

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

UNITED STATES OF AMERICA * **CRIMINAL NO. 19-199**
v. * **SECTION: "S" (1)**
KENNIE SANTOS-PAYANO *
*
* * *

FACTUAL BASIS

Should this matter proceed to trial, the United States of America will prove the defendant, **KENNIE SANTOS-PAYANO ("SANTOS-PAYANO")**, guilty beyond a reasonable doubt of possession with intent to distribute five (5) kilograms or more of a mixture and substance containing a detectable amount of cocaine hydrochloride, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A). The United States would establish the following facts through credible testimony and the production of reliable evidence. Unless stated otherwise, the following acts occurred within the jurisdiction of the Eastern District of Louisiana.

On the evening of Wednesday, September 25, 2019, Louisiana State Trooper [REDACTED] [REDACTED] was parked facing eastbound on the right shoulder of Interstate I-12 in the eastbound direction, near mile marker 54 with the driver's side window down of his marked police car. Trooper [REDACTED] heard the sound of a vehicle driving over rubble strips. He turned and looked at the direction the sound was coming from and saw a silver sports utility vehicle ("SUV") driving to the left and then on top of the rubble strips on the left lane of the interstate in violation of Louisiana Revised Statutes Title 32, Section 79 ("La. R.S. 32:79"). In the trooper's experience, rumble strips are a safety feature used to alert inattentive drivers of potential danger. Out of concern for public safety, Trooper [REDACTED] decided to catch up to the SUV in order to

initiate a traffic stop. As Trooper [REDACTED] caught up to the SUV in the left lane, but before Trooper [REDACTED] could activate his emergency lights to initiate a traffic stop, the driver of the SUV abruptly drove into the right lane. Trooper [REDACTED] activated his emergency lights and the SUV pulled over near mile marker 55 and parked very close to the right fog line of the right lane shoulder of the interstate.

Trooper [REDACTED] then approached the SUV, which was a 2019 silver Jeep Cherokee with Florida license plate number [REDACTED]. Because the SUV was parked very close to the fog line of the right lane, for safety reasons, Trooper [REDACTED] approached the SUV from the passenger side. He instructed the driver, whose front right passenger side window was down, to move his car closer to the grassy area of the right shoulder. During the approach and encounter, Trooper [REDACTED] observed that the driver was the sole occupant and the driver had a minimal amount of belongings — a pair of jeans behind the driver and passenger seats, a McDonald's bag on the front passenger seat, and a phone hooked to a charger near the center console — with him in the vehicle. After Trooper [REDACTED] instruction, the driver drove forward, turned on his right rear blinker, and then his left rear blinker. He eventually backed up to Trooper [REDACTED] vehicle and parked closer to the grassy area.

The driver then got of the driver's side and approached Trooper [REDACTED] who was also getting out of his vehicle. The driver had on a pair of red gym shorts, a gray sleeveless t-shirt, white socks, and black flip flops. He was carrying paperwork in his hand as he approached the trooper. Trooper [REDACTED] introduced himself to the driver and asked him where he was from because he believed the driver may have been from a different state or country and possibly an inexperienced driver, thus explaining why he drove the way he did.

The driver told the trooper that he was from Florida, but when asked where he was originally from, he said he was from Puerto Rico. Trooper [REDACTED] asked him if he had a driver's license. As the driver produced his driver's license, he dropped the rental agreement he was holding, picked it up, and immediately started asking the trooper why he was stopped. Trooper [REDACTED] told the driver the reason for the stop. The driver admitted that he heard the noise his tires made as drove over the rumble strips, but he then maneuvered his vehicle in order to give the trooper some room on the highway.

The driver gave Trooper [REDACTED] his license and an Avis car rental agreement. Trooper [REDACTED] identified the driver as **SANTOS-PAYANO** and confirmed **SANTOS-PAYANO** rented the SUV. **SANTOS-PAYANO** put his hands in his pockets and the trooper told him to take his hands out of his pockets for safety purposes. As Trooper [REDACTED] reviewed the documents, **SANTOS-PAYANO** told the trooper that: a) He rented the SUV at the Orlando, Florida airport on Monday, September 23; b) he had the car for two days; and c) he was two days late on returning the rental. **SANTOS-PAYANO** said he drove to Louisiana to meet a friend. He then said it was a girl on Facebook, but could not provide an address or city in Louisiana nor any details of where he met her. During the conversation, **SANTOS-PAYANO** displayed signs of nervousness. When Trooper [REDACTED] asked him a simple question, his initial response was, "huh" indicating he was buying time in order to think of a favorable response. He kept repeating simple questions or acting like he did not understand simple questions to gain time to think, made limited eye contact, had voice pitch changes, consistent with nervousness, constantly put his hands in and out of his pockets after being asked not to do so, and continued to lift his shirt and reposition his shorts.

Trooper [REDACTED] then walked to the SUV for the second time and did not see any luggage. He asked **SANTOS-PAYANO** if he had any luggage or extra clothes since he had been on the

road for two days. **SANTOS-PAYANO** gestured that he was wearing all that he needed. Based on the information Trooper [REDACTED] observed during his interaction with **SANTOS-PAYANO**, he became suspicious that **SANTOS-PAYANO** was involved in criminal activity. Trooper [REDACTED] returned to his patrol car to review the expired rental agreement and provided dispatch with **SANTOS-PAYANO**'s driver's license information to conduct a driver's license and criminal history check. Meanwhile, K-9 Trooper [REDACTED], who was approximately a mile away from Trooper [REDACTED] during the traffic stop, arrived at the scene to assist Trooper [REDACTED] as Trooper [REDACTED] was reviewing the aforementioned documents inside his patrol car. While reviewing **SANTOS-PAYANO**'s rental agreement in his patrol car, Trooper [REDACTED] confirmed that **SANTOS-PAYANO** rented the car on September 23, 2019 and it was due back on September 24, 2019. Since the traffic stop occurred on September 25, 2019, the car was one day overdue to Avis. Trooper [REDACTED] also completed a consent to search form for the SUV.

Trooper [REDACTED] then got out of his car and asked **SANTOS-PAYANO** if he was responsible for everything in the car, to which Santos replied, "no." When asked if anyone asked him to transport anything illegal in his car, **SANTOS-PAYANO** replied that he did not want the trooper to search his car. Santos refused consent to search his car even before Trooper [REDACTED] could ask Santos for consent to search. Santos appeared nervous when speaking with Trooper [REDACTED] about his car. Trooper [REDACTED] asked Trooper [REDACTED], who was already at the scene, to have K-9 "Tessa" conduct an open air sniff of the exterior of **SANTOS-PAYANO**'s car. Tessa alerted to the presence of drugs in the car. During the open air sniff, **SANTOS-PAYANO** became verbally combative and loud. He became irate, grabbed his keys, locked the doors of his car, and later unlocked it. Dispatch notified Trooper [REDACTED] that **SANTOS-PAYANO**'s driver's license was in good standing. Trooper [REDACTED] then searched it and located two boxes on the rear

passenger floor board: One black and orange radio cardboard box behind the front driver seat and one black shoe box labeled “ALDO” behind the front passenger seat. Both boxes contained several brick-like packages which weighed approximately 8.5 kilograms and which tested positive for cocaine. **SANTOS-PAYANO** was arrested, transported to the police station, and issued a citation for improper lane usage.

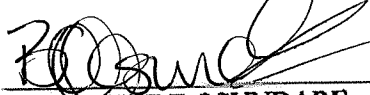
The government and **SANTOS-PAYANO** agree and stipulate that for sentencing purposes, **SANTOS-PAYANO** will be held responsible for five kilograms or more of a mixture and substance containing a detectable amount of cocaine hydrochloride.

At trial, the government would introduce the cocaine seized on September 25, 2019; laboratory report confirming that the substance found in the car **SANTOS-PAYANO** was driving was in fact cocaine; dash camera and body camera videos of the traffic stop; car rental records; and testimony of the state troopers and forensic chemist.

Limited Nature of Factual Basis

This proffer of evidence is not intended to constitute a complete statement of all facts known by **SANTOS-PAYANO** or the government, but rather is a minimum statement of facts intended to prove the necessary factual predicate for the guilty plea. The limited purpose of this proffer is to demonstrate that there exists a sufficient legal basis for **SANTOS-PAYANO**'s plea of guilty to the charged offense in Count 1 of the Indictment.

READ AND APPROVED:



MOBAYONLE OSUNDARE
Assistant United States Attorney

5-25-2021

Date



TOM HARANG
Counsel for Defendant

5.25.2021

Date



KENNIE SANTOS-PAYANO
Defendant

05/25/2021

Date

cc:

Anna Friedberg, Esq.

Co-Counsel of Record for Defendant, Kennie Santos-Payano