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Kathy Beema
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CHATHAM COUNTY, GA.

SUPERIOR COURT OF CHATHAM COUNTY
EASTERN JUDICIAL CIRCUIT OF GEORGIA

THE STATE OF GEORGIA)	
)	CASE NO.: CR13-2673-J4
)	Poss/Delivery Of C/S w/
vs.)	Intent To Distribute (2)
)	Poss Marijuana w/Intent To
)	Distribute
FABIAN K. NOTTO)	
)	
)	

Transcript of the proceedings heard during a MOTION HEARING in the above-styled case at the Chatham County Courthouse, Savannah, Georgia, on the 6th day of January, 2015, before the Honorable LOUISA ABBOT, Judge, Superior Court, Eastern Judicial Circuit, State of Georgia.

APPEARANCES:

For the State:	NOAH ABRAMS Assistant District Attorney Savannah, Georgia
For the Defense:	LARRY CHISHOLM Savannah, Georgia
Court Reporter:	Andrea White, CCR

1 THE COURT: The record will reflect that Mr. Notto is
2 here in court with Mr. Chisholm, as his attorney. Mr.
3 Chisholm, if you want to go ahead and repeat your prior
4 announcement, that you're not representing him in
5 connection with the probation revocation matter.

6 MR. CHISHOLM: That's correct, Your Honor.
7 Apparently a probation revocation petition was filed in
8 December 2014 in connection with the new charges on an
9 active indictment that he had. And when he was indicted,
10 I believe, in 2009, when I was District Attorney here in
11 Chatham County. I have not given an entry of appearance
12 on that case. I believe that case management just picked
13 up my name because I was - - made an entry on the new
14 charges. So, I'm just making the Court aware that I am
15 not retained to represent him on the probation revocation
16 hearing. And also, I could not if I wanted to represent
17 him because I believe that represents a conflict of
18 interest insofar as that the open sentence from when I was
19 DA.

20 THE COURT: I understand. It would appear, and you
21 agree Mr. Abrams, that Mr. Chisholm is disqualified as a
22 matter of law - -

23 MR. ABRAMS: Yes, ma'am.

24 THE COURT: - - from representing Mr. Notto in
25 connection with the revocation. And so, the evidence that

1 will be presented here will be solely related to the
2 motions that are pending.

3 That does bode the question though of what Mr. Notto
4 is going to do about the probation revocation matter.

5 Mr. Notto, do you plan to hire an attorney to
6 represent you in connection with the probation revocation
7 or do you want to seek Public Defender?

8 DEFENDANT: I will get a State appointed attorney.

9 THE COURT: Okay. We'll refer Mr. Notto's case then
10 to the Public Defender's Office for CR09-0506-FR. And,
11 obviously the Public Defender could, if they wish to
12 stipulate to the record in this case, and that will be up
13 to whoever's appointed to consider that at a later date.
14 I don't need to address that today

15 And, Mr. Abrams, you also raised the issue about
16 concerns about 404(b) evidence as to whether or not there
17 were cases that may have arisen while Mr. Chisholm was
18 serving as the District Attorney?

19 MR. ABRAMS: It's actually when Mr. Chisholm was an
20 Assistant District Attorney. He was the Prosecutor in
21 CR96-1893-FR. Mr. Notto pled guilty in that case. The
22 sentence has run, so he's no longer a part of that. But,
23 it is subject to a 404(b). I just wanted to make the
24 Court aware. I spoke to Mr. Chisholm. I don't have a
25 problem for him to represent. He doesn't seem to think

1 there was a conflict, but we wanted to let Mr. Notto know
2 on the record that this was a potential issue and give him
3 a moment to maybe speak with Mr. Chisholm to see if he
4 wants to waive it on the record so there's no confusion.

5 MR. CHISHOLM: That's exactly why I stood, Your
6 Honor. I'd like an opportunity to explain it to Mr. Notto
7 because it was not brought to my attention until we just
8 had a colloquy a few moments ago.

9 THE COURT: Okay. Well, are we going to do the
10 404(b) proffer first or are we going to proceed with the
11 hearing?

12 I know that we've already heard from one witness in
13 connection with the motion that, I believe, was filed by
14 prior counsel, Mr. Pine. And I'm assuming that that
15 really goes to the Fourth Amendment issue - -

16 MR. CHISHOLM: That's right.

17 THE COURT: We haven't reached the Fifth Amendment
18 issue, if there is any. I mean, obviously *Jackson-Denno*,
19 that would be appropriate at some point, and then the
20 State's 404(b) motion would be the other thing that's
21 pending.

22 MR. ABRAMS: Right. And, Your Honor, I do have one
23 witness. It's a traffic stop. The last officer that
24 testified was the majority of the testimony in this. I
25 don't anticipate any more than five or ten minutes of

1 testimony. So, if we wanted to take care of the motion to
2 suppress first - - the *Jackson-Denno*, if we could just
3 hold it until before trial if we get to that. The Agent
4 Cogswell is at the dentist, he could be here later if we
5 do want to hear it today. But I told him to go ahead with
6 the dentist appointment thinking that it would be okay
7 with the Court to hold off on that.

8 THE COURT: Well, if it's all right then, what we'll
9 do is proceed with finishing out the evidentiary portion
10 of the motion to suppress on the Fourth Amendment issue.
11 Then, Mr. Chisholm, do you have any objection to deferring
12 the Fifth Amendment issue, the *Jackson-Denno* to the
13 morning of trial, if we need such a hearing?

14 MR. CHISHOLM: My preference would be to hear it
15 before the morning of trial, Your Honor.

16 THE COURT: Well, then I may have to schedule it for
17 later since Agent Cogswell is not here. But we should
18 have time to do that before trial. And before we take up
19 the 404(b), I'll take a break and give you an opportunity
20 to speak to Mr. Notto about what may be a potential
21 conflict, but appears to be a waivable conflict, with
22 regard to one of the prior cases that may come into play
23 here. Obviously I haven't ruled on it, I don't know
24 anything about it, so how does that sound?

25 MR. CHISHOLM: That sounds satisfactory to me, Your

1 Honor.

2 MR. ABRAMS: That works perfect.

3 THE COURT: Let's call -- anybody that's going to
4 testify, let's have them sworn.

5 (NOTE: All witness sworn.).

6 THE COURT: Your first witness then, please.

7 MR. CHISHOLM: And, Your Honor, just for
8 clarification, you said just one witness?

9 MR. ABRAMS: Yes.

10 MR. CHISHOLM: That you're calling?

11 MR. ABRAMS: Yes.

12 MR. CHISHOLM: Otherwise was going to invoke the
13 rule.

14 THE COURT: No one else took the oath, so it seems we
15 don't have any other witnesses. We do have a witness here
16 that you had requested.

17 MR. CHISHOLM: That's correct, Your Honor. He's in
18 lock-up.

19 THE COURT: All right. And we'll have him sworn when
20 he comes out.

21 OFFICER GLENN CASTRO WAS CALLED BY THE STATE AND HAVING BEEN
22 DULY SWORN, TOOK THE STAND AND TESTIFIED AS FOLLOWS:

23 DIRECTR EXAMINATION BY MR. ABRAMS:

24 Q Could you just state your name for the court
25 reporter?

1 A Officer Glenn Castro.

2 Q And if you wouldn't mind, just spell it.

3 A Glenn, G-L-E-N-N. Last name, Castro, C-A-S-T-R-O.

4 Q And where do you work?

5 A Savannah Chatham Metropolitan Police Department, sir.

6 Q What do you do for Metro?

7 A I'm in Precinct 3, assigned to the Crime Suppression
8 Unit, sir.

9 Q And how long have you been with the CSU?

10 A Since 2011, sir.

11 Q And how long have you been with Metro total?

12 A Since 2005, sir. Total of nine years.

13 Q Now, were you assigned to CSU then, I guess, on
14 October 8th, 2013?

15 A Yes, sir. I was.

16 Q And what were you doing on that date, you recall?

17 A Yes, sir. I was working in a plain clothes capacity,
18 sir, in an unmarked police vehicle as well.

19 Q And you recall the area that you are patrolling?

20 A At that point in time, I was over there in Precinct
21 3, Beat 1, which is like Victory and Montgomery area by Island
22 Breeze, sir.

23 Q Now, CSU doesn't only stay within individual
24 precincts, is that true?

25 A That's correct, sir.

1 Q So if a call comes out you might be close enough to
2 go and assisting?

3 A Yes, sir.

4 Q Now, we're here regarding the case - - the case with
5 Fabian Notto. Do you recall - - you received any sort of call,
6 either through dispatch or from another officer, to be on the
7 lookout for him?

8 A Yes, sir. Just on the radio, the channel that we
9 operate on, a talk channel. I heard a CMT officer, they were
10 engaged in vehicle follow, just basically following a vehicle.
11 And I listened to their directions of travel and I realized
12 that I was close to where they were at. At that point in time,
13 they said the vehicle was traveling north on Montgomery from 5
14 second - - from 52nd. And I just happened to be at Montgomery
15 and Victory, so I parked and waited for the vehicle. They
16 described the vehicle as a Toyota Tundra, silver in color.

17 Q Did you happen to see a Toyota Tundra that was silver
18 in color?

19 A Yes, sir. The vehicle drove past me going north on
20 Montgomery, and at this point in time, I started to follow the
21 vehicle. And while behind the vehicle I was also able to get
22 the license plate and I relayed to everybody else. I was
23 listening.

24 Q Was anyone able to verify that, that in fact, was the
25 same car that they had asked you to look for?

1 A Yes, sir. The initial agent that I heard, Agent
2 Cogswell, he verified that that was indeed the vehicle. So at
3 this point, I continued.

4 Q Okay. You continued to follow the vehicle?

5 A Yes, sir.

6 Q You're along Montgomery, is that right?

7 A Yes, sir. Going north on Montgomery?

8 Q How long did you follow it?

9 A Total time, sir, maybe 5 minutes.

10 Q How far away - - how clear could you see it?

11 A The vehicle? The vehicle, sir, it was right in front
12 of me at one point.

13 Q Okay. Now, you're in an unmarked car?

14 A Yes, sir. I am.

15 Q Now, at some point though, you still did observe
16 something that you thought was a traffic violation?

17 A Yes, sir.

18 Q Describe that.

19 A Yes, sir. As we were traveling north on Montgomery
20 Street intersection with Gwinnett, the driver of the Toyota
21 Tundra went into the left-hand turning lane at Gwinnett. But
22 when the light turned green, the driver just continued straight
23 from the left-hand lane, in turn cutting off the driver that
24 was at the red light waiting for it to turn green. And the
25 driver of the Toyota Tundra, Mr. Notto, continued north on

1 Montgomery.

2 Q What you observed this improper lane change,
3 something along those lines?

4 A Yes, sir. Improper lane usage.

5 Q And you said actually cut off another vehicle?

6 A Yes, sir. It did.

7 Q And just so that I understand this part of
8 Montgomery, is it two lanes traveling northbound?

9 A I believe it's one lane, sir. And right when it gets
10 to Gwinnett it separates briefly into two, just enough for that
11 left-hand turn, sir.

12 Q Okay. So specifically that little separate lane is
13 designed solely for turning?

14 A Yes, sir.

15 Q Once you observed this, did you continue to follow
16 this Tundra?

17 A Yes, sir. I immediately relayed my observation and
18 the infraction and I continued north on Montgomery to follow
19 it.

20 Q Did any other officers follow?

21 A Yes, sir. With me I had other unmarked officers and
22 also officers in marked police units, sir.

23 Q And did any marked units affect a traffic stop?

24 A Yes, sir. - -

25 MR. CHISHOLM: Your Honor, at this point, I'm gonna

1 object to the officer reading at his report. I've given a
2 lot of latitude without raising this objection, but now
3 he's purely looking down reading, and I would prefer that
4 he testify from his memory.

5 THE COURT: Let me just give some instructions. I'm
6 sure that it's incredibly difficult to remember every
7 traffic stop you've ever made, and all that, but we have
8 to have you testify from you're independent recollection.

9 DEFENDANT: Yes, ma'am.

10 THE COURT: You're only allowed to refer to your
11 report to the extent that it refreshes that recollection.
12 If you're just reading from the report, I can't allow
13 that. But, if you then remember independently what
14 happened, you can testify

15 DEFENDANT: Yes, ma'am.

16 THE COURT: So, to the best of your ability, if you
17 can just testify based on what you remember, that would be
18 ideal for all of us.

19 DEFENDANT: Understood.

20 THE COURT: Okay.

21 DIRECT EXAMINATION BY MR. ABRAMS RESUMES:

22 Q I think we're at the part where marked patrol
23 vehicles might have affected your traffic stop?

24 A Yes, sir.

25 Q Do you happen to know which officer that was?

1 A I remember Officer Fikes (phonetic), and I believe,
2 Officer Knoop (phonetic).

3 Q Now, did you continue the investigation; did you stop
4 along with these officers?

5 A No, sir. After the vehicle was pulled over I
6 continued east on Liberty.

7 Q But you were able to verify that the vehicle that you
8 had been following was the same vehicle - -

9 A Yes, sir.

10 Q - - that got pulled over?

11 A It was.

12 Q All right. Did you happen to see the driver of the
13 vehicle when you drove past?

14 A Yes, sir. I did, briefly.

15 Q Do you see him in court today?

16 A Yes, sir. I do.

17 Q Can you point him out for me?

18 A Yes, sir. It's the gentleman with the green jumpsuit
19 on, sir.

20 MR. ABRAMS: The record will reflect that the Officer
21 has identified Mr. Notto.

22 Q Once you drove past the vehicle, did you have any
23 other involvement with the investigation of this case?

24 A No, sir. I did not.

25 MR. ABRAMS: I have no further questions.

1 THE COURT: Thank you. Mr. Chisholm?

2 CROSS-EXAMINATION BY MR. CHISHOLM:

3 Q Officer Castro, you indicated - - could you indicate
4 again - - again, where - - how did you become involved in this?

5 A I heard the radio traffic, sir, in reference to CNT
6 needing assistance to follow a vehicle.

7 Q Okay. Did you receive any other information as to
8 why you are providing assistance and following that vehicle?

9 A No, sir.

10 Q What were you looking for yourself when you decided
11 to follow?

12 A At that point in time, sir, I was just patrolling in
13 an unmarked unit.

14 Q Did you hear any additional traffic or any other
15 radio traffic indicating other vehicles were also following the
16 vehicle or should follow the vehicle?

17 A Yes, sir. I did.

18 Q What type of traffic did you hear?

19 A Just that CNT were trying to follow a vehicle going
20 north on Montgomery Street, sir. And at this point in time,
21 other unmarked units from CSU also got on the radio and advised
22 they would start coming towards that area to see if they could
23 help in the vehicle follow.

24 Q And why was it that so many vehicles were needed to
25 follow one vehicle?

1 A That's just how we do it, sir. We have to pass off
2 the vehicle that's being followed several times so that the
3 person we're following doesn't notice he's being followed, sir.

4 Q Okay. And so, where were you when you became
5 involved?

6 A I was in the parking lot of Island Breeze, sir, on
7 Montgomery Street or roughly 44th and Montgomery.

8 Q Okay. So that would be south of Victory Drive?

9 A Yes, sir. It is.

10 Q Two blocks, three blocks?

11 A One, one-and-a-half, something like that, sir.

12 Q Were you aware that there were also marked units that
13 became involved in the pursuit as well?

14 A In the follow, sir? Yes, sir.

15 Q And when did they become involved?

16 A They became involved at the same time -- Precinct 3
17 CSU, sir, we all became involved at the same time; however we
18 were spread apart. We were spread all over the precinct, so it
19 took us some time for everybody to get to that area.

20 Q So you're aware, aren't you, that the marked units
21 were called and because they were told that they need to affect
22 a traffic stop on the vehicle, isn't that correct?

23 A No, sir. It started initially as a call but because
24 we do this so much, sir, we knew eventually -- we knew
25 eventually that it would probably turn into a traffic stop,

1 sir.

2 Q So, you know, as far as when the vehicle was south of
3 Victory Drive, that it was going to be a traffic stop?

4 A More than likely, sir.

5 Q When you became involved you didn't see the vehicle
6 do anything that was suspicious or illegal or anything like
7 that, did you?

8 A Initially, sir, no.

9 Q Are you positive that information that went out to
10 the marked units was that they were going to be needed to take
11 down the truck or to stop the truck, at some point, as it was
12 traveling down Montgomery Street?

13 A I don't remember what they said - - what was said at
14 that point in time. It was a lot of traffic going on. The
15 only thing I focused on was the vehicle I was supposed to be
16 looking for, sir. I saw the vehicle and I followed that
17 vehicle. I verified the tags, they came back yes, that is the
18 tag, and I followed that vehicle, sir.

19 Q So approximately how many vehicles were following the
20 truck?

21 A As far as Precinct 3 CSU goes, sir, it would be two
22 unmarked vehicles and maybe three patrol vehicles, just from
23 Precinct 3 CSU.

24 Q And that was at the point where you are at 44 or so
25 and Montgomery, is that correct?

1 A Yes, sir.

2 Q And the truck was there at the time that all of these
3 vehicles were involved?

4 A The truck was going north on Montgomery passing
5 Island Breeze, yes, sir. But all the marked units, when we
6 follow a vehicle, sir, the marked units are not directly
7 involved in the follow, sir. They just drive parallel with us.
8 They are not behind the vehicle we are following.

9 Q Okay. And so, what did you see the vehicle do once
10 you got behind it?

11 A Sir, it continued north on Montgomery Street, sir,
12 until it came at the intersection at Gwinnett. When it made it
13 to the intersection at Gwinnett, initially the light was red.
14 The driver, Mr. Notto, went into the left-hand turning lane,
15 but then the light turned green, so he just continued straight
16 from the left-hand turning lane continuing north on Montgomery
17 Street, sir, through Gwinnett.

18 Q You indicated that there was also another vehicle in
19 that vicinity that was not a police vehicle, is that correct?

20 A There was a vehicle that was stopped at the red light
21 there, sir.

22 Q Where was that vehicle stopped?

23 A It was stopped at the intersection of Montgomery and
24 Gwinnett, north on Montgomery facing North at the red light.

25 Q And there are three lanes of traffic at that

1 intersection headed - - two lanes headed north and one lane
2 headed south, is that correct?

3 A Sir, from best I can remember, it's one lane going
4 north on Montgomery and just at the intersection there's a
5 left-hand turning lane, so...

6 Q Can you draw that on the board so I can follow a
7 little bit better?

8 A Yes, sir. I can.

9 (NOTE: Witness off stand.)

10 Q Sir, don't sit down yet?

11 A Okay.

12 Q So can you describe - -

13 A Okay, this would be Montgomery Street going north,
14 sir. This is Gwinnett. You have the red lights right here.
15 This would be Mr. Notto's direction of travel, sir. He was
16 traveling north on Montgomery. There was a vehicle stopped
17 right here at the red light, sir, uninvolved as well. Mr.
18 Notto went to the left-hand turning lane and then the light
19 turned green and all he did was continue north, sir.

20 Q And what was the vehicle you described as uninvolved,
21 what was it doing at the time?

22 A Well, sir, this vehicle was getting ready to move as
23 the light turned green. But when Mr. Notto went back to the
24 right, that vehicle had to slam on their brakes, sir, and Mr.
25 Notto continued north.

1 Q What did you do or where were you when that took
2 place?

3 A I would've been probably about here, sir. And Mr.
4 Notto would've been right here?

5 Q So, if the vehicles were both at a red light and they
6 left at the same time while with the other vehicle have to slam
7 on brakes, as you suggested if they left at the same time?

8 A Sir, the light was red and then the light turned
9 green, so Mr. Notto - - he was exact on the line, as you can
10 see he was just say a little bit behind. But both vehicles,
11 this vehicle was starting to take off already. Mr. Notto was
12 already in motion, so when he swung back over the vehicle - -
13 the driver had to slam on his brakes, sir.

14 Q And do you remember - -

15 THE COURT: Excuse me, just let me clarify. Is one
16 of those lanes to turn only lane, and if so, which one is
17 the turn only lane?

18 THE WITNESS: It would be this one right here, ma'am.

19 THE COURT: Okay.

20 THE WITNESS: Turning west on Gwinnett Street.

21 THE COURT: Okay. All right.

22 EXAMINATION BY MR. CHISHOLM RESUMES:

23 Q But isn't it true, Officer, that as you come up to
24 that intersection it's a single lane and it makes a very
25 strange and veer to the right in order to go straight down

1 Montgomery Street, isn't that true?

2 A Sir, at this point in time I can't remember?

3 Q You don't remember what the configuration - -

4 A I can't remember this exact intersection at this
5 point in time, sir, without looking at it.

6 Q And so, you really don't remember what that other
7 vehicle was doing when it came closer to that intersection and
8 how it got there?

9 A Sir, this vehicle was already stopped. As we were
10 coming north, this vehicle was already parked or standing at
11 the red light, sir.

12 Q When you say parked - -

13 A Well, stopped at the red light, sir.

14 Q Okay. Isn't it true that that vehicle made a right-
15 hand turn on Gwinnett Street?

16 A Sir, I have no idea.

17 Q So, you're not sure whether or not it was making a
18 right-hand turn or not?

19 A Sir, I have no recollection of that. I focused on
20 Mr. Notto and the infraction, sir.

21 Q But isn't it true, though, that that's important to
22 determining whether or not there was an infraction or not.
23 Because if he went around the vehicle that was going to the
24 right or that was stopped, then that would have been a
25 completely appropriate passage of that vehicle because the law

1 allows a vehicle to go around the vehicle, correct?

2 MR. ABRAMS: Your Honor, I'm just going to object to
3 the phrasing of that question. It was quite long and I
4 want to make sure the officer can answer it clearly.

5 THE COURT: Okay. You're asking about his knowledge
6 of the law regarding traffic, which I'll certainly allow.
7 If I understand your question, is it legal for someone to
8 move around a car who's taking the right turn to move into
9 a left turn only lane and then go straight, is that your
10 question?

11 I mean, based on the testimony that sounds - -
12 can you answer that question?

13 THE WITNESS: Yes, ma'am. Can I look at the report
14 for just a second just to get - -

15 THE COURT: Okay. Can he refresh his recollection
16 about the turning? I think you're asking him about that
17 and he saying he doesn't know, so - - it's up to you.

18 MR. CHISHOLM: Let me make sure that I understand
19 your response to the comment, Judge.

20 Q (Chisholm) You're saying that you don't remember what
21 happened when the vehicle was at the intersection and your
22 report has that information?

23 A No, sir. I just need to know the code section, sir,
24 because I read it that day. And from what I read from the Code
25 Section 40-8- - I don't remember the last number, it says the

1 left-hand turning lane is to turn left only, sir. And he
2 clearly got in the left-hand turning lane. I don't know why he
3 decided to go north. He just changed his mind or was that his
4 intention the entire time, I don't know. I only know that he
5 got in the left-hand turning lane. He indicated to go west,
6 but instead he went north.

7 Q When you said he indicated that he turned on the
8 signal indicating that he was going to turn left?

9 A Yes, sir. He did.

10 Q Did you put that in your report?

11 A No, sir. I did not.

12 Q And this is the first time that you've ever testified
13 to that, isn't that?

14 A Yes, sir.

15 Q So, now you don't remember what the turning lanes
16 were like that day; you said you would have to refresh your
17 recollection of that?

18 A Yes, sir.

19 Q Prior to today, you had no recollection of Mr.
20 Notto's vehicle having a light on indicating a left-hand turn,
21 correct?

22 A Yes, sir. The reason why I remembered it was because
23 during the follow they stated for a long period of time they
24 had no PC as of yet to pull over the vehicle. And, at that
25 point in time, I still didn't have PC because he indicated, but

1 then when he went straight that's when I said, okay, now we
2 have PC because he went straight in the left-hand lane, sir.

3 Q So, throughout the course of this drive, there was
4 discussion going on over the radio about the lack of PC, is
5 that what you're saying?

6 A Yes, sir.

7 Q And by PC you mean probable cause?

8 A Probable cause, yes, sir.

9 Q And so, now you're at the board and I'm asking you
10 questions about the direction of travel. You now, all of the
11 sudden, remember that there was a light - - a turn signal on
12 that truck, but you never said that previously?

13 A Yes, sir. Because Mr. Notto had been driving
14 correctly for the entire time, as far as I could remember,
15 especially since I was behind him, sir, and obeying all the
16 laws, all the traffic laws.

17 Q Now, you said that you would refresh your
18 recollection as to the charge that you alleged for the
19 violation that you allege that Mr. Notto made on that day.
20 Would you go to your report and refresh your recollection about
21 the truck?

22 A Sir, I just needed the number 40-6-48, because that
23 day, sir, I went and I read the code section, sir, to make sure
24 that we were right on the infraction, sir.

25 Q And so, when did you read that?

1 A Sir, it would've been that same day, sir.

2 Q After the - -

3 A 2013, yes, sir.

4 Q After the incident?

5 A Yes, sir. It was.

6 Q So, at the time you put out a call over the radio,
7 you weren't even aware of whether or not he had violated the
8 statute or not - -

9 A Sir - - .

10 Q - - and you had to read the code section later?

11 A No, sir. I was aware. I was just basically double
12 checking and verifying that we were correct.

13 Q Which is it, officer, because you just said a few
14 minutes ago that you had to get the code section after the fact
15 to determine whether or not there had been a code violation or
16 not?

17 A Sir, I didn't need the code section to determine if
18 there was a violation or not. It was just double checking what
19 we did, sir, that was it.

20 Q So, in order for there to be an improper lane usage
21 on that occasion, isn't it true that a driver can pass another
22 vehicle on the left-hand side as long as he does it - - he or
23 she does it safely, isn't that what the law says?

24 A Yes, sir.

25 Q And there was no problem with the safety at that

1 intersection, isn't that correct?

2 A Sir, he used the left-hand lane to go straight, sir.

3 Q Well, if the other vehicle was impeding traffic and
4 he needed to - - or he could go around it safely, wouldn't that
5 be permissible?

6 A Sir, the other vehicle was not impeding traffic, sir.
7 The other vehicle was stopped at a red light.

8 Q Well, you said they were traveling at the point that
9 they were at the red light, that he moved when the light was
10 green. And you didn't accuse them of running a red light, so
11 this was a situation in which there was a green light, is that
12 correct?

13 A Sir, the light was a stale red - - what we call a
14 stale red, which means it had been red. This uninvolved
15 vehicle had been parked there and then as we were coming up the
16 intersection the light turned green. So naturally this vehicle
17 will start to move, sir.

18 Q And so, but you don't recall whether or not that
19 vehicle was going to turn right or not, is that correct?

20 A No, sir. I don't recall.

21 Q Do you recall what the vehicle, in fact, did after
22 y'all proceeded through the intersection? Did it continue
23 north or did it turn right on Gwinnett or do you not know?

24 A I don't know, sir.

25 Q Okay. What happened after you went to the

1 intersection?

2 A We continued through the intersection, sir, north
3 until we made it to Liberty Street. Mr. Notto turned east on
4 Liberty Street, and at this point in time, Officer Fikes, in
5 the marked unit, they were finally able to catch up with the
6 vehicle that was being followed and they initiated a traffic
7 stop, sir.

8 Q Where was the traffic stop initiated on Liberty
9 Street?

10 A I believe it's just east of Montgomery as soon as
11 they made the right hand turn going east, sir, that's where Mr.
12 Notto pulled over. I couldn't tell you exactly how far in, as
13 far as the meters or feet or anything.

14 Q Do remember the cross streets?

15 A It would've been between Montgomery and the next
16 street east, somewhere about mid-block on the south side of the
17 street, sir.

18 Q So it was within the first block after Montgomery
19 Street, after you made the turn on liberty, that the police
20 stopped Mr. Notto's vehicle?

21 A Sir, I can't remember exactly - - exactly where this
22 vehicle was pulled over. I just remember it was on Liberty
23 Street east of Montgomery, sir.

24 Q And have you had an opportunity to refresh your
25 recollection from your report as to which street this took

1 place on?

2 A No, sir. I just know it was Liberty Street and I
3 continued east past - -

4 Q You're positive it was on Liberty Street?

5 A I believe it is, sir. I would have to look at the
6 report.

7 Q Do you remember what was around the vehicle when it
8 stopped? What it was near?

9 A I just remember there was other - - there were other
10 vehicles parked on the street, as well, sir. And he pulled
11 over - - I remember it was on the south side of the street and
12 that's it, as far as I can remember.

13 Q Was there anything unusual about his turn from
14 Montgomery Street onto Liberty Street?

15 A At that point in time, sir, I wasn't behind him. The
16 marked units had already passed me up on Montgomery Street, so
17 I was already behind just a little bit. So, I didn't even see
18 when he turned.

19 Q How long was it after the vehicle got onto Liberty
20 Street that you got there?

21 A I would say less than a minute, sir.

22 Q How far away is Oglethorpe Street from Liberty
23 Street?

24 A It would be the next block north, sir. I would say a
25 quarter-of-a-mile, maybe.

1 Q On the other side of the Civic Center?

2 A Yes, sir. On the north side of the Civic Center.

3 Q And you're saying that this took place on the south
4 side of the Civic Center?

5 A From what I can remember, sir.

6 Q What do you remember once you got up to the vehicle?

7 A Sir, it was stopped. I just drove past it and kept
8 going, sir.

9 Q And that was the extent of your involvement?

10 A Yes, sir.

11 Q Are you familiar with whether or not Mr. Notto ever
12 received any sort of citations for his travel down Montgomery
13 Street that day?

14 A Sir, I'm not sure. But I do believe he was cited for
15 the infraction at Gwinnett and Montgomery Street, sir.

16 Q Were there any other officers who saw that
17 infraction, other than you?

18 A Correct. I was the only one, sir. I was the person
19 behind him.

20 Q If there were so many vehicles in that vicinity with
21 the ability to stop the vehicle at Gwinnett and Montgomery, why
22 did it take so long to stop the vehicle?

23 A Sir, I was the only one behind him.

24 MR. ABRAMS: Objection. Calls for speculation, Your
25 Honor.

1 THE COURT: I'll allow it.

2 A Sir, I was the only person behind -- we were
3 staggered, sir. If this was Mr. Notto, I was maybe two or
4 three car lengths behind him. We had other marked vehicles
5 that were probably driving parallel on, let's say, MLK or
6 Jefferson, sir. So no patrol units were directly behind me,
7 sir.

8 Q Could you observe the vehicle as it was going down
9 Montgomery to Liberty or were you too far back?

10 A Sir, once the marked units got in front of me, sir, I
11 was pretty much obsolete at that point in time, so I didn't pay
12 any more attention.

13 Q And you couldn't see what was going on in front of
14 you?

15 A No, sir. I didn't. I didn't pay attention. That's
16 all.

17 MR. CHISHOLM: No further questions.

18 THE COURT: Anything else Mr. Abrams?

19 MR. ABRAMS: A couple of follow-ups.

20 RE-DIRECT EXAMINATION BY MR. ABRAMS:

21 Q You said you'd been an officer since, what, 2005 with
22 Metro?

23 A Yes, sir.

24 Q And have you made traffic stops in the past?

25 A Yes, sir.

1 Q Would you say you've made a lot of them?

2 A Yes, sir.

3 Q You're familiar with the traffic code?

4 A Yes, sir.

5 Q You know what you believe are violations when you see
6 them, right?

7 A Yes, sir.

8 Q And you've made arrests based on them?

9 A Yes, sir. I have.

10 Q You don't have the traffic code memorized though, I
11 would imagine?

12 A No, sir. I don't.

13 THE COURT: Let's try not to lead the witness too
14 much.

15 Q I think you had maybe mentioned that the reason that
16 you went and looked up the code section after the fact -- can
17 you just state what was the purpose of doing that?

18 A I just wanted to be sure, sir, that's all.

19 Q Okay. Being conscientious?

20 A Yes, sir.

21 Q Now, the vehicle that was stopped at the red light,
22 you said it had to slam on its brakes, right?

23 A It didn't have to slam, sir, but it had to tap its
24 brakes to stop.

25 Q Based on your observation of what took place, if it

1 had not put on its brakes would a collision have occurred?

2 A Yes, sir. It would have.

3 Q And if you were the officer who observed it, would
4 you have cited Mr. Notto?

5 A Yes, he would've been at fault, sir.

6 Q And you said Mr. Notto's left blinker was on - -

7 A Yes, sir.

8 Q - - when he was sitting at the light?

9 A Yes, sir.

10 Q Did he put his right blinker on when he cut off that
11 vehicle?

12 A No, sir.

13 MR. ABRAMS: I have no further questions, Your Honor.

14 THE COURT: Anything else, Mr. Chisholm?

15 RE-CROSS-EXAMINATION BY MR. CHISHOLM:

16 Q Officer, isn't it true when you go back on the other
17 side of Gwinnett there is no - - there's not two lanes, there's
18 just one lane, isn't that correct?

19 A If you're traveling which way on Gwinnett, sir/

20 Q North on Montgomery crossing Gwinnett?

21 A Sir, I do not know.

22 Q Well, let's assume there is only one lane on the
23 other side of Gwinnett, this would be a car lot over here, car
24 lot over there?

25 A Yes, sir.

1 Q And this is headed towards the Civic Center?

2 A Yes, sir.

3 Q If there was just one lane of traffic, there would
4 have been no need for Mr. Notto to put on the blinker - -

5 MR. ABRAMS: Your Honor, I object to assuming facts
6 not in evidence.

7 THE COURT: Let's let Mr. Chisholm finish his
8 question first, please. And then I'll hear your
9 objection.

10 So don't answer until Mr. Chisholm has asked the
11 question and then I'll hear the objection from the State.

12 Q (Chisholm) My question was, if there was just one
13 lane of traffic headed north of Gwinnett on Montgomery, there
14 would not have been any need for Mr. Notto to put on a right
15 turn signal, isn't that correct?

16 MR. ABRAMS: Objection, Your Honor. It assumes facts
17 not in evidence. It's hypothetical that's being posed to
18 the officer, not based on what he actually observed.

19 MR. CHISHOLM: Well - -

20 THE COURT: Okay. Well, let me just go back to the
21 turn signal; you testified a little bit ago, was that a
22 right turn signal or a left turn signal?

23 THE WITNESS: He used a left turn signal to get in
24 the left turn lane, ma'am.

25 THE COURT: All right. And did he leave on his left

1 turn signal until the light turned green?

2 THE WITNESS: The light turned - - he turned on the
3 signal, ma'am, he was getting in the eastbound lane. The
4 light turns green and instead he just continued straight.
5 He'd have to turn back, made a little right turn, and then
6 continued straight, ma'am.

7 THE COURT: Okay.

8 THE WITNESS: The left hand signal was still going
9 off.

10 THE COURT: So, we're in agreement that the left turn
11 lane at Montgomery going north at Gwinnett, is for left
12 turn only, that's what you testified to earlier?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: And he had on a left turn signal, you
15 just testified to.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Which would've taken him west?

18 THE WITNESS: Yes.

19 THE COURT: Right?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: Okay. So your testimony has been that
22 instead he went north, right?

23 THE WITNESS: Yes, ma'am.

24 THE COURT: And so, I think Mr. Chisholm's question
25 pertains to how many lanes there are going north on

1 Montgomery, is that correct?

2 MR. CHISHOLM: That's correct.

3 THE COURT: Okay. Do you know the answer to that?

4 DEFENDANT: I believe it's one, sir, but I'm not
5 hundred percent. I believe it's one.

6 RE-CROSS-EXAMINATION BY MR. CHISHOLM RESUMES:

7 Q As the vehicles come up to the light, and you said
8 there was -- you called the other vehicle the uninvolved
9 vehicle?

10 A Yes, sir.

11 Q It was in the right-hand lane, correct?

12 A Yes, sir.

13 Q And so, as he was coming up to the uninvolved
14 vehicle, he put on his light, his left signal as he was going
15 around that vehicle, correct?

16 A He was still continuing straight, sir. And then it
17 looks, from what I could tell, it appears as if he was going to
18 turn east so he turned on the left blinker and got in the left-
19 hand turning lane to take him west -- correction, to take him
20 west.

21 Q But if he's traveling north on Montgomery Street and
22 he wants the traffic behind him to know that he's going around
23 the uninvolved vehicle, the appropriate thing to do would have
24 been put on a left hand turn signal, correct?

25 A No, sir. They were stopped at a red light.

1 MR. ABRAMS: Objection, Your Honor. This is highly
2 speculative.

3 THE COURT: No. It's not just that. It's just from a
4 left turn lane going left on Gwinnett he wouldn't - -
5 nobody would turn on a right turn signal unless you're
6 trying to signal to the person that you're going to try to
7 merge into the traffic going north.

8 MR. CHISHOLM: No, this last time I said the left
9 turn signal because he indicated to you, in your
10 questioning, that Mr. Notto put on a left turn signal,
11 correct?

12 THE WITNESS: Yes, sir. He did.

13 THE COURT: Which would take him west, right?

14 THE WITNESS: Yes.

15 THE COURT: On Gwinnett?

16 THE WITNESS: Yes, ma'am.

17 MR. CHISHOLM: Well, what I was questioning him
18 concerning was whether or not he was going around the
19 vehicle to the left was the appropriate thing to do - -
20 was the appropriate thing to have done would be to turn on
21 the left signal indicating that you're going around the
22 vehicle.

23 THE COURT: I understand your question now, okay.

24 RE-CROSS-EXAMINATION BY MR. CHISHOLM FURTHER RESUMES:

25 A Yes, sir. That would have been appropriate thing, so

1 what the more appropriate thing would have been to do was to
2 stop behind the vehicle that was at the red light because that
3 vehicle was parked - - stopped at the red light - - had the
4 right away, sir.

5 Q But you indicated you don't know what that vehicle
6 was doing for sure.

7 A Sir - -

8 Q Whether or not it was taking a right or going
9 straight isn't that - -

10 A I just know it was stopped at the red light, sir.
11 That's all. So I don't know which way it was going.

12 Q And isn't that pretty important to know whether or
13 not Mr. Notto was safely maneuvering his vehicle around that
14 vehicle, to know where it was going next?

15 A Well, sir, I don't know what he was thinking, but I
16 can just tell you what I saw. And what I saw, it appeared as
17 he was going to go west. And I don't know - - because the
18 light turned green, it's quicker this way, maybe, I don't know
19 and then he decided to go north.

20 MR. CHISHOLM: I have no further questions.

21 THE COURT: Anything else of the witness?

22 MR. ABRAMS: No, Your Honor.

23 THE COURT: Officer Castro, thank you so much, and
24 you're excused now.

25 Any other witnesses from the State?

1 MR. ABRAMS: No, ma'am.

2 THE COURT: All right, so as to the Fourth Amendment
3 issue then it's -- the testimony its Officer -- I'll
4 never say his name, is Knoop?

5 MR. ABRAMS: Knoop.

6 THE COURT: Okay, Officer Knoop and Officer Castro.
7 And then, from the Defense standpoint, do you have
8 testimony to present with regard to the Fourth Amendment
9 issue?

10 MR. CHISHOLM: That's correct, Your Honor.

11 THE COURT: You do?

12 MR. CHISHOLM: Yes.

13 THE COURT: Call your witness.

14 MR. CHISHOLM: Officer -- excuse me, Mr. Johnson's,
15 who's in the lockup.

16 THE COURT: Bring Mr. Johnson out, please. He'll
17 need to be sworn so he'll need to stand at the podium.

18 (NOTE: Pause.).

19 THE COURT: Mr. Chisholm, you may proceed

20 WESLEY EUGENE JOHNSON WAS CALLED BY THE DEFENSE AND HAVING BEEN

21 DULY SWORN, TOOK THE STAND AND TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION BY MR. CHISHOLM:

23 Q State your name for the record, please?

24 A Wesley Eugene Johnson.

25 Q You need to speak up just a little bit louder so that

1 I can hear you a little bit better?

2 A Wesley Eugene Johnson.

3 Q And could you spell your first name, just for the
4 record?

5 A W-E-S-L-E-Y.

6 Q And are you the Wesley Eugene Johnson that was also
7 charged on the Indictment with the Defendant, Mr. Notto?

8 A Yes, sir.

9 Q I want to direct your attention - - well, before I
10 direct your attention to what happened at this incident, why is
11 it that you - - well, I had an opportunity to meet you in the
12 prison system. Were you aware that I was going to call you as
13 a witness today?

14 A Yes, sir.

15 Q And are you doing this of your own free will?

16 A Yes, sir.

17 Q Have you received any sort of promises or received
18 anything in return for your testimony?

19 A No, sir.

20 Q Have you been coached or told that you're to tell any
21 particular type of story or anything like that?

22 A No, sir.

23 Q Okay. Directing your attention back to October 2013,
24 when you and Mr. Notto were arrested. How did you become
25 involved with Mr. Notto just before you are arrested?

1 A Well, I called Mr. Notto and asked him could come
2 pick me up from work and take me home. He told me, yes, he
3 would come and get me, but he had to go get his medicine first.

4 Q Now, where were you working then?

5 A At my homeboy paint and body shop. His name Peanut.

6 Q Do you recall where that was located?

7 A 54th and Montgomery.

8 Q Can you describe a little bit where that body shop is
9 located relative to Montgomery, so the Judge will have a better
10 understanding of where you were and what that environment was
11 like.

12 A Okay. It's like right behind the laundromat and next
13 to the laundromat is like a beauty supply store, it sits
14 directly behind the beauty supply store, sir.

15 Q So is that on the parking lot side or is it on the
16 rear side of the business?

17 A The rear side.

18 Q And what time - - do you recall approximately what
19 time day or night it was that you called Mr. Notto to come pick
20 you up?

21 A Not exactly. It was daytime though. Not sure of the
22 exact time.

23 Q You mentioned it was clearly day.

24 A Yes, it was clearly day.

25 Q So, what happened after that?

1 A He came and got me. When he pulled up I already seen
2 the truck pulling up, so I came out the body shop, jumped in
3 the truck - -.

4 Q Where did he pull up?

5 A In the rear side.

6 Q And where was that in relation to where you were in
7 the paint and body shop?

8 A Directly in front of the door.

9 Q What happened after that?

10 A I went outside, jumped in the truck, and he proceeded
11 to pull off.

12 Q In what direction did he travel when he pulled off?

13 A He pulled off like on the side of the beauty supply
14 side, exiting out towards Montgomery Street.

15 Q And what happened when he got to Montgomery Street?

16 A He made a left-hand turn and proceeded down
17 Montgomery Street.

18 Q At that point in time, did you see any police or were
19 you aware of any police being in the area?

20 A No, sir.

21 Q What happened at Montgomery Street?

22 A That's when he advised me that he had to make a stop
23 to go get his medicine.

24 Q Did he tell you where he was going to stop to get his
25 medicine?

1 A No. He just said downtown somewhere.

2 MR. ABRAMS: Objection. All this is hearsay. He's
3 trying to get the Defendant's statements without having
4 the Defendant called himself.

5 THE COURT: Overruled. You can proceed, sir.

6 MR. CHISHOLM: Okay.

7 Q (Chisholm) I'm sorry, could you repeat your answer?

8 A He just headed down towards - - he just said downtown
9 side.

10 Q But the answer - - the answer to the question is
11 you're not really sure exactly where he had to get his
12 medicine?

13 A No, sir.

14 Q Did you stay on Montgomery Street for a while?

15 A Yes, sir.

16 Q Do you recall crossing Victory Drive?

17 A Yes, sir.

18 Q Did you see any police or anything like that in the
19 area when he crossed Victory Drive?

20 A No, sir.

21 Q What happened is, you are going down Montgomery
22 Street?

23 A We just kept going down Montgomery Street, talking
24 amongst ourselves.

25 Q Okay. When did you first discover that police were

1 behind you?

2 A Like right before we got to Whitaker, I guess, and
3 Liberty.

4 Q What happened when you got to Whitaker and Liberty?

5 A That's when he was like, the police coming up behind.
6 He said, I'm about to pull over so the police can pass us. But
7 as he was pulling over, I guess, the police pulled right behind
8 and he was like, the police pulling me over.

9 Q And what street were you on when the police pulled
10 you over?

11 A If I ain't mistaken its Liberty, sir.

12 Q Do you know where the Civic Center is on Montgomery
13 Street?

14 A Yes, sir.

15 Q So did this take place on the street before the Civic
16 Center or the street on the north side of the Civic Center,
17 closer to the courthouse?

18 A Northside, closer to the courthouse, sir.

19 Q So that was Oglethorpe Street?

20 A That's Oglethorpe.

21 Q It was on the street that was on the north of the
22 Civic Center is where you got pulled over, is that correct?

23 A Yes, sir.

24 Q And you made a - - what kind of turn did you make
25 when you got to the street that was north of the Civic Center?

1 A Right-hand hand turn, sir.

2 Q And how far down did you go on that street before you
3 were stopped by the police?

4 A Like I said, like right before we got to Whitaker.

5 Q Right before Whitaker?

6 A Yes, sir.

7 Q Okay. Now, I want to direct your attention back to
8 Montgomery Street. When you were going down Montgomery Street,
9 do you remember when you got in the area of the Kentucky Fried
10 Chicken?

11 A Yes, sir.

12 Q Are you familiar with that area?

13 A Yes, sir.

14 Q And the cross street there - - do you know the name
15 of that cross street?

16 A Gwinnett.

17 Q Do you recall anything happening when you were at the
18 corner of Gwinnett and Montgomery Street when you were in the
19 vehicle with Mr. Notto?

20 A No, sir.

21 Q Do you remember coming up to the traffic light?

22 A Yes, sir.

23 Q Can you tell the Judge what you remember about what
24 happened there?

25 A Yes, sir. We were pulling up to the light, the light

1 was already green. There was a car making a left-hand turn and
2 when it made a left-hand turn, Mr. Notto, he just kept
3 straight.

4 Q Do you remember anything else remarkable about
5 anything happening at that intersection while y'all were going
6 straight?

7 A No, sir.

8 Q Where were you seated in the vehicle?

9 A In the right-hand side in the passenger seat.

10 Q And where was the vehicle that was up at the traffic
11 light, where was it in relation to where you were sitting?

12 A On the left-hand side, sir.

13 Q You recall anything unusual happening with that
14 vehicle as it was to your left?

15 A No, sir.

16 Q I'm sorry, did you say left-hand or right-hand?

17 A Left.

18 Q So when you were sitting in the vehicle, it was on
19 your left-hand side?

20 A Yes, sir.

21 Q Okay. Did you see any vehicles on your right-hand
22 side?

23 A No, sir.

24 Q Do you recall, at any point in time, when you were
25 going down Montgomery Street, a car almost striking your

1 vehicle?

2 A No, sir.

3 Q Do you recall any cars having to come to a sudden
4 stop next to your door or anything around the side of your car?

5 A No, sir.

6 Q Are you sure about that?

7 A Yes, sir.

8 Q So, once you got onto the street that you said was
9 north that the Civic Center, what happened?

10 A We just proceeded down the street. And like I said,
11 that's when he said the police coming up. And I looked and he
12 looked and he, like, about the pullover so the police could
13 pass by, sir. But as we pulled over the police pull behind us
14 and he was like, the police pulling us over.

15 Q So what happened after the police pulled you over?

16 A The police officer got out, came to driver's door,
17 ask for IDs.

18 Q You can continue to talk?

19 A Oh, ask for IDs. And Mr. Notto gave'em his first and
20 then I gave mine and he proceeded back to the patrol car. And
21 I guess he went and ran, you know, the IDs and came back. By
22 the time he came back another officer was already at the, you
23 know, there was an officer at my door. And they asked Mr.
24 Notto to cut the truck off, so Mr. Notto cut the truck off. As
25 he was cutting the truck off, one of the officers already

1 opening the door telling Mr. Notto to step out the door. As
2 Mr. Notto was stepping out the door, that's about all I could
3 say because I was looking forward, straight ahead. So last I
4 heard, Mr. Notto say that you didn't find that on me, sir. You
5 didn't find that on me.

6 Q What happened as far as you are concerned and on your
7 side of the vehicle?

8 A I just kept looking straight ahead because, you know,
9 I done been through that situation before, so I know when you
10 go to move in this way and that way the police swear you're
11 doing something, you know, trying to hide something. So, I
12 just stayed looking forward.

13 Q Did the police ever talk to you or come to your door
14 or do anything on your side of the vehicle?

15 A They just came up and stood outside of it.

16 Q And what happened after that?

17 A After they got Mr. Notto out, then they open my door,
18 told me to step out. As I was stepping out they told me to
19 turn around and put my hands like on a - - inside of the door
20 jamb as I was stepping out, turn around backwards and step
21 down, and they handcuffed me.

22 Q What happened after that?

23 A And after that they would search me and that's when
24 they say, you recognizable, which you know, bulging out of my
25 privacy. That's when he went down there and found the

1 marijuana that I had on me.

2 Q Did you also - - did you have anything else in the
3 vehicle that the police discovered?

4 A Yes, sir. Two scales?

5 Q Where were the scales?

6 A One was in the, like, little glove compartment and
7 one was on the floorboard under the seat where I was sitting.

8 Q And how did those items get into the vehicle?

9 A I put them in there.

10 Q And where were they located in the vehicle?

11 A One was under the seat and one was in the glove
12 compartment.

13 Q And under which seat?

14 A The passenger seat where I was sitting.

15 Q Did, at any point in time, Mr. Notto have those
16 scales or did he possess them at any point in time?

17 A No, sir.

18 Q And those were your scales?

19 A Yes, sir.

20 Q Now, directing your attention back to what was
21 happening on the other side of the vehicle after Mr. Notto
22 stopped the vehicle. Did you ever see any controlled
23 substances, packages, or anything like that associated with Mr.
24 Notto?

25 A No, sir.

1 Q Well, describe for the Judge what you saw on the
2 driver's side of the vehicle, just so we're more clear on what
3 you did or did not see?

4 A Just Mr. Notto and a clean truck, sir.

5 Q Could you see anything that happened after Mr. Notto
6 got taken out at the interior of the truck?

7 A No, sir.

8 Q You indicated to the Court that you could hear some
9 things, what did you hear that was actually taking place
10 outside the vehicle?

11 A That Mr. Notto just kept saying, sir, you didn't find
12 that on me. Sir, you didn't find that on me.

13 MR. CHISHOLM: I have no further questions.

14 THE COURT: Mr. Abrams?

15 MR. ABRAMS: Thank you.

16 CROSS-EXAMINATION BY MR. ABRAMS:

17 Q Mr. Johnson, you pled guilty for possession of
18 marijuana with intent to distribute, right?

19 A Yes, sir.

20 Q In this case?

21 A Yes, sir.

22 Q So you had a bunch of weed in your private area, as
23 you described it, right?

24 A Yes, sir.

25 Q Now, you also - - were you on probation, felony

1 probation when the cop stopped the car?

2 A I was on parole too, sir.

3 Q You are on parole, okay. So, you were convicted in
4 CR11-0629 for felony obstruction, possession of marijuana with
5 intent to distribute, and possession of tools for the
6 commission of a crime. Is that what you are on parole for?

7 A Yes, sir.

8 Q You also been convicted in CR04-0142 for sale of
9 cocaine and trafficking cocaine, right?

10 A Yes, sir.

11 Q And then CR01-1602, also for possession of cocaine
12 with intent to distribute and possession of marijuana with
13 intent to distribute?

14 A Yes, sir.

15 Q So this case is your fourth felony conviction?

16 A Yes, sir.

17 Q All related to selling drugs, right?

18 A Yes, sir.

19 Q Except the felony obstruction, as well, when you got
20 arrested, I guess, on the felony case you're on parole for?

21 A Yes, sir.

22 Q Now, you got picked up from work - - what was the
23 street again, I can't remember?

24 A 54th and Montgomery.

25 Q 54 and Montgomery, okay. And from there you traveled

1 north on Montgomery all the way to - - you say Liberty or
2 Oglethorpe Street?

3 A Yes, sir.

4 Q Okay. How far is that, it's a few miles is the net?

5 A Yes, sir.

6 Q I mean, there's probably ten, fifteen traffic lights
7 between there, right?

8 A I guess so. I wasn't counting, sir.

9 Q But, I mean, there's definitely one at Victory,
10 right?

11 A Yes. You went past Victory.

12 Q There's one that light Anderson and Henry Street,
13 right?

14 A Yes.

15 Q I mean, you have been on that road before plenty of
16 times I imagine, right?

17 A Yes, sir.

18 Q And so, you can picture lots of traffic lights along
19 the way?

20 A Yes, sir.

21 Q What happened at the light at Victory and Montgomery
22 Street?

23 A I can't recall that, sir.

24 Q Oh, you can't recall that? Okay. How about
25 Montgomery and Anderson, what happened at that light?

1 A Montgomery and Anderson?

2 Q Yeah. Was it green? Was it red?

3 A I can't recall that, sir.

4 Q You don't remember that one either, huh? Anderson,
5 any of the traffic lights, just tell me out of all of the ones,
6 what happened?

7 A Just proceeded going downtown, sir.

8 Q Right. So the only traffic light you remember is at
9 Gwinnett and Montgomery, right? That's your testimony here
10 today. Out of all those blocks you remember one traffic light?

11 A No, sir.

12 Q I just asked you about all the others, you said you
13 didn't remember, you were just proceeding?

14 A You didn't ask me about all of them, sir.

15 Q What happened at Victory, how about that?

16 A I don't know what happened at Victory, sir.

17 Q You don't know that? What happened at Anderson?

18 A I don't know what happened at Anderson.

19 Q What happened at Henry?

20 A We kept going straight, sir.

21 Q Victory, was it red when you got there?

22 A I don't know, sir.

23 Q You don't know. Okay. Now, you said you didn't see
24 police when you were driving along, right? Until they actually
25 pulled you over?

1 A Yes, sir.

2 Q So you're just cruising along, right, not too worried
3 about anything, right?

4 A Right, sir.

5 Q Nothing happening at any of these lights that was
6 surprising to you, right? I mean, is that correct? Is that
7 fair to say?

8 A No, sir. I remember what happened at the light where
9 we turned at on Liberty or either Oglethorpe, sir.

10 Q Okay. That one, because you turned right and you got
11 pulled over, so it's kind of fresh in your mind, right?

12 A Yes, sir.

13 Q But you didn't know the police were pulling you over
14 because they had blue-lighted you or anything when you were at
15 Gwinnett and Montgomery, isn't that correct?

16 A Yes, sir.

17 Q Okay. But you specifically remember that there was a
18 car, you saw on the left of your vehicle?

19 A Yes, sir.

20 Q And it was a red light?

21 A No, I didn't say it was a red light, sir.

22 Q What was it? Was it a green light?

23 A Yes, sir. I said it was turning.

24 Q So you remember that intersection turning green? So
25 it was red turning green?

1 A No, it was already green, sir.

2 Q So the light was green - -

3 A Yes, sir.

4 Q - - when you got approached, okay. And you just kept
5 going straight?

6 A Yes, sir.

7 Q Just like you did on all the other blocks, right?

8 A Yes, sir.

9 Q But this one you magically remember?

10 A Yes, sir.

11 Q Did you talk about this exact one with Mr. Chisholm
12 when he interviewed you?

13 A Yes, sir. All of them.

14 Q Where did this take place? Where did he sit down
15 with you?

16 A Sir?

17 Q Where did he talk to you?

18 A Oh, when he came to see me, sir.

19 Q What, in prison?

20 A Yes, sir.

21 Q And you talked - - and that's your testimony here,
22 that this story that you're telling is completely yours, right?

23 A Yes, sir.

24 MR. ABRAMS: I have no further questions.

25 MR. CHISHOLM: Follow-up.

1 THE COURT: Okay.

2 FURTHER RE-DIRECT EXAMINATION BY MR. CHISHOLM:

3 Q Mr. Abrams, the Prosecutor, indicated to you or went
4 through your convictions and that you have a number of drug
5 convictions, is that correct?

6 A Yes, sir.

7 Q And you don't deny that you have been involved with
8 marijuana for years, is that correct?

9 A Yes, sir.

10 Q So are you familiar with the smell of marijuana?

11 A Yes, sir.

12 Q Was there the smell of marijuana in the vehicle that
13 you were in that day?

14 A No, sir.

15 Q Had anyone been smoking marijuana in the vehicle?

16 A No, sir.

17 Q How was the vehicle - - how was the marijuana that
18 was in your possession maintained while was in the vehicle?

19 A In two plastic bags, sir.

20 Q Was there any smell emanating from that bag?

21 A No, sir.

22 Q Are you sure of that?

23 A Yes, sir.

24 Q And you said you're familiar with the smell of
25 marijuana, is that correct?

1 A Yes, sir.

2 Q Did you see Mr. Notto smoking any marijuana while you
3 are in the vehicle?

4 A No, sir. He don't smoke.

5 Q Did you see him with any marijuana while you were in
6 the vehicle?

7 A No, sir.

8 Q Could you smell any marijuana coming from him while
9 you're in the vehicle?

10 A No, sir.

11 MR. CHISHOLM: I have no further questions.

12 MR. ABRAMS: No further questions, Your Honor.

13 THE COURT: Thank you, Mr. Johnson. You may go back
14 with the sheriff at this time.

15 MR. CHISHOLM: Your Honor, the Defendant has no
16 further evidence.

17 THE COURT: Yes, the witnesses excused.

18 MR. CHISHOLM: Thank you, Judge.

19 THE COURT: All right. So, that's the evidence on the
20 Fourth Amendment issue. Are we going to do the 404(b)
21 today? Do you want to go ahead or are you doing that by
22 proffer.

23 MR. ABRAMS: Yes, ma'am. We agreed to proffer, so if
24 the Court's willing to hear it, I'd be happy to go
25 forward.

1 THE COURT: Okay. And then we can have argument or I
2 can get the transcript and allow you to brief it, I mean,
3 either way. Oral arguments fine or getting the transcript
4 is fine, doesn't matter to me.

5 MR. CHISHOLM: I would prefer I would prefer the
6 transcript to (inaudible).

7 THE COURT: Sure. That would be fine. And so, you
8 want to go ahead and do the proffer on the 404(b).

9 MR. ABRAMS: Yes, ma'am. Do you want to allow them
10 the opportunity to speak very briefly, since the 404(b)
11 issue with Mr. Chisholm having prosecuted him in the past
12 or should we go forward?

13 THE COURT: Oh, yes. I do need to let you talk about
14 that Mr. Chisholm. Do we agree that that's a waivable
15 conflict or not?

16 MR. CHISHOLM: I would submit that it is waivable,
17 but I would like an opportunity to make sure he fully
18 understands what the issue is and the questions are.

19 THE COURT: All right. Let's take about a ten minute
20 recess then. And you can remain here in the courtroom,
21 you don't have to go back in lock up, and we'll give you
22 your privacy.

23 MR. CHISHOLM: Thank you.

24 (NOTE: Pause. Off record whereupon
25 case then resumes.)

1 THE COURT: Are we ready to proceed?

2 MR. CHISHOLM: Your Honor, I would ask that the Court
3 inquire on the record so that we are all clear what his
4 position is.

5 THE COURT: Sure. If you would stand, please, sir.
6 And I don't know that you were sworn previously.

7 MR. CHISHOLM: He was not, Your Honor.

8 THE COURT: Okay. Just stand in your place and raise
9 your right hand the best you can.

10 (NOTE: Defendant sworn.)

11 EXAMINATION BY THE COURT:

12 Q All right, Mr. Notto, if you remain standing I'm just
13 gonna ask you some questions and then the lawyers may have
14 questions as well. You are Fabian Notto?

15 A Yes, ma'am.

16 Q And, Mr. Notto, as far as I can understand, the State
17 seeks, in this case, to introduce, should the case go forward,
18 evidence of prior convictions. In one of those convictions Mr.
19 Chisholm was, in fact, the prosecuting attorney. You understand
20 that?

21 A Yes, ma'am.

22 THE COURT: I think that was the case in 1996 before
23 Judge Freeseemann, is that right?

24 MR. ABRAMS: Yes ma'am. It's an old case.

25 Q Okay. And, Mr. Notto, you obviously have the

1 opportunity to make a decision as to whether or not you want to
2 continue to have Mr. Chisholm represent you and you have the
3 right to choose your own lawyer. But your lawyer has an
4 ethical obligation, as well to the Court and to you, to
5 disclose any conflicts. And this has been disclosed here today
6 that there was this prior conviction that may or may not come
7 into evidence, you understand that?

8 A Yes, ma'am.

9 Q And you and Mr. Chisholm have had an opportunity to
10 discuss the fact that that may -- may come into evidence in
11 this case?

12 A Yes, ma'am.

13 Q You understand that you have the right to hire
14 another attorney if you want to?

15 A Yes, ma'am.

16 Q Do you want to continue with Mr. Chisholm's
17 representation of you?

18 A Yes, ma'am.

19 Q Knowing that potentially this evidence of this prior
20 conviction could come into evidence, should this case go to
21 trial, if you still want Mr. Chisholm to continue to represent
22 you?

23 A Yes, ma'am.

24 Q So the word waiver means you are giving up. That
25 means you're giving up your right to complain about Mr.

1 Chisholm later with regard to this particular issue do you
2 understand that?

3 A Yes, ma'am.

4 THE COURT: Questions from you, Mr. Chisholm.

5 MR. CHISHOLM: I have no questions, Your Honor.

6 THE COURT: Mr. Abrams?

7 MR. ABRAMS: No, ma'am.

8 THE COURT: Everyone is satisfied that Mr. Notto is
9 fully, knowingly, resolving this conflict by waiving in a
10 conflict of interest.

11 MR. ABRAMS: Yes, ma'am.

12 MR. CHISHOLM: That's right, Your Honor.

13 THE COURT: Okay. Thank you, Mr. Notto.

14 MR. ABRAMS: And I apologize for not having raised
15 this before, it just occurred to me. The other conviction
16 that I am intending to introduce, if the Court allows it
17 under 404(b), is the conviction that he is currently on
18 probation for that Mr. Chisholm was the elected District
19 Attorney. I don't know if that affects anything.

20 THE COURT: Well, you know, it's sort of late in the
21 day. We're gonna have to have a *Jackson-Denno* hearing in
22 this case. I need to rule on the Fourth Amendment issue,
23 we're gonna get the transcript. You'll be able to brief
24 it. We'll set a hearing date for the motion on the
25 *Jackson-Denno* issue and we can do the 404(b) then.

1 In the meantime, probably Mr. Chisholm, even though I
2 think the record is pretty clear here, just to make it
3 extremely clear, maybe you'll get a written waiver of a
4 potential conflict of interest from your client in that
5 regard.

6 And then, also, in the meantime I will have Public
7 Defender's Office see Mr. Notto about appointing in the
8 probation revocation hearing, which I don't anticipate
9 being a problem. And then they can also discuss whether
10 or not to stipulate to this record or whether or not they
11 want to have a full blown separate hearing. So we have
12 several steps we have to take before we get too much
13 further here. It doesn't usually take the court reporters
14 very long to take it transcript, so I would say - -

15 COURT REPORTER: I'll try to have it by next week.

16 THE COURT: Next week, okay. The State has the
17 burden so I would give you, say twenty days is enough.

18 MR. ABRAMS: Yes, ma'am.

19 THE COURT: Twenty days to file your brief and then
20 you'll have twenty days after you receive the State's
21 brief to file your response. So we'll calendar this case
22 for being ripe in about six weeks for ruling on the Fourth
23 Amendment issue. And I think I'll rule on that first
24 before we get you much further down the road.

25 Let's assign this then for - -

1 CASE MANAGER: February 17th?

2 THE COURT: No, that's too soon. Let's put it on the
3 motion hearing in late March.

4 CASE MANAGER: March 31st.

5 THE COURT: March 31st.

6 CASE MANAGER: At 1:30.

7 THE COURT: March 31st at 1:30 to have the 404(b) and
8 the *Jackson-Denno*, assuming that's necessary obviously.
9 The Fourth Amendment issue, I assume everybody would
10 agree, would be dispositive.

11 MR. CHISHOLM: Yes.

12 MR. ABRAMS: Well - -

13 THE COURT: Okay. It would be dispositive for the
14 State's case, obviously.

15 MR. CHISHOLM: Your Honor, I'm sorry is that - -

16 THE COURT: March 31st at 1:30 tentatively. That
17 would be for the 404(b) and the *Jackson-Denno*.

18 MR. CHISHOLM: I have one other question, just for
19 the benefit of Mr. Notto.

20 THE COURT: Sure.

21 MR. CHISHOLM: Do you have any idea on what the
22 timing would be, as far as the probation revocation
23 hearing?

24 THE COURT: Um - -

25 MR. CHISHOLM: Because his family is present and they

1 may have to do some thinking about whether or not there
2 are additional resources for (inaudible).

3 THE COURT: Here would be my question on that,
4 although I traditionally like to have the revocation
5 hearing prior to trial. Depending on - - the Fourth
6 Amendment issue be adverse to the Defendant in the case
7 proceeds to trial, then we could combine the revocation
8 and the jury trial rather than having a wholly separate
9 revocation. The only problem with that though is I'm
10 going to have to have somebody from the Public Defender's
11 Office sit with you Mr. Chisholm.

12 MR. CHISHOLM: I'm quite corroborative, Your Honor,
13 to work with.

14 THE COURT: All right. Well, that may be the most
15 judicially economical thing to do. Right now, I don't
16 think trial docket call's, I don't even have on this. It
17 would be May - -

18 CASE MANAGER: Yeah, it will be May 4th.

19 THE COURT: May 4th would be the first trial docket
20 call I would have. I don't have one in April. And that
21 would be for trials May 13th, 14th, 15th, and May 18th
22 through the 22nd.

23 So, if in fact, Mr. Notto's family wants to retain
24 counsel on the probation revocation, that would give them
25 until May to make - - well, we wouldn't have a hearing on

1 that until May, obviously. They could make a decision
2 after we have hearings on the other matters.

3 MR. CHISHOLM: But, we would still be moving forward
4 with him being reviewed or interviewed by the Public
5 Defender's Office.

6 THE COURT: Absolutely, yes. I'm going to have the
7 Public Defender's Office go out and talk to him.

8 MR. CHISHOLM: Thank you.

9 THE COURT: Anything else.

10 MR. CHISHOLM: No.

11 THE COURT: All right. Very good. Thank you.

12 CASE MANAGER: Keep the probation revocation
13 traveling along?

14 THE COURT: Just keep the case numbers traveling
15 along.

16 (NOTE: End of proceeding.)
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C E R T I F I C A T E

This is to certify that the foregoing sixty-two (62) pages of typewritten material were taken down by me and transcribed by me, and that the same contain a true and accurate transcript of the proceedings as stated in the caption.

I further certify that I am not of kin nor counsel to any of the parties hereto, nor am I an interested party to these proceedings.

This 30th day of March, 2015.

Andrea White

Andrea White, C.C.R.

Certificate Number-2611

Ellabell, Georgia



This document is a certified copy of the original document placed on record in the office of the Clerk of Superior Court, Chatham County, GA. Given under my hand and seal this 28 day of March 2018.

S. M. Niken

Deputy Clerk, S.C.C.C., GA