the
7 State, at this point, will rest its case.

8 **THE COURT:** All right. You may step down.

9 **MR. ERWIN:** And at this point, renew all
10 prior objections and move for directed verdict.

11 **THE COURT:** Certainly, and those are
12 respectfully denied and my previous rulings
13 affirmed. All right. The State's rested.

14 Ma'am, will you stand and raise your right hand
15 for me please.

16 (Defendant, Ms. Evelyn Nixon, is first duly sworn.)

17 **THE COURT:** All right. You can put your hand
18 down. I'm the same way. My right and my left.

19 **MS. NIXON:** I was like --

20 **THE COURT:** Yeah. I know. I'm the same way.
21 Have you discussed with your attorney whether or not
22 you will testify in the trial of this case?

23 **MR. ERWIN:** We had a brief discussion about
24 it the other day, Your Honor, but I don't know if
25 we've really gotten this far although ---

1 **THE COURT:** Why don't we break --

2 **MR. ERWIN:** --- it won't take but a second.

3 **THE COURT:** Okay. Do you want to -- do y'all
4 want to have a break and y'all talk about it and
5 then we'll come back?

6 **MR. ERWIN:** Sure, but really, very brief.

7 **THE COURT:** Okay. I won't leave. I won't
8 leave if that's alright.

9 (Brief recess is taken.)

10 **THE COURT:** All right. So ma'am, you can
11 stay seated. You're fine. You can stay seated.
12 But have you had enough time to discuss whether or
13 not you'll testify in the trial of this case with
14 your attorney?

15 **MS. NIXON:** Yes, ma'am.

16 **THE COURT:** You understand that I will not
17 take it into account in any way, that if you choose
18 not to testify, you have an absolute right to remain
19 silent and I will not consider it in any way. You
20 know that?

21 **MS. NIXON:** Yes, ma'am.

22 **THE COURT:** You also know, by the same token,
23 that this is your one opportunity to tell your side
24 of the story. You know that as well?

25 **MS. NIXON:** Yes, ma'am.

1 **THE COURT:** And, uh, you feel like you've
2 understood your conversations with your attorney?

3 **MS. NIXON:** Yes, ma'am.

4 **THE COURT:** Are you under -- I just have to
5 ask this. Are you under the influence of drugs or
6 alcohol here today?

7 **MS. NIXON:** No, ma'am.

8 **THE COURT:** Anybody forced you into this
9 decision in any way?

10 **MS. NIXON:** No, ma'am.

11 **THE COURT:** All right. You understand -- I
12 don't know if you have any past convictions on your
13 record or anything like that, but the State could
14 potentially use those against you for impeachment if
15 you do testify. You do know that?

16 **MS. NIXON:** Yes, ma'am.

17 **THE COURT:** And what is your decision?

18 **MS. NIXON:** I'd just like to go ahead and
19 proceed on.

20 **THE COURT:** And are you going to testify?

21 **MS. NIXON:** No, ma'am.

22 **THE COURT:** Okay. All right. All right.
23 Very well.

24 And you agree with her decision?

25 **MR. ERWIN:** Yes, ma'am. I do.

1 **THE COURT:** All right then. Okay. Anything
2 y'all want to present?

3 **MR. ERWIN:** No, ma'am. We're not going to
4 put up a case.

5 **THE COURT:** Okay.

6 **MR. ERWIN:** The defense rests.

7 **THE COURT:** All right. Okay. All right.
8 Well, then we're, I guess, ready to wrap things up.
9 Does anybody want to say anything since we've
10 already made extensive argument before?

11 **MR. STEINBERG:** Not from the State, Your
12 Honor.

13 **THE COURT:** Okay.

14 **MR. ERWIN:** No, ma'am.

15 **THE COURT:** All right then. Well, I do find
16 based upon the evidence beyond a reasonable doubt, I
17 find you guilty of the possession of drug
18 paraphernalia and possession of methamphetamine.
19 And we can, uh, -- certainly, you have 10 days to
20 appeal this conviction, but you must do so in
21 writing. We can now proceed to sentencing if y'all
22 would like to.

23 **MR. ERWIN:** Yes, ma'am.

24 **THE COURT:** All right.

25 (Both counsel and the defendant approach the bench.)

1 **THE COURT:** All right. Anything from the
2 State?

3 **MR. STEINBERG:** Your Honor, this is very
4 brief. This is a very small amount of drugs. The
5 State admits that. And I want to say that the
6 defendant has actually gone the majority of her life
7 without much of a criminal record. It's actually
8 remarkably small. Our concern is that after this
9 incident, she was charged and convicted of a DUI
10 this year and possession of drug paraphernalia and a
11 shoplifting.

12 We hope this trial has gotten her attention.
13 Again, she has led almost a crime-free life until
14 around age 39 or 40. And we just hope this is the
15 last we do see her in this courtroom.

16 The only final thing is the defendant was not
17 charged with Resisting Arrest. I do want to say on
18 the record she is not allowed to kick at these
19 police officers. It would have been technically
20 correct to charge Resisting Arrest, but opposing
21 counsel would have won that at trial, I think, as a
22 jury matter. I would just ask her to obey the laws
23 and treat the officers a little bit differently.
24 But again, she has essentially no record until this
25 incident.

1 **THE COURT:** Okay. All right. All right.

2 Yes, sir.

3 **MR. ERWIN:** Thank you, Judge. I just want to
4 kind of give you the sort of history of how I got
5 into this case. Ms. Nixon was pro se for a very
6 long time. In July of this year, I don't know if it
7 was on the docket or it was close to being on the
8 docket or whatever, she was brought in for sort of
9 the "you need to get a lawyer" talk in front of
10 Judge Barber. Judge Barber's you need to get a
11 lawyer talk is do you want a public defender? Yes.
12 Well, then take her away. Yeah. And so she --

13 **THE COURT:** I have heard that.

14 **MR. ERWIN:** Yeah, so she spent about a week,
15 week and a half in jail because she wanted a lawyer.
16 I got appointed. I went down there. I talked to
17 her. Got back out on bond, which Howard agreed to
18 and everything. So that was fine, but she spent
19 some time in jail when she was arrested and then
20 again a year and a half later over this.

21 I know that there was -- before I ever got
22 involved with the case, there was a probation offer
23 out there. She felt like she had some issues. And
24 frankly, she came into my office earlier this week
25 so we could get ready for this, and I agreed. I

1 thought she had some issues here. Yeah, you heard
2 all about those.

3 So I encouraged her not to plead guilty, but to
4 do it this way, to have a hearing on the evidence
5 and then to do a bench trial so we wouldn't waste
6 any jury's time, but she would get to argue her
7 issues and preserve them for appeal should we lose.
8 So that was why we were here today. She is
9 certainly not trying to play any games with the
10 system or anything like that.

11 **THE COURT:** I think that was good advice you
12 gave her.

13 **MR. ERWIN:** Thank you. I would ask you to
14 give her a probationary sentence. She doesn't have
15 a lot of record. She's not a bad person. She
16 slipped a little bit over the last couple of years,
17 but I do believe that she's got it in her to do
18 right and I think that she will.

19 **THE COURT:** What's her -- is she -- all these
20 other things that she has, it sounds like they are
21 maybe magistrate level offenses.

22 **MR. STEINBERG:** All magistrate level charges.

23 **THE COURT:** Okay.

24 **MR. STEINBERG:** I don't see any General
25 Sessions charges in her record.

1 **MR. ERWIN:** No, no, no. I was just wondering
2 if --

3 **THE COURT:** What was that?

4 **MR. ERWIN:** I was just wondering does that
5 make her -- I don't know why I hadn't thought of
6 this. Is she eligible for conditional discharge?

7 **MR. STEINBERG:** Judge, she is not eligible
8 for conditional discharge. She had a prior
9 Possession of Meth in 2014.

10 **MR. ERWIN:** Where she did a conditional --

11 **MR. STEINBERG:** She completed it. I should
12 have raised that. She is not eligible.

13 **MR. ERWIN:** I knew there was something.

14 **MR. STEINBERG:** I do want to put on the
15 record so the court understands how the Solicitor's
16 office works. Both myself and the prior assistant
17 solicitor who had this case urged Ms. Nixon to get
18 an attorney. She was given a court order in January
19 of this year to get a court order. She did not --
20 she was actually there for a trial. I'll be honest
21 with you. I think Judge Barber wasn't happy with
22 her responses. She is entitled to 22 days jail time
23 credit.

24 **THE COURT:** We're off the record.

25 (Brief recess is taken.)

1 **THE COURT:** All right. Here's what I'm going
2 to do. I think you were right to press these
3 issues. I think they were a close call in all
4 honesty. A close call. And I would never hold it
5 against you that you assert your right to have this
6 trial. I think your attorney gave you great advice
7 to do it on a bench trial basis. I know you can not
8 be anything but pleased with your lawyer. That was,
9 on both sides, one of the best argued motions I've
10 heard probably ever.

11 Uh, two years suspended with probation for 18
12 months. Credit for the 23 days you served.
13 Substance abuse counseling. Random drug and alcohol
14 testing. Your probation will terminate upon
15 successful completion of drug treatment. Then, time
16 served on the other. All right.

17 **MR. ERWIN:** Thank you, Your Honor.

18 **THE COURT:** Good luck to you.

19 **MR. STEINBERG:** Thank you, Your Honor.

20 **THE COURT:** Thank you.

21

22 (Proceeding concludes at approximately 2:23 p.m.)

23

24

25

WITNESSES

J B Belding

Greenville County Sheriffs Office

2/18/2015

ARREST WARRANT NUMBER

47634GY

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pugh

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty Bench Trial
JH
10/13/14

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-23-SPE

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2015

THE STATE

vs.

EVELYN CHRISTINE NIXON

Indictment for

2428

POSSESSION OF DRUG PARAPHERNALIA

VIOLATION § 44-53-0391

RECEIVED

JUL 24 2015

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF DRUG PARAPHERNALIA

At a Court of General Sessions, convened on

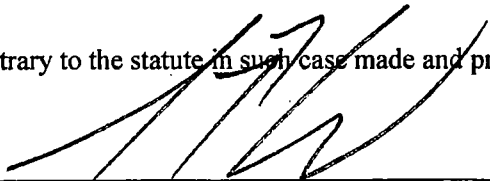
APR 19 2016

the Grand Jurors of Greenville

County present upon their oath:

That EVELYN CHRISTINE NIXON did in Greenville County, on or about the 18th day of February, 2015, knowingly and intentionally possess drug paraphernalia in that she did have in her possession and under her control pipes. This is in violation of §44-53-391 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

BAR # 77364

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Evelyn Christine Nixon

AKA:

Race: WHITE Sex: F Age: 41

DOB: SS#:

Address:

City, State, Zip: Greenville, SC 29609-3622

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Unlawful To Advertise For Sale,

in violation of § 44-53-0391 of the S.C. Code of Laws, bearing CDR Code # 2428

☒ 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:

14082

Steinberg, Howard

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 23 days/months/years or ☐ under the Youthful Offender Act not to exceed 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

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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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 61.6 (Public Def/Probation)	\$500	\$
§ 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/ea	\$
3% to County (if paid in installments)		\$ 8.25

TOTAL \$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2306010

A/W#: 47634GY

Date of Offense: 2/18/2015

S.C. Code § : 44-53-0391

CDR Code #: 2428

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code: 2162

Sentence Date: 10-13-2016

WITNESSES

J B Belding

Greenville County Sheriffs Office

2/18/2015

JP

ARREST WARRANT NUMBER

2015A2330201438

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pich

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty Bench Trial
JS

Foreperson of Petit Jury

Date:

10/13/16

DOCKET NO. 2015-GS-23-

SPE

006011

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2016

2016

THE STATE

vs.

EVELYN CHRISTINE NIXON

Indictment for

3009

POSSESSION OF METHAMPHETAMINE

VIOLATION § 44-53-0375

RECEIVED

JUL 24 2015

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF METHAMPHETAMINE

At a Court of General Sessions, convened on

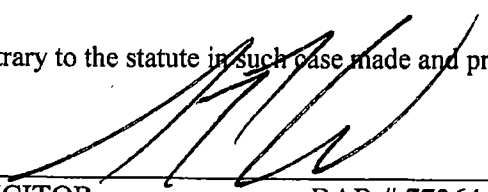
APR 19 2016

the Grand Jurors of Greenville

County present upon their oath:

That EVELYN CHRISTINE NIXON did in Greenville County, on or about the 18th day of February, 2015, willfully and unlawfully have in her possession a quantity of Methamphetamine (Crank), a schedule II controlled substance. This is in violation of §44-53-0375 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

BAR # 77364

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

82534
93COUNTY OF
STATE

Greenville

VS.

Evelyn Christine Nixon

AKA:

Race: WHITE Sex: F Age: 41

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Fair St

City, State, Zip: Greenville, SC 29609-3622

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Drugs/Possession Of Less Than One Gram Of Meth.

INDICTMENT/CASE#: 2015GS2306011

A/W#: 2015A2330201438

Date of Offense: 2/18/2015

S.C. Code § : 44-53-0375 (A)

CDR Code #: 3009

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

In Bench Trial

in violation of § 44-53-0375 (A) of the S.C. Code of Laws, bearing CDR Code # 3009

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

14082

Steinberg, Howard

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 2 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ 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 18(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. 23 days☐ 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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 \$

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§ 56-1-286 (DUI Breath Test) \$25 \$

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§ 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 \$

3% to County (if paid in installments) \$ 8.25

TOTAL

\$ 283.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel,
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date:

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,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 1st day of December, 2017.

RECEIVED

DEC 01 2017

SC Court of Appeals