

No. 20-_____

IN THE
Supreme Court of the United States

JEREMY MICKENS,
Petitioner,
v.

STATE OF ARKANSAS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ARKANSAS SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

Gene E. McKissic, Sr.
Counsel of Record
MCKISSIC & ASSOCIATES, PLLC.
116 West Sixth Avenue
Pine Bluff, Arkansas 71601
(870) 534-6332
countrysmack@aol.com

Counsel for the Petitioner

QUESTION PRESENTED

Whether a police officer may, in the absence of reasonable suspicion, extend an otherwise completed traffic stop, justified only by a police officer observed traffic violation, in order to conduct a dog sniff.

PARTIES TO THE PROCEEDING

Petitioner, Jeremy Mickens, is the Defendant at the trial court level in this case and was the appellant in the state court of appeals.

Respondent, State of Arkansas, is the Plaintiff at the trial court level and was the appellee in the state court of appeals.

RELATED PROCEEDINGS

State of Arkansas v. Jeremy Mickens, No. 35CR-19-133
(11th West Judicial District Circuit Court, July 9, 2019)

Jeremy Mickens v. State of Arkansas, No. CR-19-754
(Arkansas Court of Appeals April 29, 2020)

Jeremy Mickens v. State of Arkansas, No. CR-19-754
(Arkansas Supreme Court, Petition for Review Denied,
September 24, 2020)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Jeremy Mickens, respectfully asks that a writ of certiorari issue to review the judgment and opinion of the Arkansas Court of Appeal, CR-19-754, filed on April 29, 2020, Petition for Review denied September 24, 2020.

OPINIONS AND ORDERS BELOW

The relevant opinion of the Arkansas Court of Appeals, which is published at 599 S.W.3d 392, was issued on April 29, 2020, and is attached as Appendix A. The Arkansas Supreme Court one-page order denying Appellant's Petition for Review, which is unpublished, was entered on September 24, 2020, and is attached as Appendix B. Relevant portions of court of appeals abstract of transcript of the trial court suppression hearing is attached as Appendix C.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the Arkansas Court of Appeal for which petitioner seeks review was issued on April 29, 2020. The Arkansas Supreme Court order denying petitioner's timely petition for discretionary review was filed on September 24, 2020. This petition is filed within 90 days of the Arkansas Supreme Court's denial of discretionary review, under Rules 13.1 and 29.2 of this Court.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment 4 provides, in pertinent part:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF CASE

Officer Collins, an officer in the violent crimes unit, stopped petitioner at approximately 8:07 p.m. on February 15, 2018 for driving with the license plate light out, a violation of Arkansas law. Officer Collins approached the petitioner's vehicle, took the petitioner's I.D. and vehicle registration, returned to his vehicle to conduct a computer search of petitioner's information. Officer Collins requested a canine unit be sent to the traffic stop prior to receiving any information back on the computer check. Officer Collins insisted that petitioner readily provided him the information he requested. The computer check took approximately two (2) minutes to complete. The computer check did not return any information indicating that petitioner's driver's license was suspended or information that would lead to petitioner being issued a citation or arrested. Collins determined to issue a warning citation for the defective license plate light. Officer Collins subsequently removed appellant's keys from the vehicle and had a second officer, Officer Oswalt, keep petitioner under surveillance until the canine unit arrived. Officer Collins stated that he did not see any drug contraband in the vehicle, nor did he smell marijuana or drugs of any other kind while at the driver side door near petitioner. The petitioner was using his phone during the encounter and Officer Collins stated that he did not feel threatened by petitioners use of the phone. Finally, Officer Collins stated that he had no knowledge that petitioner was engaged in the commission of a felony, misdemeanor, violence against a person, was appropriating property not his nor about to do so. The canine unit subsequently arrived at approximately 8:20 p.m. and the dog was used to conduct an open-air-sniff around appellant's vehicle. On the second trip around the vehicle, the dog alerted to the

presence of drugs by the driver's door and petitioner was removed from the vehicle. The ensuing search of the vehicle revealed marijuana, Xanax pills and a firearm in the back seat of the vehicle.

Petitioner was charged by felony information with simultaneous possession of drugs and firearm charges. Petitioner moved to suppress the evidence seized from the vehicle on the ground, among others, that Collins had prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff. The trial court held a hearing on petitioner's motion for suppression of evidence held June 10, 2019. The trial court found that the officer had probable cause to make a traffic stop of petitioner's vehicle at 8:07 p.m. because the license plate light was out. The officer conducting the traffic stop testified that the computer checks of the appellant and his vehicle took approximately two minutes and did not lead to appellant being issued a ticket or being arrested. Subsequently, a narcotics officer arrived on the scene with a drug dog at 8:20 p.m. Following denial of his motion to suppress evidence, on June 24, 2020, Petitioner entered a conditional guilty plea in the Circuit Court, Jefferson County, Arkansas to simultaneous possession of drugs and firearm and possession of marijuana with purpose to deliver. Petitioner was sentenced to serve a term of 120 months for the simultaneous possession of drugs and firearms charge and 60 months for the possession of marijuana with the intent to deliver. The sentences were to run concurrently. Appendix D. Defendant appealed.

In the state Court of Appeal, petitioner argued that he was unlawfully detained after approximately 8:10 p.m. when the officer had received the information from the computer checks of the petitioner and his vehicle. Petitioner argued that the continued detention after the officer received the information from the computer check, was unlawful and violated his rights under the 4th Amendment to the Constitution.

The Arkansas Court of Appeal rejected petitioner's argument on the merits and affirmed his sentence. Appendix A.

Petitioner sought discretionary review of the issue in the Arkansas Supreme Court, making the same federal constitutional argument and citing the same basic authorities set forth above. The Arkansas Supreme Court denied review. Appendix B.

REASONS FOR GRANTING THE PETITION

This case presents an important issue on which the Arkansas Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

In *Illinois v. Caballes*, 543 U. S. 405 (2005), the United States Supreme Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment's proscription of unreasonable seizures. However, in *Rodriguez v. United States*, 575 U.S. 348 (2015) the United States Supreme Court held that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a ticket for the violation. *Id.*, at 407.

It is well-established that "[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure'" under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809–10, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89 (1996); *see also* U.S. Const. amend. IV (protecting "against unreasonable searches and seizures...."). A traffic stop, therefore, must satisfy the Fourth Amendment's reasonableness limitation. *Whren*, 517 U.S. at 810, 116 S.Ct. 1769; *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct. 744, 151 L.Ed.2d 740 (2002) (stating that the guarantees under the Fourth Amendment extend to "brief investigatory stops of persons or vehicles"). In that regard, "[b]ecause a traffic stop is more akin to an investigative detention than a custodial arrest," we apply the two-prong standard articulated in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) in determining whether a stop

is reasonable. *United States v. Williams*, 808 F.3d 238, 245 (4th Cir. 2015).

Pursuant to *Terry*, a traffic stop comports with the reasonableness standard of the Fourth Amendment where (1) the “stop [i]s legitimate at its inception” and (2) “the officer’s actions during the seizure [are] reasonably related in scope to the basis for the traffic stop.” *Bowman*, 884 F.3d at 209 (internal quotation marks and citations omitted). An initial traffic stop is warranted where an officer has “probable cause to believe that a traffic violation has occurred.” *Whren*, 517 U.S. at 810, 116 S.Ct. 1769. Nonetheless, “a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution.” *Illinois v. Caballes*, 543 U.S. 405, 407, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005). For instance, “[a] seizure that is justified solely by the interest in issuing a warning ticket to the driver can become unlawful if it is prolonged beyond the time reasonably required to complete that mission.” *Id.*

The acceptable duration of a traffic stop “is determined by the seizure’s mission—to address the traffic violation that warranted the stop and attend to related safety concerns.” *Rodriguez v. United States*, 575 U.S. 348, 354, 135 S.Ct. 1609, 1615, 191 L.Ed.2d 492 (2015) (internal quotation marks and citation omitted).

Ordinary tasks related to a traffic stop include “checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance.” *Id.* at 349, 135 S.Ct. 1609, 1615. These types of “checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Id.* In addition, an officer may permissibly ask questions of the vehicle’s occupants that are unrelated to the violation, provided that doing so does not prolong the stop absent independent reasonable suspicion. *Id.* at 355, 135 S.Ct. 1609, 1615.

The reasonable suspicion standard requires “‘considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.’” *Kansas v. Glover*, — U.S. —, 140 S. Ct. 1183, 1187, 206 L.Ed.2d 412 (2020) (quoting *Prado Navarette v. California*, 572 U.S. 393, 397, 134 S.Ct. 1683, 188 L.Ed.2d 680 (2014)). In order to meet this standard, an “officer’s suspicions must ... be more than an ‘inchoate and unparticularized suspicion or hunch’” of criminal activity. *United States v. Johnson*, 599 F.3d 339, 345 (4th Cir. 2010) (citing *Terry*, 392 U.S. at 27, 88 S.Ct. 1868). Rather, “a police officer must offer ‘specific and articulable facts’ that demonstrate at least ‘a minimal level of objective justification’ for the belief that criminal activity is afoot.” *Bowman*, 884 F.3d at 213 (quoting *United States v. Branch*, 537 F.3d 328, 337 (4th Cir. 2008)). We “‘cannot reasonably demand scientific certainty ... where none exists,’” and “must permit officers to make ‘commonsense judgments and inferences about human behavior.’” *Glover*, 140 S. Ct. at 1188 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000)).

In *Rodriguez*, the Supreme Court addressed whether a dog sniff is constitutional if it extends an otherwise completed traffic stop, even if for a few minutes. 575 U.S. at 353, 135 S.Ct. 1609. In *Rodriguez*, the officer lawfully stopped a vehicle, with two occupants, for driving on the shoulder. *Id.* at 351, 135 S.Ct. 1609, 1615. The officer ran a records check on the driver, issued a warning ticket, and returned his documents. Put simply, the officer had “[taken] care of all the business” related to the traffic violation yet did not consider the defendant “free to leave.” *Id.* at 352, 135 S.Ct. 1609, 1615. The officer held the defendant for an additional seven or eight minutes until a canine unit arrived, and a search ultimately uncovered methamphetamine in the vehicle. *Id.* On defendant’s motion to suppress, the Court concluded that, “absent reasonable suspicion,” an officer may not prolong a traffic stop to allow a canine sniff. *Id.* at 353, 135 S.Ct. 1609, 1615.

In the case before the Court on this petition, Officer Collins lawfully stopped the petitioner for driving a vehicle with the license plate light out. Officer Collins approached the vehicle of the petitioner at approximately 8:07 p.m. on the night of February 15, 2018 and requested petitioner provide him with driver's license and vehicle registration and returned to his vehicle to run a records check. While in his vehicle running a records check, Officer Collins also called for a canine unit to be brought to the traffic stop. Officer Collins acknowledged that petitioner was cooperative with his requests; that he did not see any drug contraband in the vehicle, nor smell marijuana or drugs of any other kind while at the driver's side of the vehicle near the petitioner. Officer Collins further stated that he had no knowledge that petitioner was engaged in the commission of a felony, misdemeanor, violence against a person, appropriating property the property of another or about to do so. The record check was completed in approximately two (2) minutes after Officer Collins returned to his vehicle and Officer Collins stated that he intended to write petitioner a warning citation. However, despite having essentially completed the mission of the traffic stop, Officer Collins prolonged the stop until the canine unit arrived to conduct a dog sniff. Officer Collins offered no testimony of his having a reasonable suspicion of criminal activity to justify detaining petitioner beyond the completion of the traffic infraction investigation. After receiving the information from the records check, officer Collins again approached the petitioner's vehicle and continued to investigate and asked petitioner for his consent to search the vehicle, which the petitioner did not consent to the search of his vehicle.

When reviewing whether an officer developed reasonable suspicion, we look at the totality of the circumstances. *Arvizu*, 534 U.S. at 274, 122 S.Ct. 744. The possibility that some facts on their own might be innocently explained does not suffice to defeat a finding of reasonable suspicion if "the articulated factors ... 'in their totality serve to eliminate a substantial portion of innocent

travelers.” *Palmer*, 820 F.3d at 650 (quoting *Williams*, 808 F.3d at 246); *see also Navarette*, 572 U.S. at 403, 134 S.Ct. 1683 (noting that an officer “need not rule out the possibility of innocent conduct”).

In assessing the reasonableness of a stop, we consider “what the police in fact do.” *Rodriguez v. United States*, 575 U.S. at 357. Thus, the “critical question” is not whether the unrelated investigation “occurs before or after the officer issues a ticket,” but whether conducting the unrelated investigation “prolongs—i.e., adds time to—the stop.” *Id.* (internal quotation marks omitted). A traffic stop becomes unlawful “when tasks tied to the traffic infraction are—or reasonably should have been—completed.” *Id.* at 354, 135 S.Ct. 1609, 1615.

Officer Collins’ unrelated investigation of petitioner after receiving information from the records check, which returned no outstanding warrants or reasons to make an arrest, and after determining that he would issue petitioner a warning citation, only served to extend the time of the stop to allow time for the drug dog time to arrive to conduct an unconstitutional dog sniff of petitioner’s vehicle.

Officer Collins possessed no reasonable suspicion that criminal activity was afoot. Petitioner denied Officer Collins consent to search his vehicle. Absent reasonable suspicion, an officer may not prolong a traffic stop to allow a canine sniff.

Although a traffic stop constitutes a seizure of persons within the meaning of the Fourth Amendment, such a seizure is constitutionally reasonable where the police have probable cause that a traffic violation has occurred. *Whren v. United States*, 517 U.S. 806 (1996). But a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution. *Illinois v. Caballes*, 543 U.S. 407 (2005).

Here, the petitioner does not argue that Officer Collins was without probable cause to make the initial traffic stop of his vehicle because of the defective license plate light. However, the seizure became unlawful when the business of the traffic stop was completed and Officer Collins determined that he would issue petitioner a warning citation, but instead prolonged the stop in order to allow time for the drug dog to arrive and conduct an unconstitutional dog sniff of petitioner's vehicle.

The Fourth Amendment's prohibition against unreasonable search and seizure prohibits police officers from prolonging a traffic stop to conduct a drug dog sniff in the absence of consent or the existence of facts that create a reasonable suspicion of criminal activity.

In the absence of petitioner's consent to a search of his vehicle or person in this case, the facts are insufficient to constitute reasonable suspicion of criminal activity on the part of the police officer before the dog sniff took place.

The Arkansas Court of Appeals decision is inconsistent with this Court's holding in *Rodriguez v. United States*, 575 U.S. 348 (2015) and *Illinois v. Caballes*, 543 U.S. 407 (2005) in that the seizure, while lawful at its inception, violated the Fourth Amendment because the continued detention of petitioner after Officer Collins received the information from the records check showing no outstanding warrants and Officer Collins determined to issue a warning citation for the defective license plate light was unreasonable based on the totality of the circumstances.

Petitioner urges this Court to take review because the Arkansas Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.

Respectfully submitted,

/s/: Gene E. McKissic, Sr.
Gene E. McKissic, Sr. (Bar #:313929)
Counsel of Record
MCKISSIC & ASSOCIATES, PLLC.
116 West Sixth Avenue
Pine Bluff, Arkansas 71601
(870) 534-6332
countrymack@aol.com

Counsel for the Petitioner

CERTIFICATE OF SERVICE

I, Gene E. McKissic, Sr., attorney for Petitioner herein, certify that a copy of the Petition for Writ of Certiorari was served upon the Respondent, State of Arkansas, via regular mail to the following attorney(s) of record:

Leslie Rutledge
STATE OF ARKANSAS
ATTORNEY GENERAL
323 Center Street, Suite 200
Little Rock, AR 72201

Darnisha C. Evans
STATE OF ARKANSAS
ATTORNEY GENERAL
323 Center Street, Suite 200
Little Rock, AR 72201

Joseph Karl Luebke
STATE OF ARKANSAS
ATTORNEY GENERAL
323 Center Street, Suite 200
Little Rock, AR 72201

on this 22nd day of December 2020.

/s/: Gene E. McKissic, Sr.
Gene E. McKissic, Sr.

**APPENDIX TO THE PETITION FOR A WRIT OF
CERTIORARI**

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ARKANSAS COURT OF APPEALS

DIVISION III
No. CR-19-754

JEREMY MICKENS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered: April 29, 2020

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT
[NO. 35CR-18-133]

HONORABLE JODI RAINES DENNIS,
JUDGE

AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Jeremy Mickens entered a conditional plea of guilty to one count each of simultaneous possession of drugs and firearm and possession of marijuana with the purpose to deliver following the circuit court's denial of his motion to suppress evidence. Appellant contends that the circuit erred by denying his suppression motion and by admitting hearsay testimony based on rumor into evidence at the suppression hearing. We find no error and affirm.

At approximately 8:07 p.m. on February 15, 2018, appellant was stopped by Officer Kevin Collins of the Pine Bluff Police Department due to his vehicle's license plate light being out.¹ Officer Collins asked appellant for his license, insurance, and registration.

¹Officer Collins was driving an unmarked vehicle along with Officer Tomeka Oswalt.

Appellant handed Officer Collins an ID card and the vehicle registration. He declined Officer Collins's request to search the vehicle. Officer Collins subsequently went to his vehicle to check ACIC/NCIC. He also contacted Detective Aaron Robertson with Vice and Narcotics to bring his canine to the scene of the stop. Officer Collins was able to verify that appellant had a proper driver's license and that no warrants were out for appellant's arrest. He then made the decision to issue appellant a warning. As he was issuing the warning ticket, Detective Robertson arrived with Zeke. Officer Collins then made appellant turn the vehicle off and place his keys on the top of the roof. Zeke alerted on appellant's vehicle. After Zeke alerted, appellant informed the officers that there was a firearm in the vehicle. A search of the vehicle turned up a semiautomatic handgun as well as marijuana and Xanax. Appellant was arrested and charged with simultaneous possession of drugs and firearm, possession of Xanax with purpose to deliver, and possession of marijuana with purpose to deliver.

Appellant filed a motion to suppress on May 2, 2018, contending that he was illegally detained and that the search of his vehicle violated his rights. Appellant's suppression hearing took place on June 10, 2019. Officer Collins testified that he legitimately stopped appellant's vehicle due to the license plate light being out. He stated that appellant was cooperative but failed to have his driver's license or proof of insurance. He said that he asked appellant for permission to search the vehicle and appellant replied "no." He testified that he recognized appellant and that he heard rumors about appellant being involved with controlled substances. At this point, appellant objected based on hearsay, but the court overruled the objection. Officer Collins stated that he ran appellant's information through

ACIC/NCIC and discovered that appellant had a valid driver's license and that there were no outstanding warrants for him. He stated that as he waited for the information on appellant, he contacted Detective Robertson to bring his drug dog. He said that it took approximately ten minutes from the initiation of the stop to Detective Robertson's arrival. He testified that he was still in the process of writing the warning ticket when Detective Robertson arrived.

On cross-examination, Officer Collins testified that the license plate light was his only basis for the traffic stop. He stated that he requested the drug dog prior to receiving a response from the check he ran on appellant. He said that Detective Robertson and the dog arrived while he was writing the warning ticket. He testified that if "the drug dog would not have arrived prior to [his] issuing the warning ticket, then [he] would have proceeded to the next traffic stop." He stated that it "normally takes two minutes to get return information from ACIC/NCIC on a traffic stop." He said that he had to wait on a call back from 911 dispatch before he could return appellant's information to him or issue a citation. He stated that as soon as he was notified that the dog alerted, he removed appellant from the vehicle and the vehicle was searched. Officer Collins testified that the dog's alert was the sole basis for the search.

Detective Robertson testified that he was called to a traffic stop that involved appellant on February 15, 2018. He stated that he arrived at the scene about thirteen minutes after receiving the call. He said that his dog alerted on appellant's vehicle and that a subsequent search turned up drugs and a firearm.

The court took the matter under advisement and issued an order denying appellant's motion on June 12, 2019. After appellant asked for written findings of fact and conclusions, the court issued them on June 27. The court made the following pertinent findings and conclusions:

Officer Kevin Collins, Pine Bluff Police Department, initiated a traffic stop on a vehicle being driven without a properly working license plate light.

The MECA record reflects that the traffic stop was initiated at 8:07 p.m.

Once advised as to the reason for the stop, the officer asked the driver to produce his driver's license, vehicle registration, and proof of insurance.

The defendant provided registration documents, but, did not provide a driver's license or proof of insurance. The defendant did provide an I.D. card.

The officer returned to his patrol car to run a check through ACIC.

The MECA record reflects that a vice and narcotics officer arrived with the drug dog at 8:20 p.m.

No testimony was elicited that the results of the computer checks on the defendant and the vehicle were completed prior to the arrival of the drug dog.

During the open-air sniff at a high bearing, the drug dog sat at the driver's side window which indicated he detected the scent of narcotics.

A search of the vehicle resulted in the seizure of marijuana, Xanax, and a handgun.

CONC[L]USIONS

A canine sniff to the exterior of a vehicle is not a Fourth Amendment search.

Officer Collins had probable cause to believe that defendant's vehicle violated traffic laws and was justified in making the traffic stop.

Appellant entered into a conditional plea of guilty pursuant to Arkansas Rule of Criminal Procedure 24.3(b), reserving his right to appeal the court's denial of his motion to

suppress the evidence. As a result of the plea, he was sentenced to an aggregate term of ten years' imprisonment, and the Xanax charge was nolle-prossed. The plea, along with the sentencing order, was filed on July 9. Appellant filed a notice of appeal the same day. This appeal followed.

In reviewing a trial court's denial of a motion to suppress evidence, we conduct a de novo review based on the totality of the circumstances, reviewing findings of historical facts for clear error and determining whether those facts give rise to reasonable suspicion or probable cause, giving due weight to the inferences drawn by the trial court.² A finding is clearly erroneous when, even if there is evidence to support it, the appellate court, after reviewing the entire evidence, is left with the definite and firm conviction that a mistake has been made.³ We defer to the trial court's superior position in determining the credibility of the witnesses and resolving any conflicts in the testimony.⁴

A police officer may stop and detain a motorist when the officer has probable cause to believe that a traffic offense has occurred.⁵ Probable cause exists when the facts and circumstances within an officer's knowledge are sufficient to permit a person of reasonable caution to believe that an offense has been committed by the person suspected.⁶ In assessing

²*Cagle v. State*, 2019 Ark. App. 69, 571 S.W.3d 47.

³*Id.*

⁴*Id.*

⁵*Id.*

⁶*Id.*

the existence of probable cause, our review is liberal rather than strict.⁷ The relevant inquiry is whether the officer had probable cause to believe that the defendant was committing a traffic offense at the time of the initial stop, not whether the driver was actually guilty of a traffic offense.⁸

Appellant concedes that his license plate light was out at the time his vehicle was stopped. However, he contends that Officer Collins used the traffic stop as a pretext to conduct an illegal search of his vehicle. This argument is without merit. Our supreme court has held that in cases where the stop is pretextual, it will “not allow a police officer’s ulterior motives to serve as the basis for holding a traffic stop unconstitutional so long as it was a valid stop—meaning, the officer had the proper probable cause to make the traffic stop.”⁹ Our common-law jurisprudence does not support invalidation of a search because a valid traffic stop was made by a police officer who suspected other criminal activity.¹⁰ Officer Collins implemented a valid traffic stop on appellant’s vehicle because it was being operated while its license plate light was out, it makes no difference whether this stop was pretextual.

Appellant further argues that Officer Collins prolonged the issuing of the warning ticket so that the drug dog could arrive. Our supreme court has stated that a law enforcement officer, as part of a valid traffic stop, may detain a traffic offender while

⁷*Id.*

⁸*Id.*

⁹*State v. Mancia-Sandoval*, 2010 Ark. 134 at 6, 361 S.W.3d 835, 839.

¹⁰*State v. Harris*, 372 Ark. 492, 277 S.W.3d 568 (2008).

completing certain routine tasks, such as computerized checks of the vehicle's registration and the driver's license and criminal history, and the writing up of a citation or warning.¹¹ During this process, the officer may ask the motorist routine questions, such as his or her destination, the purpose of the trip, or whether the officer may search the vehicle, and the officer may act on whatever information is volunteered.¹² However, after those routine checks are completed, unless the officer has a reasonably articulable suspicion for believing that criminal activity is afoot, continued detention of the driver can become unreasonable.¹³ In *Sims*, our supreme court held that the legitimate purpose of the traffic stop ended after the officer handed back the driver's license and registration along with a warning ticket.¹⁴

Here, Officer Collins testified that he was still in the process of writing appellant's warning ticket when Detective Robertson arrived with Zeke. Therefore, the legitimate purpose of the stop had not ended when Zeke alerted on appellant's vehicle. Once Zeke alerted on the vehicle, there was no additional suspicion needed for the vehicle to be searched.¹⁵ And to the extent that appellant attempts to argue that there was no reasonable suspicion to allow the dog to sniff the exterior of the car, this argument also fails. According to our case law, if police have probable cause to detain a vehicle, no separate suspicion is

¹¹*Sims v. State*, 356 Ark. 507, 157 S.W.3d 530 (2004).

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵*Harris, supra.*

required to conduct a canine sniff.¹⁶ The use of a drug dog during a traffic stop does not constitute an illegal search under the federal constitution.¹⁷ Where there is no search within the meaning of the Fourth Amendment, no reasonable suspicion is necessary to justify having a dog smell an individual's vehicle.¹⁸

Accordingly, Officer Collins had probable cause to stop and detain appellant's vehicle, and we hold that any pretext on the part of Officer Collins is irrelevant and that no additional cause was needed to justify the canine sniff that took place prior to the conclusion of the legitimate purpose of the stop. We also hold that the dog's alert on appellant's vehicle provided the probable cause necessary to search appellant's vehicle. Therefore, the court did not err by denying appellant's motion to suppress.

To the extent that appellant makes an argument about Arkansas Rule of Criminal Procedure 16.2, that rule is not triggered based on the facts of this case.¹⁹ It only comes

¹⁶*Id.*

¹⁷*Id.*

¹⁸*Id.*

¹⁹Arkansas Rule of Criminal Procedure 16.2 provides that a party may object to the use of any evidence on the grounds that it was illegally obtained. The rule further provides that a motion to suppress evidence should be granted if the court finds that the violation upon which it is based was substantial. Ark. R. Crim. P. 16.2(e). In determining whether a violation is substantial, the court is to consider all the circumstances, including the following:

- (i) the importance of the particular interest violated;
- (ii) the extent of deviation from lawful conduct;
- (iii) the extent to which the violation was willful;

into play once the court finds that there has been a violation. Here, the court found no such violation so there was no reason for the court to determine whether a violation was substantial enough to justify suppression of the evidence.

Appellant argues that the circuit court abused its discretion by admitting hearsay testimony based on rumor into evidence at the suppression hearing. We agree with the State that this argument is not properly before us. Rulings on evidentiary claims are not appealable under Rule 24.3(b).²⁰

Affirmed.

GLADWIN and WHITEAKER, JJ., agree.

-
- (iv) the extent to which privacy was invaded;
 - (v) the extent to which exclusion will tend to prevent violations of these rules;
 - (vi) whether, but for the violation, such evidence would have been discovered; and
 - (vii) the extent to which the violation prejudiced moving party's ability to support his motion, or to defend himself in the proceedings in which such evidence is sought to be offered in evidence against him.

²⁰See *Fisher v. State*, 2013 Ark. App. 301, 427 S.W.3d 743.

OFFICE OF THE CLERK
ARKANSAS SUPREME COURT
625 MARSHALL STREET
LITTLE ROCK, AR 72201

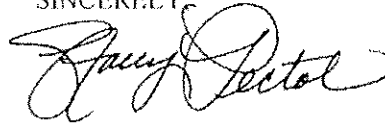
SEPTEMBER 24, 2020

RE: SUPREME COURT CASE NO. CR-19-754
JEREMY MICKENS V. STATE OF ARKANSAS

THE ARKANSAS SUPREME COURT ISSUED THE FOLLOWING ORDER TODAY IN THE
ABOVE STYLED CASE:

"APPELLANT'S PETITION FOR REVIEW IS DENIED."

SINCERELY,

A handwritten signature in cursive script, appearing to read "Stacey Pectol".

STACEY PECTOL, CLERK

CC: GENE E. MCKISSIC, SR.
JOSEPH KARL LUEBKE, ASSISTANT ATTORNEY GENERAL
JEFFERSON COUNTY CIRCUIT COURT
(CASE NO. 35CR-18-133)

ABSTRACT OF TESTIMONY

OFFICER KEVIN COLLINS – Called by the State

My name Kevin Collins and I am employed by the Pine Bluff Police Department in the Violent Crime Unit. I was working in that capacity on the night of February 15, 2018. I was working with officer Tomeka Oswalt, in an unmarked vehicle.

We were traveling behind Mr. Mickens' vehicle on West 16th Avenue and noticed his license plate light was out. We initiated a traffic stop (T. 55-56). After stopping him I spoke with Mr. Mickens and walked around his vehicle. He stopped in the parking lot of Immanuel Baptist Church. I identified myself and asked for his license, registration and proof of insurance. He provided me an ID card. I do not recall being provided a driver's license. He did provide a registration but no insurance card that I can remember.

I did recognize the defendant just from being in Pine Bluff growing up. I have had no professional dealings with him (T. 57-58). I had heard rumors about his being involved with controlled substance violations.

MR. McKISSIC: Objection. Hearsay.

THE COURT: Overruled.

After receiving his ID, I talked to him and requested permission to search the vehicle. He said no. He asked how long the traffic stop would take. I walked around

Ab. 1

the vehicle and noticed his lights were on bright. I went to the rear to my vehicle and ran him through ACIC/NCIC to establish that he had a proper license and no warrants or anything like that. While I was waiting on the return through ACIC/NCIC, I notified Detective Robertson with Vice and Narcotic to bring the dog. He arrived with the dog (T. 59-60).

It took approximately 10 minutes or so from the initiation of the stop until the dog arrived. I got a return from ACIC/NCIC and issued him a warning ticket. While issuing him a warning ticket, Officer Robertson arrived with the dog, Zeke.

I let Officer Robertson handle the dog. I made Mickens turn the vehicle off and placed the keys on top of the roof. I then stood where I could observe Mickens' movements so he could not harm the dog. Mickens remained in the vehicle. After the dog alerted, Mickens was removed from the vehicle (T. 61-62).

I was not involved in the search of the vehicle after the dog alerted. I asked Mr. Mickens when I first stopped the vehicle if there were any drugs or anything in the vehicle. His response was no. Once the dog arrived, he acknowledged there was a firearm in the vehicle. It was a semiautomatic handgun in the back seat of the vehicle, within reach (T. 61-63).

CROSS EXAMINATION: By Mr. McKissic

The only basis for the traffic stop of Mickens was his license plate light being off. There was no passenger in the vehicle. Mickens provided most of what I asked

Ab. 2

for except proof of insurance, I believe. He cooperated with me and after some discussion I went to check ACIC/NCIC. He had already told me there was nothing illegal in the vehicle (T. 64-85). I asked for permission to search the vehicle and Mickens said no.

While I was at the window talking to him, he was texting on the phone or trying to make calls. His behavior warranted a reasonable suspicion he was trying to hide something. He readily provided the information I asked for and was totally cooperative. He answered all of my questions. I can't remember any information from the ACIC/NCIC that was basis for a search (T. 66-67).

No information came back from ACIC/NCIC that indicated his driver's license was suspended or an outstanding warrant for his arrest. I called for the drug dog prior to receiving a response from ACIC/NCIC check. The drug dog arrived while I was writing the warning citation. Officer Oswalt was on the passenger side of Mickens' vehicle paying attention to him. Mr. Mickens was being detained (T. 68-69). I had Mr. Mickens hand me the keys to the vehicle and I placed them on the roof of his vehicle. This was done right before the dog started the air sniff. Mr. Mickens was in the vehicle texting but did not talk on the phone. I did not ask him not to use his cell phone. While at the driver side window I did not smell marijuana or any other kind of drug (T. 70-71).

I did not see any drug or contraband in the vehicle. I had no knowledge that the defendant was engaged in the commission of a felony, a misdemeanor, violence against a person, was appropriating property not his or was about to do so. I did see groceries in the vehicle. I can not remember if he told me he had just finished shopping and was going home to have a meal.

As a result of his texting, no one showed up and obstructed any of my actions. His using the phone slowed down the process (T. 72-73). I recall his communicating his location and asking if that person could come and get the vehicle. I did not feel threatened by his use of the phone.

If the drug dog would not have arrived prior to my issuing the warning ticket, then I would have proceeded to the next traffic stop. It normally takes two minutes to get return information from ACIC/NCIC on a traffic stop. I do not recall giving the defendant his ID back and telling him to sit there because it may take a minute (T. 74-75). I had to wait on a return call from 9-1-1 dispatch. I did not give him his ID back without writing the warning citation. I do not recall advising him why he was being detained. Once I received the requested information from the defendant, I went straight to run his name and vehicle for a check (T. 76).

As soon as Detective Robertson advised me the dog had alerted. I removed the defendant from the vehicle. I don't recall whether I placed the defendant in handcuffs or not. As soon as the dog was put up, the vehicle was searched. The

defendant did not sign a consent to search, and I did not ask for permission to search once the dog alerted. I did not hear anyone else ask for consent to search (T. 76-78). The sole basis for the search was the dog alerted (T. 79).

RE-DIRECT EXAMINATION: By Robert Dittrich

I asked for consent to search while first at the driver's window. I saw no need to ask for consent subsequent to his first saying no. he did not have a driver's license, but an ID card. I checked the status of his driver's license. I did not delay issuing the warning citation solely to allow the drug dog to get there. If the drug dog had not arrived prior to the time I finished writing the warning citation, I would have allowed the defendant to leave. I have done so in the past (T. 79-80).

CROSS EXAMINATION: By Gene McKissic

If the defendant did not have a valid driver's license or proof of insurance, I would have had someone come get the vehicle. But I did not do that because the defendant was placed under arrest (T. 81-82).

FURTHER RE-DIRECT EXAMINATION: By Mr. Dittrich

The law requires that he carry a driver's license to operate a vehicle (T. 82).

FURTHER RE-CROSS EXAMINATION: By Mr. McKissic

I did not cite the defendant for not having a valid driver's license (T. 83).

DIRECT EXAMINATION of Detective Aaron Robertson: By Mr. Dittrich

I am Detective Robertson of the Pine Bluff {Police Department. I was working vice and narcotics on February 15, 2018 and was also the canine handler. At that time, I had been handing Zeke for less than a year. Zeke and I were certified through Little Rock Training Academy and recertified through the Commission on Law Enforcement Standards, (CLEST). We recertify May of each year. I was patrolling in the area of East Harding, the Belmont/Broadmoor area in a unmarked canine unit. There had been a lot of shooting in that area. I received a phone call that my assistance was needed at 17th and Hickory and with a traffic stop. I arrived at the scene in approximately thirteen minutes. I introduced myself to Mr., Mickens (T. 84-85).

He was in the driver's seat and I informed him I was going to run my canine around the vehicle to do an open-aired search or sniff. I ran the canine around on a low bearing so he could run the search of the vehicle. The dog did not alert. I ran the dog higher the second time and he alerted on the driver's door. The window was open. The dog stuck his nose in the vehicle and sat. That indicates an alert. He detected narcotics or the scent of narcotics in the vehicle. I informed officer Colling of Zeke's alert and put the dog up. Officer Oswault began the search. I assisted in the search and located a black trash bag that contained a tupperware container that had multiple bags of marijuana and Xanax inside. The marijuana was in 24 individual baggies ranging from 5 grams to 20 grams. There were 50 Xanax pills.

There were 10 individual bags containing five Xanax pills and an additional bag containing six Xanax pills (T. 86-87). The baggies were in miniature zip lock bags. I found Mr. Mickens' wallet that contained \$720 dollars in U.S. Currency. There was also a black Ruger handgun in the back seat in the middle under some groceries. It was accessible to the driver. I maintain records on Zeke's activities and did so on February 15, 2018. I have kept a record of every stop and log in Zeke's performance. I logged in that Zeke alerted and drugs found in Tupperware container located on front passenger seat. I logged this in as a good alert (T. 88-90).

CROSS EXAMINATION: By Mr. McKissic

It took me 13 minutes after receiving the call to arrive at the scene of the stop. I did not know how long Mr. Mickens had been stopped prior to my being called to assist. I first went to the vehicle without the dog and saw no evidence of drugs. I was there specifically to conduct an open-air sniff. I don't know who removed the keys from the vehicle or when. I make sure the vehicle is off when I arrive for the safety of the dog and officers. I was satisfied when I arrived that it was safe. I believe officer Collins was filling out the citation. Mr. Collins never attempted to get in the back seat and did not resist or threaten me in any way (T. 91-93).

RE-DIRECT EXAMINATION: By Mr. Dittrich

I have the MECCA records from the traffic stop. MECCA records indicate that Mickens' stop was reported at 8:07 PM and I arrived at 8:20 PM (T. 94-95).

RE-CROSS EXAMINATION: By Mr. McKissic

It took me thirteen minutes from the time I received the call until I arrived at the scene of the stop. I don't know what time the stop was initiated (T. 95).

FURTHER RE-DIRECT EXAMINATION: By Mr. Dittrich

As soon as you are lighting the vehicle up and give the vehicle description, and where you are making the stop, dispatcher know before the stop is made (T. 95-96).

FURTHER RE-CROSS EXAMINATION: By Mr. McKissic

It could happen that as soon as the stop is initiated, I also was called by dispatcher to bring the dog.

MR. DITTRICH: State Rest.

MR. MCKISIC: The defense moves for a directed verdict pursuant to Rule 3.1. This rule requires that any detention even after a valid traffic stop has to be for legitimate reasons. An officer may detain a person but only for time necessary to conduct the traffic stop. Reasons for the stop must be specific and particular and the officer must be able to articulate them. Those reasons must be associated with evidence that a felony is being committed for has been committed; that the person stopped is engaged in committing a misdemeanor which involves violence and injury to person; and or is engaged in theft or damage to property. When asked

questions about each specific reason justifying detention of Mickens, the testimony was no such reason was known to police (T. 97-98).

The case law in Arkansas is replete with rulings that suspicion as to be more than mere suspicion or conjecture. It has to be based on specific facts that from the totality of the circumstances indicate further investigation is warranted. Here, the police enunciated no specific facts giving rise to suspicion and articulate no such facts. It is telling that officer Collins initiated the call for the drug dog at the same time as making the traffic stop and that the officer sought permission to search the vehicle without evidence of any illegal conduct by Mickens. Defendant relies on Sims v. State, 356 Ark. 507. This case makes clear that reasonable suspicion must be tied to felony, or misdemeanor involving forcible injury to person or property, citing Brazwell v. State, 354 Ark. 281, 119 S.W. 3rd 499 and U.S. v. Beck, 140 Fed. 3rd 1129 (99-101). Frette v. State, 58 Ark. App. 81 (1997), states “that suspicion based on facts or circumstances which of themselves do not give rise to probable cause requisite to justify a lawful arrest, but which give rise to more than mere suspicion, that is suspicion what is reasonable as opposed to an imaginary or purely conjectural suspicion.” Defendant also relies on Lilley v. State, 362 Ark. 463 (T.101-102).

MR. DITTRICH: This is not a Rule 2.1 or 3.1 case. This is a Rule 4.1 case which authorizes a law enforcement officer to arrest a person without a warrant if

the officer has reasonable cause to believe that such person has committed any violation of the law in the officer's presence. The defendant was arrested for failure to have a light on his license plate and headlights. There is no prohibition against an officer asking for a dog to come. And there is no constitutional prohibition against asking a man to consent to search or conducting air-sniff. The search was conducted within a reasonable time. Rule 3.1 does not apply, and we believe the motion to suppress should be denied (T. 102-103).

MR. McKISSIC: The police can have a legitimate basis for a traffic stop. But you can not use the traffic stop as pretext for conducting a search. This officer asked for permission to search without seeing anything or having any evidence. The officer has no facts he can articulate for believing there are drugs in the defendant's vehicle but summons the drug dog to conduct an air-sniff. That's the pretext and it violates the Fourth Amendment against unreasonable search and seizure. You can't have a canine just sniff the air around a vehicle without probable cause anymore than you can have the dog sniff around someone's house without probable cause (T. 104-107).

MR. DITTRICH: This is not 3.1 case. The officer made a traffic stop for specific violation observed by the officer. The officer had a number of options including a warning ticket or incarceration. The officer chose the least obstructive route (T. 107).

THE COURT: I am going to take this matter under advisement and will issue a decision.

THE COURT: Mr. McKissic are you calling any witnesses?

MR. MCKISSIC: No (T. 107).

PROCEEDING OF JUNE 25, 2019 –

MR. DITTRICH: I have prepared a conditional plea document which is agreeable to Mr. McKissic. I have requested proof that Mr. Mickens' bail bondsman would remain on the bond and Mr. McKissic has agreed to provide me with assurance from the bonding company.

MR. MCKISSIC: The conditional plea agreement I believe conforms to Rule 24.3 of the Arkansas Rules of Criminal Procedure and Mr. Mickens and I have both signed it (T. 110 – 111).

THE COURT: I received yesterday the defense's motion for the court to make findings of facts and conclusions of law and the court will do so for purposes of the appeal.

THE COURT: Is the defendant to be released today?

MR. MCKISSIC: Yes. I will provide written proof from the bonding company agreeing to stay on the defendant's bond (T. 112-113).

THE COURT: Mr. Mickens have you had opportunity to discuss this case with your retained counsel.

MR. MICKENS: Yes.

THE COURT: Are you satisfied with your attorney?

MR. MICKENS: Yes. I have a 12th grade education and can read, write and understand English. I understood all of the information in my file and I am not under the influence of drugs or alcohol.

THE COURT: The state has recommended a term of years in ADC based on the conditional plea from which you have an opportunity to appeal. You are facing simultaneous possession of drugs and firearms which is a class Y felony. The range of punishment if convicted is 10-20 or life in ADC. Your other drug charges are possession of a controlled substance, marijuana and Xanax, class D felonies respectively carrying up to six years in ADC and/or a fine of up to \$10,000 (T. 113-115).

You have an absolute right to a jury trial and your attorney would participate in the selecting of the jury. Once a jury was selected you have a right to call witnesses to testify, to testify in your own defense or exercise your right to remain silent. It be the responsibility of the jury to deliberate and return a unanimous verdict on the question of your guilt or innocence. If found not guilty, you would be released from facing charges. If found guilty, we would move to the punishment phase. You could call additional witnesses to testify at the punishment phase.

MR. DITTRICH: I am nolle prossing Count #2.

THE COURT: You have a right to change your plea. Do you want a jury trial?

DEFENDANT: No ma'am.

THE COURT: The state has offered you a sentence of 120 months on the charge of simultaneous possession of drugs and weapons and 60 months on possession of marijuana with intent to deliver, both sentences to run concurrently. The charge related to the Xanax would be nolle prossed. This is a conditional plea pursuant to Rule 24.3.

Now, upon release from prison you would have to pay the fines and court cost as ordered by the court (T. 116-118).

MR. MICKENS: This is the total plea agreement which I approved and signed. I have not been provided anything other than the plea agreement and have not been threatened in any manner.

THE COURT: The conditional plea agreement document does bear your signature.

THE DEFENDANT: Yes.

THE COURT: Do you have any questions what this means?

THE DEFENDANT: No ma'am.

THE COURT: I will sign off on the agreement as well (T. 119-120).

THE COURT: On February 15, 2018, did you have in your possession packaged marijuana that the state could prove was for the purpose of delivery and simultaneously a handgun in your possession?

THE DEFENDANT: Yes ma'am.

THE COURT: How do you plead to the two counts?

THE DEFENDANT: Guilty.

MR. MCKISSIC: I concur in this guilty plea.

THE COURT: This I find the defendant knowingly and voluntarily entered this plea and there is a factual basis for the court to accept it. The court will accept the sentence recommendation of the state and sentence you to 120 months in ADC on County 1, and 60 months ADC on Count 3, and Count 2 will be nolle prossed.

IT IS the Court's understanding that the defendant is to remain on bail during the appeal (T. 121-123).

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ARKANSAS
CRIMINAL DIVISION – 5TH

STATE OF ARKANSAS

PLAINTIFF

vs.

35CR-18-133-5

JEREMY MICKENS

DEFENDANT

CONDITIONAL PLEA

I, JEREMY MICKENS, with the approval of the Court and the consent of the Prosecuting Attorney am entering a plea of Guilty to:

Count 1. Simultaneous Possession of Drugs and Firearm.

Count 2. Possession of Marijuana with the Purpose to Deliver.

I understand that my plea of guilty is conditioned upon the filing of an appeal on the issue of the Motion to Suppress the evidence seized at the time of the arrest.

I understand that if the Judge approves my plea of guilty, a judgment and sentence (Sentencing Order) will be entered, and that I may appeal on the issue specified above in the manner provided by the rules of court.

I understand that if I win my appeal on the issue specified above, that I may withdraw my plea of guilty.

I have read and understand the above. I have discussed the case and my constitutional rights with my lawyer. I understand that by pleading guilty, if my plea is not later withdrawn, I will be giving up my right to a trial by jury, to confront, cross-examine, and compel the attendance of witnesses, and my privilege against self-incrimination. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

FILED

JUN 25 2019

LAFAYETTE WOODS, SR.
Circuit Clerk
JEFFERSON COUNTY, ARKANSAS

Add. 36
36

Date

6/24/19

JEREMY MICKENS, Defendant

J. Mickens

DEFENSE COUNSEL REVIEW

I have reviewed this Conditional Plea with my client and I have discussed with my client its consequences.

Date

6/24/19

GENE E. MCKISSIC, Attorney for Defendant

Gene E. McKissic

PROSECUTOR APPROVAL

I have reviewed this Conditional Plea and consent to it.

S.KYLE HUNTER, Prosecuting Attorney

Date

6-24-19

By:

DEPUTY PROSECUTING ATTORNEY

Robert J. Hunter

COURT APPROVAL

.... This Conditional Plea Agreement is approved and I direct that it be entered of record in this case.

Date

6-24-19

JODI RAINES DENNIS, Circuit Judge
35CR-18-133-5

Jodi Raines Dennis

This Conditional Plea Form shall accompany the Sentencing Order and made a part of the record in the case.

I certify this is a true and correct record of this Court.

Date

Circuit Clerk/Deputy

Add. 27
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SENTENCING ORDER

IN THE CIRCUIT COURT OF Jefferson COUNTY, ARKANSAS,
Eleventh West JUDICIAL DISTRICT 5 DIVISION

On 6/25/2019 the Defendant appeared before the Court, was advised of the nature of the charge(s), of Constitutional and legal rights, of the effect of a guilty plea upon those rights, and of the right to make a statement before sentencing.

Offender	Defendant <u>Mickens, Jeremy</u>	DOB <u>7/12/1983</u>	Sex <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female	Total Number of Counts <u>3</u>
	SID#	Race & Ethnicity <input type="checkbox"/> White <input checked="" type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic		
Court Info	Supervision Status at Time of Offense			
	Judge <u>JODI RAINES DENNIS</u>	FILED AT 11:45 O'CLOCK A.M.		
	Prosecuting Attorney/Deputy <u>ROBERT DITTRICH/CAROL BILLINGS</u>	JUL 9 2019		
Legal Statements	Defendant's Attorney <u>GENE MCKISSIC</u>	<input checked="" type="checkbox"/> Private <input type="checkbox"/> Public Defender	LAFAYETTE WOODS, JR., CIRCUIT CLERK	
	Change of Venue <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes, from:	JEFFERSON COUNTY, ARKANSAS	
	<input type="checkbox"/> Pursuant to A.C.A. <input type="checkbox"/> 16-93-301 et seq., or <input type="checkbox"/> this Court, without making a finding of guilt or entering a judgment of guilt and with the consent of the Defendant defers further proceedings and places the Defendant on probation. There being no legal cause shown by the Defendant, as requested, why judgment should not be pronounced, a judgment: <input type="checkbox"/> is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. Defendant was advised of the conditions of the sentence and/or placement on probation and understands the consequences of violating those conditions. The Court retains jurisdiction during the period of probation/suspension and may change or set aside the conditions of probation/suspension for violations or failure to satisfy Department of Community Correction (D.C.C.) rules and regulations. <input checked="" type="checkbox"/> of conviction is hereby entered against the Defendant on each charge enumerated, fines levied, and court costs assessed. The Defendant is sentenced to the Arkansas Department of Correction (A.D.C.) for the term specified on each offense shown below. Defendant made a voluntary, knowing and intelligent waiver of right to counsel. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			

Offense #1 - Most Serious Offense	A.C.A. # / Name of Offense <u>5-74-106 - SIMULTANEOUS POSSESSION OF DRUGS AND FIREARMS</u>		Case # <u>35CR-18-133-5</u>
	A.C.A. # Orig. Charge <u>5-74-106</u>		ATN <u>4236610</u>
	Offense Date <u>2/15/2018</u>	Appeal from District Court <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Probation/SIS Revocation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Criminal History Score <u>0</u>	Seriousness Level <u>8</u>	Offense is <input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misd. <input type="checkbox"/> Violation
	Presumptive Sentence <input checked="" type="checkbox"/> Prison Sentence of <u>96 to 180 months</u>		Community Corrections Center <input type="checkbox"/> Alternative Sanction <input type="checkbox"/>
	Number of Counts <u>1</u>	Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to Commit the Offense	
	Defendant Sentence <input checked="" type="checkbox"/> ADC <input type="checkbox"/> Jud Trans <input type="checkbox"/> Cnty Jail	If probation or SIS accompanied by period of confinement, state time: _____ days _____ mths	
	Imposed <u>120 months</u>	Sentence was enhanced _____ months, pursuant to A.C.A. _____	
	Probation <u>0 months</u>	Enhancement(s) is to run <input type="checkbox"/> Concurrent <input checked="" type="checkbox"/> Consecutive	
	SIS <u>0 months</u>	Defendant was sentenced as a habitual offender, pursuant to A.C.A. 5-4-501, subsection	
Other <input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death	<input type="checkbox"/> (a) <input type="checkbox"/> (b) <input type="checkbox"/> (c) <input type="checkbox"/> (d)		
Victim Information <input checked="" type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No	Age	Sex <input type="checkbox"/> Male <input type="checkbox"/> Female	Race & Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Hispanic
Defendant voluntarily, intelligently and knowingly entered a		Defendant <input type="checkbox"/> 16-93-301 et seq.	
<input checked="" type="checkbox"/> negotiated plea of <input checked="" type="checkbox"/> guilty <input type="checkbox"/> nolo contendere		<input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> Other _____	
<input type="checkbox"/> plea directly to the court of <input type="checkbox"/> guilty <input type="checkbox"/> nolo contendere		<input type="checkbox"/> entered a plea and was sentenced by a jury. <input type="checkbox"/> court <input type="checkbox"/> jury	
		<input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury	
		<input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury	
		<input type="checkbox"/> was found guilty of lesser offense by <input type="checkbox"/> court <input type="checkbox"/> jury	
Sentence is a Departure <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A		Sentence Departure <input type="checkbox"/> Durational <input type="checkbox"/> Dispositional <input type="checkbox"/> Both	
		If Durational, state how many months above/below the Presumptive Sentence <u>0</u>	
Departure Reason <u>Mitigating # _____</u>		or Aggravating # _____ (For Agg #17, Mit #9 or departure from guidelines, explain)	
Sentence will run <input type="checkbox"/> Consecutive <input checked="" type="checkbox"/> Concurrent		to Offense # <u>3</u> or to Case # _____	

Add. 36

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Defendant's Full Name: Mickens, Jeremy

A.C.A. # / Name of Offense		5-64-432(b)(1)(A) - Possession of Sched IV/V Cont. Subs. w/ Purpose to Deliver, < 200g		Case #	35CR-18-133-5
A.C.A. # Orig. Charge		5-64-432(b)(1)(A)		ATN	4236610
Offense Date		2/15/2018		Appeal from District Court	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Criminal History Score		0		Seriousness Level	3
Offense Is		<input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misd. <input type="checkbox"/> Violation		Offense Classification	
Presumptive Sentence		<input type="checkbox"/> Prison Sentence of _____ to _____ months		<input checked="" type="checkbox"/> Community Corrections Center <input checked="" type="checkbox"/> Alternative Sanction	
Number of Counts		1		Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to Commit the Offense	
Defendant Sentence		If probation or SIS accompanied by period of confinement, state time: _____ days _____ mths			
Imposed		_____ months			
Probation		_____ months			
SIS		_____ months			
Other		<input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death			
Victim Information (Multiple Victims)		<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No		Age	
Sex		<input type="checkbox"/> Male <input type="checkbox"/> Female		Race & Ethnicity	<input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Hispanic
Defendant voluntarily, intelligently and knowingly entered a		Defendant <input type="checkbox"/> 16-93-301 et seq.			
<input type="checkbox"/> negotiated plea of		<input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> Other _____			
<input type="checkbox"/> plea directly to the court of		<input type="checkbox"/> entered a plea and was sentenced by a jury.			
<input type="checkbox"/> guilty <input type="checkbox"/> nolo contendere		<input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury			
<input type="checkbox"/> guilty <input type="checkbox"/> nolo contendere		<input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury			
<input type="checkbox"/> was found guilty of lesser offense by		<input type="checkbox"/> court <input type="checkbox"/> jury			
Sentence is a Departure		<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A		Sentence Departure <input type="checkbox"/> Durational <input type="checkbox"/> Dispositional <input type="checkbox"/> Both	
Departure Reason		Mitigating # _____ or Aggravating # _____ (For Agg #17, Mit #9 or departure from guidelines, explain)			
Sentence will run		<input type="checkbox"/> Consecutive <input type="checkbox"/> Concurrent to Offense # _____ or to Case # _____			

A.C.A. # / Name of Offense		5-64-436(b)(2) - Possession of Sched VI Cont. Subs. w/ Purpose to Deliver, > 14g < 4 oz		Case #	35CR-18-133-5
A.C.A. # Orig. Charge		5-64-436(b)(2)		ATN	4236610
Offense Date		2/15/2018		Appeal from District Court	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Criminal History Score		0		Seriousness Level	3
Offense Is		<input checked="" type="checkbox"/> Felony <input type="checkbox"/> Misd. <input type="checkbox"/> Violation		Offense Classification	
Presumptive Sentence		<input type="checkbox"/> Prison Sentence of _____ to _____ months		<input checked="" type="checkbox"/> Community Corrections Center <input checked="" type="checkbox"/> Alternative Sanction	
Number of Counts		1		Defendant <input type="checkbox"/> Attempted <input type="checkbox"/> Solicited <input type="checkbox"/> Conspired to Commit the Offense	
Defendant Sentence		If probation or SIS accompanied by period of confinement, state time: _____ days _____ mths			
Imposed		60 months			
Probation		_____ months			
SIS		_____ months			
Other		<input type="checkbox"/> Life <input type="checkbox"/> LWOP <input type="checkbox"/> Death			
Victim Information (Multiple Victims)		<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No		Age	
Sex		<input type="checkbox"/> Male <input type="checkbox"/> Female		Race & Ethnicity	<input type="checkbox"/> White <input type="checkbox"/> Black <input type="checkbox"/> Asian <input type="checkbox"/> Native American <input type="checkbox"/> Other <input type="checkbox"/> Unknown <input type="checkbox"/> Pacific Islander <input type="checkbox"/> Hispanic
Defendant voluntarily, intelligently and knowingly entered a		Defendant <input type="checkbox"/> 16-93-301 et seq.			
<input checked="" type="checkbox"/> negotiated plea of		<input type="checkbox"/> was sentenced pursuant to <input type="checkbox"/> Other _____			
<input type="checkbox"/> plea directly to the court of		<input type="checkbox"/> entered a plea and was sentenced by a jury.			
<input checked="" type="checkbox"/> guilty <input type="checkbox"/> nolo contendere		<input type="checkbox"/> was found guilty by the court & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury			
<input type="checkbox"/> guilty <input type="checkbox"/> nolo contendere		<input type="checkbox"/> was found guilty at a jury trial & sentenced by <input type="checkbox"/> court <input type="checkbox"/> jury			
<input type="checkbox"/> was found guilty of lesser offense by		<input type="checkbox"/> court <input type="checkbox"/> jury			
Sentence is a Departure		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A		Sentence Departure <input type="checkbox"/> Durational <input type="checkbox"/> Dispositional <input type="checkbox"/> Both	
Departure Reason		Mitigating # _____ or Aggravating # _____ (For Agg #17, Mit #9 or departure from guidelines, explain)			
Sentence will run		<input type="checkbox"/> Consecutive <input checked="" type="checkbox"/> Concurrent to Offense # 1 or to Case # _____			

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Defendant's Full Name: Mickens, Jeremy

Special Conditions	Sex Offenses Defendant has been adjudicated guilty of an offense requiring sex offender registration and must complete the Sex Offender Registration Form and pay the Mandatory Sex Offender Fee. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Domestic Violence Offenses Defendant has been adjudicated guilty of a domestic-violence related offense and must pay additional court costs of \$25 under Act 583 of 2017. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Defendant has committed an aggravated sex offense as defined in A.C.A. 12-12-903 <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Defendant was originally charged with a domestic-violence related offense. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, state the A.C.A. # of the Offense
	Defendant is alleged to be a sexually dangerous person and is ordered to undergo an evaluation at a facility designated by A.D.C. pursuant to A.C.A. 12-12-918. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes to either question, identify the relationship of the victim to the Defendant by offense number.
	Defendant has been adjudicated guilty of an offense requiring registration and has previously been adjudicated guilty of a prior sex offense under a separate case number. If yes, list prior case numbers. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Case Number(s)	Drug Crime Defendant has been adjudicated guilty of a drug crime as defined in A.C.A. 12-17-101. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
DNA Sample / Qualifying Offenses Defendant has been adjudicated guilty of a qualifying offense or repeat offense as defined in A.C.A. 12-12-1103. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Defendant is ordered to have a DNA sample drawn at <input type="checkbox"/> a D.C.C. Facility <input checked="" type="checkbox"/> the A.D.C. <input type="checkbox"/> Other		

Fines, Fees, Restitution	Court Costs	\$150.00	Restitution
	Fines	\$0.00	
	Booking/Admin Fees (\$20)	\$20.00	Payable to (If multiple beneficiaries, give names and payment priority) Terms <input type="checkbox"/> Due Immediately <input type="checkbox"/> Installments of: <input type="checkbox"/> Payments must be made within _____ days of release from A.D.C. <input type="checkbox"/> Upon release from confinement, Defendant must return to court to establish payment of restitution. <input type="checkbox"/> Restitution is joint and several with co-defendant(s) who was found guilty. List name(s) and case number(s).
	Drug Crime Assessment Fee (\$125)	\$125.00	
	DNA Sample Fee (\$250)	\$250.00	
	Children's Advocacy Center Fund Fee	\$0.00	
	Public Defender User Fee (\$25)	\$0.00	
	Public Defender Attorney Fee	\$0.00	
Other (explain below)	\$50.00		
SHERIFF'S FEE \$50.00			

Sentence Options	Defendant was convicted of a target offense(s) and is sentenced pursuant to provisions of the Community Punishment Act. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Extended Juvenile Jurisdiction Applied <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	The Court hereby orders a judicial transfer to the Department of Community Correction. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	Pursuant to Community Punishment Act, the defendant shall be eligible to have his/her records sealed. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	JAIL TIME CREDIT In days: 1	TOTAL TIME TO BE SERVED FOR ALL OFFENSES In months: 120 <input type="checkbox"/> Life <input type="checkbox"/> LWOP	Death Penalty <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	If Yes, State Execution Date
	DEFENDANT IS ASSIGNED TO: <input checked="" type="checkbox"/> ADC <input type="checkbox"/> ADC, Admin. Transfer Authorized <input type="checkbox"/> CCC <input type="checkbox"/> COUNTY JAIL <input type="checkbox"/> PROBATION <input type="checkbox"/> SIS			
	Conditions of disposition or probation are attached. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		<input type="checkbox"/> Defendant has previously failed a drug court program	
	A copy of the Pre-sentence Investigation on sentencing information is attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No A copy of the Prosecutor's Short Report is attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
	DEFENDANT WAS INFORMED OF APPELLATE RIGHTS <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Appeal Bond \$			
The County Sheriff is hereby ordered to: <input type="checkbox"/> transport the defendant to county jail <input type="checkbox"/> take custody for referral to CCC <input checked="" type="checkbox"/> transport to ADC				
Defendant shall report to DCC probation officer for report date to CCC <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				

Signature	Prosecuting Attorney/Deputy Signature: <i>Paul Phillips</i>	Date: 6/28/19 Print Name: ACHORN/BILLINGS
	Circuit Judge Signature: <i>Jodi Rains Dennis</i>	Date: 7-8-19 Print Name: JODI RAINES DENNIS

Additional Info
 CONDITIONAL FEE PER RULE 24.3. DEFENDANT FORFEITS PROPERTY SEIZED.

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PROSECUTOR'S SHORT REPORT OF CIRCUMSTANCES

This information is provided pursuant to A.C.A. § 12-27-113 (C) (1) & (2) (Supp. 1993).

Defendant's Name: Mickens, Jeremy

SID #: AR3330415

Case #'s 35CR-18-133-5

- I. SUMMARY OF THE FACTS:
Nothing was input into the Summary of Facts Text Box
- II. FACTORS:

AGGRAVATING

MITIGATING

- | | |
|--|--|
| <input type="checkbox"/> Production or use of any weapon during the criminal episode. | <input type="checkbox"/> Victim(s) provoked the crime to substantial degree or other evidence that misconduct by victim contributed to the criminal episode. |
| <input type="checkbox"/> Threat or violence toward witness(es) or victim(s) | <input type="checkbox"/> Cooperation with criminal justice agencies in resolution or other criminal activity. |
| <input type="checkbox"/> Defendant knew or had reason to know the victims were particularly vulnerable (aged, handicapped, very young, etc.) | <input type="checkbox"/> Effort to make restitution or reparation (particularly before required to do so by sentencing). |
| <input type="checkbox"/> Ability to make restitution, reparation or return property and failed to do so. | <input type="checkbox"/> Degree of property loss, personal injury or threatened personal injury substantially less than characteristic for the crime. |
| <input type="checkbox"/> Violation of position of public trust or recognized professional ethics. | <input type="checkbox"/> Special effort on part of perpetrator to minimize the harm or risk. |
| <input type="checkbox"/> Degree of property loss, personal injury or threatened personal injury substantially greater than characteristic for the crime. | <input type="checkbox"/> Peripheral involvement in criminal episode (e.g., passive accessory). |
| <input type="checkbox"/> There is a single conviction for a crime involving multiple victims or incidents. | <input type="checkbox"/> Evidence of withdrawal, duress, necessity or lack of sustained criminal intent or diminished mental capacity (e.g., mental retardation) which is insufficient to constitute a defense but is indicative of reduced culpability. |
| <input type="checkbox"/> Defendant on probation or parole at the time of the crime. | <input type="checkbox"/> No prior parole or probation difficulty. |
| <input type="checkbox"/> Persistent involvement in similar criminal offenses. | <input type="checkbox"/> Efforts to deal with problems associated with past criminal conduct. |
| <input type="checkbox"/> Repetition of behavior pattern which contributes to criminal conduct, e.g., return to drug or alcohol abuse. | <input type="checkbox"/> No, or minimal, prior record. |
| <input type="checkbox"/> Prior record of similar offenses. | <input type="checkbox"/> Other: |
| <input type="checkbox"/> Serious prior record | |
| <input checked="" type="checkbox"/> Pursuant to a Guilty or No Contest plea, other crimes were dismissed or not prosecuted. | |
| <input type="checkbox"/> New criminal activity while on pretrial release. | |
| <input type="checkbox"/> Persistent criminal misconduct while under supervision. | |
| <input type="checkbox"/> Efforts to conceal crime. | |
| <input type="checkbox"/> Other: | |

SIGNED

Joseph L. Sanders
Circuit Judge

SIGNED

Charles D. Williams
Prosecuting Attorney or Deputy

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JEREMY MICKENS
35CR-19-133-5
ADDITIONAL INFORMATION AND MONETARY OBLIGATIONS

<u>\$50.00</u>	Sheriff's fee	<u>\$250.00</u>	DNA Fee
<u>\$150.00</u>	Court Cost	<u>\$125.00</u>	Drug Related Crime Fee
<u>\$0.00</u>	Fines	<u>\$0.00</u>	Attorney's Fee
<u>\$20.00</u>	Booking	<u>\$0.00</u>	User Fee
<u>\$0.00</u>	Circuit court automation fee (paid to JCSO at \$5/month)	<u>\$0.00</u>	Monthly probation service fee

\$0.00 CHILD ADVOCACY FEE

JUDGMENT OF RESTITUTION:

\$WAIVED **Jefferson County Sheriff's Office (pay-for-stay) - not to exceed \$1000**

Monetary amount to be paid to Jefferson County Sheriff's Office within 30 days of entry of Sentencing Order: \$0.00
Monetary obligations to be paid at the rate of \$50.00 per month to JCSO, \$5 per month circuit court automation fee to JCSO, and \$0 per month probation service fee for a total monthly payment of \$50.00 until paid in full. Restitution may be collected through interception of the Defendant's state income tax return if the defendant fails to comply with the terms and conditions of the restitution order.

X **PAYMENTS TO BEGIN 60 DAYS FOLLOWING RELEASE FROM ARKANSAS DEPARTMENT OF CORRECTION.**

SPECIAL PROVISIONS

MARK IF APPLICABLE:

- | | |
|---|---|
| <input type="checkbox"/> Community Service Work | <input type="checkbox"/> Drug/alcohol treatment (<input type="checkbox"/> if needed <input type="checkbox"/> mandatory) |
| <input checked="" type="checkbox"/> Bond refund to be applied to fine, fees, costs, restitution | <input type="checkbox"/> Mental health treatment (<input type="checkbox"/> if needed <input type="checkbox"/> mandatory) |
| <input checked="" type="checkbox"/> DNA SAMPLE TO BE DRAWN (<input type="checkbox"/> ACC <input checked="" type="checkbox"/> ADC) | <input checked="" type="checkbox"/> Defendant forfeits property seized |
| <input type="checkbox"/> GED (if needed) | <input type="checkbox"/> Defendant to register as a sex offender |
| <input type="checkbox"/> Sentenced pursuant to Act 346 | <input type="checkbox"/> Tour ADC |
| <input type="checkbox"/> Automatic review date _____ | <input type="checkbox"/> Defendant to complete anger management course, mandatory. |
| <input type="checkbox"/> Defendant agrees to submit to Arkansas Accountability Interventions Matrix as administered by probation office per Act 570 | |
| <input type="checkbox"/> Defendant agrees to testify truthfully at trial of co-defendant in case 35CR- _____ | |
| <input type="checkbox"/> Defendant agrees to give sworn statement prior to entry of plea, if requested by the State. | |
| <input type="checkbox"/> Defendant to have no contact with: _____ | |
| <input type="checkbox"/> Defendant remains obligated to pay any fees, costs and/or restitution as previously ordered. | |
| <input type="checkbox"/> Defendant to be jointly and severally liable with co-defendant(s) for restitution | |
| <input type="checkbox"/> Defendant may be required to enter a residential drug treatment program as a condition of Drug Court upon plea. | |
| <input type="checkbox"/> Defendant shall not commit a new offense during any period of suspension of an imposed sentence. | |
| <input type="checkbox"/> Defendant shall report to probation within _____ hrs. | |
| <input type="checkbox"/> State shall dispose of evidence collected in manner auth. by law. | |

SPECIAL CONDITIONS:

CONDITIONAL PLEA PER RULE 24.3

The evidence, if any, seized by *Pine Bluff Police Department* in reference to agency number: *N-18-021*, incident number: *18-00006260* in this case shall be destroyed or released in accordance with applicable state and federal laws.

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