STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Cherokee County

H. Steven DeBerry, IV, Circuit Court Judge

NICHOLAS BONNER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2022-000085

APPENDIX
VOLUME III

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STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Nicholas A. Bonner, SCDC No. 290216 Applicant, v. State of South Carolina Respondent.	Case No. 2018-CP-11-00551 **ORDER GRANTING APPLICANT BELATED APPELLATE REVIEW PURSUANT TO *WHITE* V. *STATE* AND DISMISSING ALL OTHER CLAIMS WITH PREJUDICE**

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Nicholas A. Bonner on August 27, 2018. Respondent the State of South Carolina made its return and moved for a more definite statement on August 5, 2019. The Court convened an evidentiary hearing into the matter on Wednesday, August 4, 2021. Applicant was present at the hearing and represented by Attorney Susannah Ross. Assistant Attorney General William H. Ray of the South Carolina Attorney General's Office represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Attorney Candice K. Lapham, also testified virtually via the WebEx virtual platform.[1] The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records form the Cherokee County Clerk of Court's Office, Applicant's direct appeal records, and the pleadings. This Court has reviewed the pleadings and records before it, has heard the testimony, has observed the witnesses, and finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the September 2012 term of the Cherokee County Grand Jury for

[1] The parties consented to her testimony being provided virtually at the outset of the hearing.

trafficking in crack cocaine, more than 400 grams (2012-GS-11-00820) and trafficking in cocaine, more than 400 grams (2012-GS-11-00821). Applicant was represented by Attorney Candice K. Lapham and Assistant Solicitor Christopher M. Bain of the Seventh Circuit Solicitor's Office prosecuted the case. On April 24, 2017, Applicant proceeded to trial before the Honorable R. Keith Kelly and a jury. The jury found Applicant guilty of the lesser included offense of trafficking in cocaine, 28-100 grams, on April 27, 2017. Judge Kelly sentenced Applicant to imprisonment for a term of 20 years. Applicant filed a motion to reconsider the sentence and a motion for a new trial on May 5, 2017. A hearing on the motions was convened on May 19, 2017, and Judge Kelly denied the motions by written orders on May 30, 2017.

Applicant filed a notice of appeal. Applicant then filed a motion to remand the case to the circuit court to resolve the pending post-trial motions, on July 18, 2017. Respondent did not oppose Applicant's motion. The South Carolina Court of Appeals granted Applicant's motion and dismissed the appeal without prejudice on August 24, 2017. The Remittitur was issued on September 15, 2017.

Applicant filed an additional motion for a new trial and a hearing on the motion was convened on November 8, 2017 before Judge Kelly. Applicant was again represented by attorney Lapham, and the State was again represented by Assistant Solicitor Bain. By written order filed December 5, 2017, Judge Kelly denied the motion.

Applicant did not seek further appellate review of his conviction or sentence until the filing of this instant post-conviction relief action, wherein a portion of the relief sough is for belated appellate review of direct appeal claims pursuant to *White v. State*263 S.C. 110, 119, 208 S.E.2d 35, 40 (1974)

II. FACTUAL HISTORY

Testimony from Law Enforcement

On August 6, 2012, Prentiss Jeffries, a confidential informant for the Cherokee County Sheriff's Office ("CCSO"), told CCSO narcotics investigators Todd Parker and Brandon Gardner that a large shipment of cocaine had arrived at Applicant's house in Cherokee County. (Tr. 122-23; Tr. 140-44; Tr. 283-86; State's Trial Exhibit #2). Jeffries first agreed to work as confidential informant beginning in 2008, when he filled out, signed, and recorded his fingerprint on a written agreement after he was "busted with drugs at [his] father's house." (Tr. 115-17; Tr. 136-39; State's Trial Exhibit #1). Gardner, the lead investigator, obtained a search warrant based on Jefferies information. (Tr. 276-77). The search warrant was not immediately executed; instead, police waited until Jefferies called Parker, the controlling agent, to confirm the shipment had arrived at Applicant's house. (Tr. 282-83).

Gardner reached out to Mice Scruggs, a narcotics officer with the City of Gaffney Police Department, and the two put together a joint team between the county and city given the number of people anticipated to be present at the raid target. (Tr. 347-48). The team assembled, Nick Federico, a CCSO narcotics officer, formally executed the search warrant on August 6, 2012. (Tr. 201-03; Tr. 288-29; Tr. 347-48). During the search, law enforcement discovered cocaine in "Ronnie Littlejohn's front right pocket," approximately two ounces of crack cocaine in the oven, $13,084 in cash in the top drawer of the nightstand in the "left bedroom," $615 from the "[r]ight bedroom," and $1,250 in Applicant's front right pocket. (Tr. 203-08; Tr. 291-92; Tr. 294-98; Tr. 303-09). After some initial confusion—the first search hardly produced the large shipment that was expected—Parker was contacted by Jefferies, who clarified the shipment was across the street. (Tr. 310-11; Tr. 349, 2-6).

Ronnie Anderson, an officer then with the Gaffney City Police department,[2] secured the residence during the search. (Tr. 233-34). While on scene, Det. Parker advised him that Jefferies reported that Applicant's big drug shipment was across the street. Anderson then separately spoke with Jefferies, who repeated the tip. (Tr. 234-35; Tr. 244-47). Anderson obtained a search warrant that he signed in front of the magistrate. (Tr. 246-47). The police executed the search warrant and found a red duffel bag inside of a trash can under the carport which contained over 400 grams of cocaine and crack cocaine. (Tr. 209-10; Tr. 235, 11-15; Tr. 240-41; Tr. 249-50; Tr. 349-50). Applicant, and all others present in the house, were arrested at the scene. (Tr. 309, 6-15). Agitated "because [Eric Lattimore] wouldn't claim the drugs[,]" Applicant managed to shove Lattimore until the police broke up the confrontation and separated the two.[3] (Tr. 309-10). Lattimore was subsequently kept separate from the others for his own safety. (Tr. 310)

Applicant gave a statement to Detectives Garner and Scruggs, in which he claimed Lattimore came into the house looking for a scale on which he could weigh his crack cocaine, only to have the police immediately raid the house. (Tr. 319-20; Tr. 351-52). Attempts at DNA and fingerprint analysis on the containers for the drugs were not productive. (Tr. 417-34).

Testimony from the People in the House

Lattimore went to Applicant's home on August 6, 2012, to buy a couple of cigarettes and a beer. (Tr. 151-52). While there, Lattimore witnessed Applicant send a person to retrieve bags from across the street in order to provide drugs to "[s]ome dude from out of town[.]" (Tr. 152, 18-23). It was not the first time Lattimore had seen Applicant dealing out of his house. (Tr. 161-62). Applicant produced scales, weighed what Lattimore described as "some white stuff like cocaine,

[2] Anderson resigned after thirteen years with the Gaffney City Police Department. (Tr. 233, 10-17).

[3] Eric Lattimore was a lifelong acquaintance of Applicant's who was present at the scene.

crack cocaine[,]" and gave it to the out-of-towner. (Tr. 152-53; Tr. 159, 5-14). Applicant then directed his man to return the bag of drugs across the street. (Tr. 153, 3-4). The police raided the house shortly thereafter and arrested everyone present. (Tr. 159-60). While at the detention center, Applicant verbally abused Lattimore, and threatened to set him up to take the fall for the crime. (Tr. 164-65). Lattimore gave law enforcement a written statement consistent with his trial testimony. (Tr. 167-68).

Stephon Adams, another lifelong acquaintance of Applicant's, testified he was hanging out and smoking marijuana at Applicant's house when the police arrived. (Tr. 254-55; Tr. 257, 9-14). Adams, who majored in criminal justice at Limestone College, saw Applicant and Lattimore exchange something unidentified, and then saw crack cocaine weighed on a digital scale in Lattimore's presence. (Tr. 254, 14-23; Tr. 258-60) Applicant said "there go the cops[,]" and at least six people, including Adams, fled out the back door. (Tr. 255-56). Adams was apprehended and arrested for trafficking crack cocaine. (Tr. 256, 11-14). While the group, minus Lattimore, were transported in the police van, Applicant asserted to the group that the drugs belonged to Lattimore. (Tr. 260-61). Adams denied knowing anything about the drugs recovered from across the street. (Tr. 264-65). In a written statement, Adams indicated Lattimore arrived at the house already in possession of the drugs he sought to weigh. (Tr. 267-68).

Jarvis McCluney, who grew up with Applicant, was at Applicant's house smoking marijuana on August 6, 2012. (Tr. 378-80). McCluney denied much familiarity with drugs other than marijuana, but testified he saw Lattimore arrive and produce a hard, white substance from his pocket, and ask for a scale. (Tr. 381-82). McCluney reached for a scale and handed it to him. (Tr. 382-83). McCluney denied ever seeing an exchange of drugs, but explained Lattimore came to the door and called Applicant outside, after which Lattimore came in and asked for a scale. (Tr. 384,

1-19). Somebody yelled the police had arrived, and McCluney pocketed his scale and stepped through the door while Lattimore ran toward the kitchen. (Tr. 385, 17-22). At some point, McCluney saw an argument between Applicant and Lattimore over Lattimore's demands that all present stick the drugs on a 14-year-old juvenile. (Tr. 385-86). McCluney denied knowing anything about the drugs recovered from across the street. (Tr. 390-91). McCluney gave a statement to law enforcement largely consistent with his trial testimony, explaining that about 10 to 15 minutes passed between Lattimore's request for a scale and the raid. (Tr. 392, 15-23).

The Defense Case

Rodney Love, a friend of Applicant's for some twenty years, arrived at the house after the police had already raided the building and testified he saw law enforcement retrieve a red bag from the woods, then bring it back to Applicant's property. (Tr. 463-65). Love also testified he observed Ofc. Anderson leave with Lattimore in custody, then return around fifteen minutes later. (Tr. 468, 9-14). After Anderson returned, the whole of the raid team converged on the abandoned house across the street from Applicant; when they opened the trash can, they began to celebrate. (Tr. 468-69). Love also testified that Applicant did not live at the home, but rather lived with his girlfriend at a different address, but visited every day to see his mother, Gwen Bonner. (Tr. 471-72).[4] Love testified Applicant's mother would never let people smoke in the house due to her heart problems, and could not explain why drugs and marijuana were found in the house. (Tr. 473-74). Love also testified the nightstand in which the $13,000 cash was found was Gwen's "money drawer." (Tr. 487, 6-23).

Ronda Norris, Applicant's ex and mother to one of his children, testified Gwen "was like a mother to everybody in the neighborhood" and would not allow "this sort of activity" to take

[4] Gwen Bonner was deceased at the time of trial. (Tr. 494, 22-24).

place in her home. (Tr. 490-94). Norris also testified Applicant did not consume drugs and that she would not allow her children to be "around that environment, that situation[.]" (Tr. 495-96). Like Love, Norris could not explain why cigarettes were found on her bedside table, but offered that "Gwen Bonner wasn't home at the time" to explain the marijuana recovered from the home. (Tr. 499-500; Tr. 510, 16-19). Norris testified she pulled up at the house after the police had already raided the building and taken all present into custody. (Tr. 510-11).

Rodney Davidson, who knew Applicant since he was a child and is married to his cousin, testified Applicant was typically at Gwen's home with "[t]he whole family" every weekend. (Tr. 517-22). Rodney asserted Gwen would never allow drugs in her house, and was surprised to hear crack was found in the oven. (Tr. 523-34). Rodney was never present at the scene on the day of the raid. (Tr. 523, 11-16).

Shakeia Davidson, Applicant's first cousin and Rodney's wife, testified the house was Gwen's, and that people regularly gathered there for celebrations during her life. (Tr. 526-28). Shakeia was not at the scene the day of the raid, and was not aware of any family gatherings taking place at Gwen's home that day. (Tr. 527-29).

Daphine Bonner, Applicant's aunt, testified Applicant did not live at the home, but would visit every day. (Tr. 530-31). Daphine testified that although people would gather at Gwen's home very frequently, she would not allow parties to be thrown at her house in her absence. (Tr. 533-34). Daphine testified Gwen trusted banks, but when confronted with the $13,840 from the "money drawer," Daphine found nothing strange about it, explaining she also had such a drawer. (Tr. 534-35).

Todd Fernanders, a lifelong friend of Applicant's family, was returning home from bible school when he happened upon the raid, where he saw an officer recover a bag from city property

and drop it near a big tree near the property line between his sister's home and the raided house. (Tr. 546-50).

Latonya Smith, the older sister of one of the juvenile arrested in the raid, learned of her younger brother's arrest and promptly went to the scene with her mother and a cousin. (Tr. 573-74). After an emotional appeal, Federico and Gardner let them into the house to meet with the juvenile, who was handcuffed. (Tr. 574-76). While there, Smith learned that Lattimore had tried to pin the drugs on the juvenile. (Tr. 576-77).

Chris Bonner, Applicant's cousin, was sitting by the big tree when Lattimore arrived and asked him for a scale; Chris denied knowing anything about a scale and Lattimore went into the house. (Tr. 578-80). Chris did not see what occurred inside the house, and testified he never saw Lattimore and Applicant walk out. (Tr. 580-81). Chris denied it was common for people to come and go from the house buying and selling drugs, and testified he never saw Applicant involved in drug activity. (Tr. 581, 11-21). Chris was present and arrested during the raid. (Tr. 586-87). As the police brought everybody out of the house, Lattimore aid "put the drugs on the young guy, and [Applicant] hit him in his mouth." (Tr. 587, 6-11).

Applicant testified in his own defense. Applicant testified he was a "momma's boy," that he visited his mother every day, and that she had been in poor health with a heart condition, such that she could not be around any smoking. (Tr. 613, 8-15). Applicant listed his mother's home as his own on all of his paperwork in order to ensure that she received it. (Tr. 613-14). As to the money found in the house, Applicant testified his mother had worked for nearly forty years after inheriting the home from her own father, such that she was able to save up a large amount of cash. (Tr. 614-15). Applicant admitted to smoking marijuana, but only when he was younger. (Tr. 615, 13-20). On the day in question, Applicant testified Lattimore pulled up, apparently asked Chris for

a scale, and then came in and asked him "Nick, do you got a weed scale?" (Tr. 615-16). Applicant said no, and so Lattimore asked McCluney, who produced the scale. (Tr. 616, 7-12). Applicant testified that when he saw Lattimore's dope, he told them to leave, only to have law enforcement arrive and raid the house. (Tr. 616, 13-15). Lattimore fled towards the back door and threw his drugs in the oven, but found the back door was nailed shut. (Tr. 617, 3-17). On the way out, Lattimore insisted Applicant "put the drugs on the 14 year old[,]" which prompted Applicant to strike him and refuse the scheme. (Tr. 617-18). Applicant recalled after hitting Lattimore in the mouth, Ofc. Anderson asked why he hit his informant. (Tr. 618-19). Applicant explained the $2,500 in his pocket was from selling a four-wheeler to Gus Logan, who testified to the same. (Tr. 619-20).

On cross-examination, Applicant denied anybody smoked marijuana at the house due to his mother's bad heart, and noted the absence of "blunt roaches," or other paraphernalia in the pictures of the home. (Tr. 625, 15-23). Applicant denied knowledge about his mother's cash drawer, explaining he didn't "go rambling in her room." (Tr. 625-26). Applicant denied his mother smoked cigarettes, but that she did chew tobacco, and that she probably bought the cigarettes for her sister. (Tr. 626-31). As to the cash in the cash drawer, Applicant claimed he had been told it was $35,000, strongly implied the police had underreported the cash to steal it, and noted the allegations that Ofc. Parker stole and sold poker machines. (Tr. 631-34). Applicant also claimed no valid search warrant was served during the raid, and that Ofc. Federico "was reading blank pieces of paper[.]" (Tr. 634-37). Applicant gave a statement to law enforcement that Lattimore entered the home, asked for a scale, indicated his desire to sell his crack for $350, and that the police came right after. (Tr. 640, 12-19).

Nickcos Smith testified he was at the house when Lattimore entered and sat down next to him. (Tr. 697-98). A few minutes later, Ronnie Littlejohn entered and threw marijuana down on the table while Lattimore was looking out the back window. (Tr. 698, 7-11; Tr. 701, 6-14). Smith denied seeing anybody from North Carolina bring drugs to Lattimore. (Tr. 698, 15-18). Smith denied ever seeing Jefferies that day. (Tr. 698, 19-20). Smith also recalled Lattimore producing the crack and asking McCluney for the scale, and that Applicant told him to get out with the drugs. (Tr. 699-701). When the police raided the house, Lattimore threw his crack into the stove. (Tr. 699, 13-14). Smith affirmed his own nickname was "Pee Wee." (Tr. 701, 22-23).

DeeGee Bonner, Applicant's older sibling, testified Applicant visited his mother often and denied any drug transactions or other suspicious activity was taking place at the home. (Tr. 705-06). DeeGee explained the money in the drawer was her mother's savings, separate from her checking account. (Tr. 706-10). DeeGee denied ever seeing Applicant use, buy, or transport drugs. (Tr. 710-11).

Stacy Covington, Applicant's older sister, testified the home had belonged to Applicant's mother, and that she saved "like almost thirty some thousand dollars" in the drawer in her room. (Tr. 714-18). Covington denied ever seeing Applicant use, sell, or buy drugs. (Tr. 718-19). Covington testified their mother never allowed drugs in the house. (Tr. 726, 6-8).

III. CURRENT APPLICATION

In his initial *pro se* application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel, in that:
    a. "For failure to discharge her duty of due diligence to investigate the evidence, facts, and witness(es) in this case."
    b. "For failure to have a proper defense for physical evidence in this case."
    c. "For failure to have a valid strategy for trial."
    d. "For abandonment of her client during trial."

e. "Failure of counsel to properly and fully investigate the case"
f. "Failure of counsel to investigate the evidence and discovery, to make sure the informant "Prentice Jeffries" was registered with the South Carolina Law Enforcement Division, for a drug trafficking investigation. Investigator Brandon Gardner failed to register the informant "Prentice Jeffries", with "SLED", for this investigation. The Investigator Brandon Gardner is in violation of SLED Policy 13.30 "Use of Information in investigations." Furthermore, this investigation was unlawful and illegal.
g. "Counsel failed to challenge subject matter jurisdiction of the Petitioner's trial, pursuant to the Investigator's violation of Sled Policy 13.30, for this investigation. Furthermore, the Grand Jury was improperly influenced with tainted evidence and false testimony. Therefore, the trail court lacked jurisdiction to hear the case."
h. "Counsel failed to make a pretrial motion to suppress evidence out of the case By the narcotic investigator Brandon Gardner violating Sled Policy 13.30 and failing to register the informant "Prentice Jeffries" with "Sled", then came the improper influencing of the Magistrate judge with false testimony to sign a search warrant."
i. "Counsel failed to adequately investigate the alleged crime scene or the allegations so as to be prepared to present testimony through direct and cross-examination of relevant evidence related to the matter."
j. "Counsel failed to provide Petitioner with a copy of the discovery in the case, or spend adequate time with the Petitioner reviewing discovery with him."
k. "Counsel failed to interview or call as a witness a number of people who would have relevant information in this matter."
l. "Counsel failed to request a preliminary hearing so Petitioner could more adequately be informed about case."
m. "Counsel failed to challenge the testimony of the state's witness(es) and failed to adequately object and preserve objections to portions of the witness(es) testimony and failed to effectively cross-examine the witness(es) on their testimony."
n. "Counsel failed to properly and fully prepair Petitioner for testimony in the case."
o. "Counsel failed to challenge or move to quash the indictment, before the jury is sworn, that indictment is not sufficient."
p. "Counsel failed to file a motion on a fast and speedy trial violation. The Petitioner's Due Process rights were violated, pursuant to the five year delay for trial. During the wait, Petitioner lost certain witness(es), that could have testified on his behalf."

q. "Counsel failed to object to hearsay."
r. "Counsel failed to move for a pretrial motion for a directed verdict."
s. "Counsel failed to move for a mistrial when the informant "Prentice Jeffries" admitted that he had never seen the inside of Petitioner's house. Furthermore, at the first trial "Prentice Jeffries" admitted during testimony, that he was coached and paid by the state."
t. "Counsel failed to move for a directed verdict at the end of the entire case."
u. "Failure of Counsel to file a direct appeal. This is a due process violation."
v. "Counsel failed to put on the record the objection and ruling from a bench conference so as to preserve the issue for appellate review."
w. "Counsel failed to have the Petitioner mentally evaluated."
x. "Counsel failed to limit the state, or object to questions, on its cross examination of the Petitioner as to his testimony."

Applicant, through counsel, filed an amended application on February 28, 2020, and alleged the following allegations:

1. Ineffective assistance of trial counsel for
   a. failure to move to suppress the evidence;
      (1) US Const. 4th prohibits unreasonable search and seizure without a search warrant supported by probable cause;
      (2) Art. I Sec. 10 SC constitution prohibits unreasonable search and seizure without a search warrant supported by probable cause "and unreasonable invasions of privacy" and S.C. Code Ann. §17-13-140 allows warrant only upon affidavit establishing the grounds for the warrant or probable cause the grounds exist which identifies the property and place to be searched;
      (3) The affidavit contains misinformation and omits exculpatory information and should have been scrutinized under *Franks v. Delaware*; Exhibits #1 & 2
   b. failure to make a *Batson* motion after the state struck two of four black jurors in the jury pool; (R. p. 50)
   c. failure to object to leading (R. p. 124 p. 161-5, pp. 180, 181 p. 251-9); failure to renew objection to reference to prior bad acts (R. p. 90, pp. 160, 180, 181); failure to object to hearsay (R. p. 251-9),; failure to object to re-direct/cross beyond the scope (R. p. 132, p. 180-12, p. 251-9, p. 738, p. 743); failure to object to introduction of drugs as evidence (R. pp. 440 and 451);
   d. failure to effectuate appeal
   e. failure to request jury instruction or take exception to jury instructions, particularly the instruction on inference (R. p. 792);
   f. failure to object to verdict form;

e. failure to make reasonable closing arguments such as (1) where was witness Lattimore's father if he was at the house to see his father or (2) Prentiss Jefffries telling the truth about that his statement was a lie because why not put in the first warrant that cocaine was hidden in trash can across the street.

2. Due Process violations of rights guaranteed in the Fifth, and Fourteenth Amendments of the Constitution of the United States & Art. I Sec. 3 of the South Carolina Constitution because denial of a fair trial.

Applicant proceeded forward on the allegations raised in the amended application at the evidentiary hearing.

IV. FINDINGS OF FACT AND COCNLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. §17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State,* 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland.* First, Applicant must prove that counsel's performance

was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference

between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Suppress the Search Warrant

Applicant alleges that counsel provided ineffective assistance by failing to seek suppression of the drugs seized pursuant to the search based upon the search warrants. Specifically, Applicant alleges that counsel should have moved to suppress the drugs because the search warrant affidavit contained misinformation or omitted exculpatory information or constituted an unreasonable invasion of privacy. This allegation is without merit.

The Fourth Amendment does not permit police officers to obtain search warrants based on information that is knowingly and intentionally false, or offered with reckless disregard for the truth. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674 (1978). A criminal defendant seeking to challenge the fruits of search a search warrant must make a substantial preliminary showing of the falsity of the warrant affidavit, and also show that the alleged false statement was necessary to the

finding of probable cause. *Id.* Once such a showing is made the defendant is entitled to an evidentiary hearing where he must prove the statement was included in the search warrant affidavit knowingly and intentionally, or with reckless disregard for the truth. *Id.* If the warrant does not support probable cause with the false statements excluded, the fruits of the search must be excluded at trial. *Id.*

A defendant's challenge "must be more than conclusory and must be supported by more than a mere desire to cross-examine. There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof." *Id.* 438 at 171, 98 S.Ct. at 2684. The deliberate falsity or reckless disregard is only that of the affiant, not of any nongovernmental informant. *Id.*

Unlike the United States' Constitution, the South Carolina Constitution contains an express right to privacy provision in its article prohibiting unreasonable searches and seizures. S.C. Const. art. I, §10. This favors an interpretation offering a higher level of privacy protection than the Fourth Amendment. *State v. Forrester*, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (2001). While this provision provides a higher level of protection in the search and seizure context, it does not go so far as to require such rigid construction of a warrant that renders otherwise reasonable searches and seizures unlawful. *See State v. Sullivan*, 282 S.C. 522, 316 S.E.2d 404 (1984) (warning against overly technical readings of warrants that ignores the nature of the stated place to be searched and the objects to be sought). South Carolina law allows warrants to be issued only upon affidavit sworn to before a magistrate and establishing probable cause for the places to be searched and the persons to be seized. S.C. Code Ann. 17-13-140.

Officer Brandon Gardner testified that he was the lead investigator on this case and had obtained information about Applicant through Prentiss Jeffries, a confidential informant working

with Det. Parker. (Tr. 276-280). He met with both of them and Jeffries told him that he had seen marijuana at the residence, and that they were expecting a large shipment of cocaine at some point in the future. (Tr. 280-281). He obtained a search warrant, listing marijuana, but it was not immediately executed, as they were waiting for Jeffries to alert them when the cocaine arrived. (Tr. 281-282).

Officer Gardner was the only narcotics officer working when the call from Jeffries finally came, and he began to prepare a raid plan before realizing that the search warrant had expired. (Tr. 283). He alerted Det. Parker, who suggested calling Jeffries because "he saw marijuana there." (Tr 283, 18-19). They called, spoke to Jeffries on speaker phone, and were told that the shipment of cocaine had arrived, and that there was marijuana at the residence. (Tr. 284). They obtained another warrant for marijuana because the warrant would authorize them to "search anywhere where that particular drug would be." (Tr. 285, 2-9). Because marijuana can be stored in small bags, this allowed them to search "pretty much anywhere." (Tr. 285, 14-21).

Counsel did not move to suppress the fruits of the search prior to trial. She deliberately chose not to do so because her theory of the case was that the drugs did not belong to Applicant. Instead, her strategy was to present evidence that the drugs belonged to someone else, and to challenge the credibility of those who accused Applicant of being the true owner. She testified that there were issues with Det. Parker's credibility because he had been terminated shortly after the arrest on unrelated charges. She also stated that the issues with Prentiss Jeffries, Parker's confidential informant who supplied the information needed to obtain the warrant, were numerous; he was not at the home at the time, did not see the drugs, claimed he was coached and paid to provide the information, disagreed with all of the officers, and would testify that he lied when he implicated Applicant. Jeffries specifically stated that he provided the information *after* the search,

and she noted that she stressed to the jury that the warrant was not dated. She knew all of this going into the trial because the case had previously been tried and resulted in a mistrial. However, there was no evidence corroborating Jeffries's story.

Applicant testified that the search warrant giving rise to the search of his house listed marijuana as the item to be searched for and seized. The second warrant, which permitted the search of the trash can across the street, was the only one that listed cocaine. He stated that he asked counsel about the warrants and she told him that she "was good with warrants." He admitted that marijuana was found in the home, but asserted that the probable cause did not support a search for crack cocaine. He acknowledged that crack was found in the oven.

This Court finds that there is no reasonable probability that the outcome of trial would have been different had counsel moved to suppress the fruits of the warrant under *Franks* or the South Carolina Constitution. The only evidence suggesting that the warrant affidavit was mischaracterized is the testimony of Prentiss Jeffries. Such scant evidence would have been insufficient to suppress the drugs in this case. The determination would have come down to the credibility of the witnesses. Such questions are factual in nature and should be put before the jury for resolution, rather than the trial judge. This was precisely counsel's strategy for combatting the evidence seized pursuant to the search, and this Court finds no deficiency with counsel's performance in this regard.

Furthermore, the search revealed marijuana, consistent with the warrant, and the other drugs that Applicant was convicted of trafficking were found pursuant to that search in a place where marijuana could have been found. There is no reasonable probability that the drugs would, or should, have been suppressed had counsel made the purported challenges to the warrant's validity or the probable cause affidavit's truthfulness. Applicant's purported challenge on this basis

requires an overly rigid reading of the warrant and is not the sort of protection authorized by the South Carolina Constitution's right to privacy provision. Because such a challenge would have failed, there is no reasonable probability that the outcome of trial would have been different but for counsel's omissions, and he has not met his burden of proving prejudice.

Failure to Raise a Batson Motion

Applicant alleges that counsel failed to challenge the State's strike of two black jurors in the jury pool under *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712 (1986). This allegation is without merit.

A State denies a criminal defendant the equal protection of the laws when it seeks to purposefully exclude members of his own race from the jury. *Strauder v. West Virginia*, 100 U.S. 303, 25 L.Ed. 664 (1880). A defendant may establish a *prima facie* case of purposeful discrimination in selection of the petit jury solely on evidence concerning the prosecutor's exercise of peremptory challenges at the defendant's trial; to establish such a case, defendant must first show that he is a member of a cognizable racial group, that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant's race, and that the facts and any other relevant circumstances raise an inference that the prosecutor used that practice to exclude the veniremen from the petit jury on account of their race. *Batson*, 476 U.S. 79, 106 S.Ct. 1712. Once a sufficient showing is made, the trial court will move to the second step in the process, which requires the party opposing the challenge to provide a race neutral explanation for the challenge. *State v. Giles*, 407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014). Once this burden has been met, the process will proceed to the third step, at which point the trial court must determine whether the party asserting the challenge has proved purposeful discrimination. *Id.* The ultimate

burden always rests with the party asserting the *Batson* challenge to prove purposeful discrimination. *Id.*

The random strike sheet in this case indicates that the State struck two white males, a black male, and a black female. The State also seated two black females. In total, the jury, including alternates, was made up of two black females, five white females, and six white males. One of the black females stricken by the State shared the last name with two potential witnesses and stated that she had previously worked with other potential witnesses related to Applicant. (Tr. 27; Tr. 30).

Counsel stated that she herself did not want the two black jurors who were stricken to be seated based upon the way their demeanor. She noted that their body language and appearance gave the impression that they simply did not want to be there. She stated that half of the eligible black jurors were seated on the jury, and she did not see any basis for a *Batson* challenge. She stated that she would have made a *Batson* challenge if she thought it would have been successful.

This Court agrees with counsel that there was no basis for a *Batson* challenge in this case. Given that two black jurors were seated, and one of those excluded shared the last name of two potential witnesses, counsel could not have established the *prima facie* showing required of the proponent of such a motion. There is no evidence indicating that the State sought to exclude any black jurors from the jury based upon their race in light of the fact that other members of the same racial group were seated. Therefore, there is no likelihood that a *Batson* challenge would have been successful, and counsel was not deficient for failing to raise such an issue. Furthermore, there is no reasonable probability that the outcome of the trial would have been different if a *Batson* challenge had been made and the stricken jurors had been seated. Rather, based upon counsel's testimony that the two potential jurors in question appeared disinterested, it is possible that

Applicant would have suffered worse odds of prevailing at trial. As such, Applicant has not met his burden of proving prejudice from his counsel's performance. Therefore, this allegation must be denied and dismissed with prejudice.

Failure to Object to Leading Questions

Applicant alleges that counsel provided ineffective assistance when she failed to object to leading questions. Specifically, Applicant alleges that counsel should have objected to questions asked during the direct examination of Prentiss Jefferies, direct and redirect examination of Eric Lattimore, and redirect of Ronnie Anderson. These allegations are without merit.

Under Rule 611(c), SCRE, leading questions "should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony." When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, interrogation may be by leading questions. *Id.* The true test of whether a question is leading is whether it suggests the answer. *State v. Tyner*, 273 S.C. 646, 258 S.E.2d 559 (1979). A question which does not suggest an answer in the affirmative or negative is not a leading question. *Smith v. Union-Buffalo Mills Co.*, 100 S.C. 115, 84 S.E. 422 (1915).

The sections of the transcript cited in Applicant's amended allegations refer to the State's direct examination of Prentiss Jefferies, direct and redirect examination of Eric Lattimore, and redirect of Ronnie Anderson. The Assistant Solicitor and Jefferies had the following exchange after Jefferies claimed that he was coached by law enforcement into giving a statement that implicated Applicant:

Q: Okay. Does it make sense for law enforcement to coach a statement and not use the real name of the individual?
A: I mean, everybody go by nicknames. Ask them they say Toot-Toot and that's not my name.
Q: But if law enforcement coached you, wouldn't they use the real name?
A: They got to make it look true.

Q: So your testimony today is you were coached into writing this statement, is that correct?
A: Yes, sir.
Q: And for your cooperation on this case what did – what was your compensation?
A: Gave me money.
Q: Okay. Did you get money from the county?
A: I just know Ronnie Anderson is the one that gave me the money.
Q: Okay. You are pretty familiar with the surroundings at 126 Iris Lane, is that true?
A: Yes, I grew up around there. Yes, I know about the surroundings around there, yes, sir.
Q: Are you aware are there several – are there houses around that address?
A: There is plenty of houses. It's a big neighborhood.

(Tr. 124).

Eric Lattimore testified on direct examination that a typical day at Applicant's home was a "lot of guys smoking reefer and selling drugs." (Tr. 160). Lattimore clarified that many people would come and go from the home, staying just long enough to "get what they were going to get." (Tr. 160-161). Lattimore was asked directly if he had ever seen drugs in Nick Bonner's house when he had hung out there prior to the date in question. (Tr. 161, 5-6). He said "Oh, yes, sir." (Tr. 161, 7).

The State briefly questioned Lattimore on redirect after counsel's cross-examination. The testimony was as follows:

Q: Mr. Lattimore, did they find anything in your book bag?
A: A phone charger. A phone charger and a KFC box.
Q: Did they find any money on you?
A: I think 25 cents.
Q: Okay. And Ms. Lapham asked you about every time you went over there. I just want to clarify. You said you only been over there three or four times, is that correct?
A: Yes.
Q: Your testimony was every time that you were over there you seen a drug deal?
A: Yes.
Q: So on August 6th, 2012 did it surprise you to see crack cocaine in that house?
A: No, sir.

Q: And did it surprise you they found a substantial amount of crack and cocaine across the street?
A: No, sir, he cut what across the street, the big house. If you are going in Nick's house you, sit in the living room where he sits, you can look right out the window and see right there.
Q: Okay. And you testified earlier you have been convicted on drug charges, is that correct?
A: Yes.
Q: So are you familiar with different drug dealers in the community?
A: Yes, sir.
Q: Okay. Does people go over there to get drugs at Nick Bonner's house at 126 Iris Lane?
A: Yes, sir.

(Tr. 180-181).

Finally, Applicant cites counsel's failure to object to Ronnie Anderson's testimony on redirect as problematic. Anderson was asked "Prentiss Jefferies told you whose drugs those were, is that correct?" (Tr. 251, 9-10). Anderson responded with "Yes, sir." (Tr. 251, 11).

Little testimony was elicited from counsel about the specific questions at issue in this allegation. Counsel did state that the case had been tried previously and resulted in a mistrial, which essentially served as a practice run of the subject trial. She stated that she knew the trial court's position on many issues because of rulings made in the previous trial. She stated that she was hesitant to make certain objections because she did not want to frustrate the jury, which did not appear to be friendly to her client. She specifically recalled that there were some questions that may have been objectionable, but she did not object because she believed the testimony elicited may have actually supported Applicant's theory of the case. This Court finds that this strategy, particularly in regards to Jeffries's testimony, was objectively reasonable under the circumstances.

Furthermore, had counsel objected, there is no reason to believe the testimony elicited from the leading questions would not have come out after the State simply rephrased the question. The evidence of prior bad acts offered by Lattimore had been properly ruled admissible, and it would

have come in regardless of how it was asked. Applicant bears the burden of proving his allegations by showing that his counsel's representation was deficient, and that he was prejudiced. He has done neither with the claim that counsel failed to object to leading questions. Therefore, this allegation must be denied and dismissed with prejudice.

Failure to Renew Objection to Prior Bad Acts Evidence

Applicant alleges that counsel provided ineffective assistance when she failed to object evidence of Applicant's prior bad acts. Specifically, Applicant asserts that counsel should have objected to Eric Lattimore's testimony that he had previously seen Applicant dealing drugs out of the house. This allegation is without merit.

Evidence of a defendant's crimes, wrongs, or acts is generally not admissible. Rule 404(b), SCRE. South Carolina courts view a defendant's previous distribution of drugs as a prior bad act. *Id. See also State v. Bostick*, 307 S.C. 226, 414 S.E.2d 175 (Ct. App. 1992) (finding that testimony of a defendant's prior drug distribution acts constituted prior bad acts). A defendant's prior bad acts may nevertheless be admitted to show motive, identity, existence of a common scheme or plan, the absence of mistake or accident, or intent. *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).

Additionally, evidence of prior drug distribution must be clear and convincing before it can be admitted. *State v. Dickerson*, 341 S.C. 391, 399, 535 S.E.2d 119, 123 (2000). When the admissibility of prior bad acts evidence turns on the credibility of conflicting witnesses, it should not be excluded because credibility is an issue solely reserved for the jury. *State v. King*, 349 S.C. 142, 561 S.E.2d 640 (2002).

The record shows that prior to trial the Assistant Solicitor sought to admit Eric Lattimore's testimony that he had been to Applicant's house several times before this incident and had seen Applicant selling drugs. (Tr. 83-89). He argued that it was admissible as evidence of intent, the

existence of a common scheme or plan, and the absence of a mistake. (Tr. 90-91). He specifically focused on intent because aiding and abetting is an element of the offense, and repeated drug deals shows at least an intent to aid and abet the drug transactions. (Tr. 91-92). Finally, he argued that the evidence was admissible under *King*.

Counsel argued for exclusion of the testimony because the evidence was coming from a co-defendant. (Tr. 90). She asserted that Lattimore had not substantiated his testimony with any proof, and the prejudicial value of his testimony would far outweigh its probative value. *Id.* She asserted that he would need some form of substantiation of who may have bought or sold drugs to Applicant, which he did not clearly provide. (Tr. 92).

The trial court permitted the testimony, noting that generally prior bad acts are not allowed, but the probative value of Lattimore's testimony outweighed the risk of unfair prejudice on the issue of intent to aid and abet. (Tr. 93). The trial court stated that courts have generally allowed such testimony when it goes to an essential element of the charged offense. *Id.*

Eric Lattimore took the stand and testified that he had spent time at Applicant's house three or four times prior to this incident. (Tr. 160). He stated that a typical day at the house was "a lot of guys smoking reefer and selling drugs." *Id.* He stated that he had seen many crack and cocaine deals take place at Applicant's home every time he went there. (Tr. 161-162). Counsel did not object to this testimony. On cross-examination counsel questioned Lattimore on his prior convictions, the extent of his prior visits to the house, his actions on the day of the arrest, whether he brought the drugs in the house, why he was there that day, why he was the only one who mentioned a man from North Carolina, whether he could read his statement aloud, whether he was a co-defendant in the case, whether he was telling the truth, and whether he tried to pin the charges on a juvenile at the scene. (Tr. 171-180).

Counsel stated at the evidentiary hearing that she forgot to renew her objection to the prior bad acts evidence. She also stated that the trial court had ruled against her at both trials, and she knew the judge's position on the issue. She stated that she did not want to keep raising the issue, because continuously objecting would harm Applicant's image in front of the jury. Instead, she sought to focus her attention on cross-examination.

This Court finds that counsel's failure to object was not deficient, because the trial court properly determined that the issue with the prior bad acts came down to the credibility of the witnesses, which is a question to be resolved by the jury. The court's pretrial determination that the testimony was admissible indicates that her objection would have been overruled, and would have likely drawn attention to one of the crucial pieces of evidence showing that Applicant intended to aid and abet the drug transactions. To that end, the trial court's determination that the evidence was admissible was legally proper. Therefore, counsel's failure to object cannot be deficient.

Furthermore, there is no reasonable probability that the outcome at trial would have been different but for counsel's failure to object to this testimony. There is substantial evidence showing that Applicant was either selling drugs himself, or was aiding and abetting the drug transactions through the use of his mother's house. Large sums of money were found throughout the property and in Applicant's pocket. Furthermore, large amounts of drugs were found inside the home, outside the home, and across the street. Applicant likely would have been convicted even without Lattimore's prior bad acts testimony. Simple failure to preserve the issue for appellate review is insufficient to warrant post-conviction relief under these circumstances. In any event, it would not have made a difference on appeal in this case, because as stated above, the admission of the prior

bad acts evidence was legally proper. Applicant has failed to prove he was prejudiced. Therefore, the allegation must be denied and dismissed with prejudice.

Failure to Object to Hearsay

Applicant alleges that counsel provided ineffective assistance when she failed to object to hearsay testimony. This allegation is without merit.

Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Rule 801(c), SCRE. Trial counsel may be deficient for failing to object to hearsay testimony without a valid trial strategy. *Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018). However, trial counsel's deficient failure to object to such testimony does not remove an applicant's burden to prove prejudice. *Id.* 423 S.C. at 246, 814 S.E.2d at 493. Relevant considerations are the strength of the State's case apart from the inadmissible evidence to which trial counsel deficiently failed to object. *Id.* 423 S.C. at 246, 814 S.E.2d at 493-94.

Applicant cites counsel's failure to object to Ronnie Anderson's testimony on redirect as problematic. Anderson was asked "Prentiss Jefferies told you whose drugs those were, is that correct?" (Tr. 251, 9-10). Anderson responded with "Yes, sir." (Tr. 251, 11).

As mentioned above, counsel offered several explanations for her failure to offer objections at various points during the trial. Those explanations likely constitute a reasonable trial strategy under certain circumstances. Furthermore, prior to this question being asked, Ronnie Anderson testified that the basis for the search warrant were Prentiss Jeffries's statements to him that there was a large amount of cocaine at the house across the street from Applicant's home. This information was properly admitted because it would have both impeached Jeffries and would have shown the basis for the search warrant, rather than the truth of the matter asserted. There is no

probability that failing to object to the question later would have changed the outcome of the trial. As such, Applicant has not shown that he was prejudiced by counsel's failure to object to hearsay.

Applicant has failed to meet his burden of proving that his counsel was deficient, or that he was prejudiced on this basis. Therefore, the allegation must be denied and dismissed with prejudice.

Failure to Object to Examination Beyond the Scope

Applicant alleges that counsel provided ineffective assistance when she failed to object to redirect and recross examination that allegedly went beyond the scope of the testimony presented on cross or direct examination. Specifically, Applicant alleges that counsel should have objected to the redirect examination of Prentiss Jefferies (Tr. 132), the redirect of Eric Lattimore (Tr. 180, 12), the redirect of Officer Ronnie Anderson (Tr. 251, 9), the redirect of Officer Ronnie Painter (Tr. 738), and the redirect of Officer Tim Tate (Tr. 743). These allegations are without merit.

The scope of redirect examination rests within the discretion of the trial court. *State v. Stroman*, 281 S.C. 508, 316 S.E.2d 395 (1984).

The record shows the following from the cited pages: Prentiss Jefferies was questioned about the truthfulness of his statements; Eric Lattimore was asked about what was in his book bag; Officer Anderson was asked about who told him who owned the drugs; Officer Painter was asked about the drugs and money found in the house; and Officer Tate was asked if he recalled Eric Lattimore being held at gunpoint prior to being transported to the jail.

The record also shows that counsel questioned Jefferies about the statement he gave to police as a confidential informant and his motivation for providing conflicting testimony at trial. (Tr. 126 – Tr. 130). Counsel cross-examined Lattimore at length about his prior convictions, his previous visits to Applicant's home, and whether he had seen drugs at the scene, among other

questions. (Tr. 171 – Tr. 180). Counsel cross-examined Officer Anderson about his dealings with Jeffries, what was told to him, and his role in the investigation. (Tr. 248 – Tr. 251). Counsel cross-examined Officer Painter about where the money was recovered from the home. (Tr. 737). Counsel cross-examined Officer Tate about his recollection of Lattimore's transport.

Little testimony was taken at the evidentiary hearing on counsel's failure to object to these questions. However, counsel did state that she knew the court's position on many evidentiary issues because of her previous attempt at trying the case. She also stated that she often chose not to object to several questions because they provided information that she believed would benefit Applicant.

This Court finds that no objection to the redirect examination of the cited witnesses would have been sustained because the issues were all raised on cross-examination. In each instance cited, the door had been opened on cross-examination for further questioning on redirect. Therefore, each matter was directly at issue and the State's redirect examination was appropriate. Applicant has failed to prove that counsel's performance was deficient for failing to object to what is otherwise not objectionable. Furthermore, there can be no prejudice arising from counsel's failure to object because counsel stated that she wanted at least some of the testimony to come in, which was objectively reasonable under the circumstances. The Court finds that Applicant has failed to meet his burden of proving ineffective assistance of counsel on this basis. As such, the allegation must be denied and dismissed with prejudice.

Failure to Object to the Introduction of the Drugs as Evidence

Applicant alleges that counsel provided ineffective assistance when she failed to object to the drugs being introduced as evidence. This allegation is without merit.

The State introduced drug evidence through SLED Agents Maribeth McCormack and Lynn Black, who had tested the substances and confirmed that they were crack cocaine. (Tr. 440, 23-25; Tr. 451, 11 – Tr. 453, 8). Counsel did not object to the introduction of the drugs during the testimony of either witness.

Counsel testified that her defense strategy at trial was to argue that the drugs did not belong to Applicant. She was not trying to argue that the drugs did not exist. She did not object to them coming in on that basis. She also stated that she was generally aware of the court's position on the admissibility of evidence in this case due to the initial trial that had been declared a mistrial.

This Court finds that counsel's performance was not deficient in this case because the drugs were properly admitted and an objection to their introduction would have been overruled. The search of the premises and seizure of the drugs was made with probable cause, pursuant to a valid warrant. This Court can conceive of no basis, and Applicant has not sufficiently provided such, for exclusion of the drugs. Therefore, counsel's failure to object was objectively reasonable under prevailing professional norms.

Furthermore, counsel stated a valid, albeit partially unsuccessful, trial strategy for combatting the evidence. The theory was that the drugs did not belong to Applicant, not that they did not exist. Under that theory the State could have conceivably introduced a boat load of drugs into evidence, and if successful, Applicant would have nevertheless been acquitted. And to that end, Applicant was acquitted of the charge relating to the drugs found in the trashcan across the street from the scene, because the jury did not believe beyond a reasonable doubt that it belonged to Applicant.

Furthermore, this Court finds that the State presented strong evidence that Applicant, at the very least, was aiding and abetting the drug trafficking taking place within his mother's home.

There were large sums of cash found inside the home without a reasonable explanation of where it came from, and circumstantial evidence indicating that it belonged to Applicant. There was eyewitness testimony indicating that the drugs belonged to Applicant. There was eyewitness testimony that Applicant had previously engaged in drug deals at the same location. There was testimony from numerous police officers who indicated that a confidential reliable informant had told them the drugs belonged to Applicant. Nearly everyone who testified at trial acknowledged that there were drugs at the scene. Counsel's strategy to attack the credibility of the State's witnesses, rather than fight the introduction of the drugs as evidence was clearly reasonable under the circumstances. Applicant therefore cannot show prejudice because of the objectively reasonable trial strategy counsel was pursuing when she did not object to the drugs being introduced. As such, the allegation must be denied and dismissed with prejudice.

Failure to Effectuate a Direct Appeal

Applicant alleges that counsel provided ineffective assistance when she failed to effectuate his direct appeal. This Court agrees that Applicant did not knowingly, voluntarily, and intelligently waive his right to a direct appeal, and therefore grants his request for relief on this narrow issue.

Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. *Turner v. State*, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738 (1967). *Id.*

South Carolina's Appellate Courts have no jurisdiction to entertain appeals when the notice of appeal is not timely given and served. *White*, 263 S.C. at 119, 208 S.E.2d at 40. Nevertheless, if a PCR court finds that an applicant has been denied his right to direct appeal from trial due to counsel's errors, his request for post-conviction relief may be denied, but he may be permitted to

seek belated review of trial errors in conjunction with his appeal of the order dismissing his PCR application. *Id.*

Counsel testified that she initially did file and serve a notice of appeal. However, she moved to dismiss the appeal without prejudice and remand the case to the lower court to present several post-trial motions. She stated that medical problems prevented her from filing and serving a second notice of appeal once the post-trial motions were resolved. She claimed responsibility for the issue.

This Court finds that counsel's failure to timely file and serve the notice of appeal deprived Applicant of an opportunity to seek appellate review of his conviction. The testimony shows that he did not knowingly, voluntarily, and intelligently waive this right. Therefore, this Court finds that he is entitled to belated review of his conviction, pursuant to *White*, 263 S.C. 110, 208 S.E.2d 35.

Failure to Request or Take Exception to the Jury Instruction on Inference

Applicant alleges that counsel provided ineffective assistance when she failed to take exception to the jury instruction on inference. This allegation is without merit.

The facts must support a jury instruction for it to be proper. *State v. Crosby*, 355 S.C. 47, 584 S.E.2d 110 (2003). Jurors are presumed to follow the instructions of the trial court. *State v. Queen*, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). Further, South Carolina law dictates that jury instructions, when analyzed, must be considered in their entirety. *See Todd v. State*, 355 S.C. 396, 585 S.E.2d 305 (2003).

If the jury charge is reasonably free from error, isolated portions which might be misleading do not constitute reversible error. *Welch v. Epstein*, 342 S.C. 279, 536 S.E.2d 408 (Ct.App. 2000). The law to be charged to the jury must be determined by the evidence presented at trial. *State v. Harris*, 382 S.C. 107, 113, 674 S.E.2d 532, 535 (Ct.App. 2009). Mere presence is insufficient to

prove constructive possession. *State v. Tabory*, 260 S.C. 355, 364, 196 S.E.2d 111, 113 (1973). In order to prove constructive possession, the "State must show a defendant had dominion and control, or the *right to exercise dominion and control* over the [illegal substance]." *State v. Halyard*, 274 S.C. 397, 400, 264 S.E.2d 841, 842 (1980) (emphasis added). Further, the State may establish constructive possession by either circumstantial or direct evidence. *Id.* An instruction on constructive possession is not appropriate when drugs are discovered in a public area in which the defendant has no dominion or control. *State v. Fripp*, 397 S.C. 455, 725 S.E.2d 136 (2009).

South Carolina's Supreme Court has previously stated that "[t]he proper charge on constructive possession is to instruct the jury that the defendant's knowledge and possession may be inferred if the substance was found on premises under his control," and that the jury may accept or deny this inference of knowledge and possession depending upon its view of the evidence. *State v. Adams*, 291 S.C. 132, 135-36, 352 S.E.2d 483, 486 (1987). However, persons who are merely present and have actual knowledge of the drugs at the scene are not converted into possessors without evidence that they were providing some sort of assistance to the operation. *State v. Cheeks*, 408 S.C. 198, 758 S.E.2d 715 (2014).

Since Applicant's trial the Supreme Court has ruled that an instruction that the existence of evidence showing the defendant had control over the property does not equate to a finding of constructive possession. *State v. Stewart*, 858 S.E.2d 808, 811 (2021). This is problematic because it unduly emphasizes a piece of evidence and deprives the jury of its prerogative both to draw inferences and to weigh evidence. *Id*, 858 S.E.2d at 813 (citing *Burdette*, 427 S.C. 490, 503, 832 S.E.2d 575, 582 (2019)). However, challenges to jury instructions of this sort do not apply to convictions challenged on post-conviction relief. *Burdette*, 427 S.C. at 505, 832 S.E.2d at 583. (citing *Teague v. Lane*, 489 U.S. 288 (1989)) (holding that habeas corpus cannot be used as a

vehicle to create new constitutional rules of criminal procedure unless those rules would be applied retroactively to all defendants on collateral review through one of two exceptions: (1) the rule must place certain kinds of primary, private individual conduct beyond power of criminal law-making authority or (2) the rule must be an absolute prerequisite to fundamental fairness that is "implicit in the concept of ordered liberty.").

The jury instruction given regarding inference was in accord with the Supreme Court precedent at the time of Applicant's trial. The rule as it currently stands is not retroactively applicable in post-conviction relief proceedings. Therefore, Applicant's counsel was not deficient for failing to object. Furthermore, the jury instruction when read as a whole properly informs the jury as their role as the finder of fact, and the Judge also told the jury that he could not comment on the evidence in the case. Likewise, the jury was instructed that mere presence at the scene was not sufficient to prove possession. Uncontroverted testimony showed that Applicant either lived at the house or was frequently present to visit his mother, who was not present that day. Witness testimony also supports the jury's finding that he was selling, or at the very least, aiding and abetting the sale of narcotics from the house. Numerous individuals inside the home were found to be in possession of narcotics, paraphernalia and large sums of cash were found in the home and on Applicant's person, Eric Lattimore stated that Applicant was responsible for the operation, and police claimed that they were informed of the operation through Prentiss Jeffries. This is sufficient to support the jury's finding that Applicant was in constructive possession of the crack found in his oven. As such, there is no reasonable probability that the outcome of the trial would have been different had Applicant's counsel objected to the jury instruction on inference. Applicant has failed to meet his burden of proving he was prejudiced. Therefore, the allegation must be denied and dismissed with prejudice.

Failure to Take Exception to the Verdict Form

Applicant alleges that counsel provided ineffective assistance in failing to take exception to the verdict form.

Any verdict form given to a jury for use in a criminal case must specifically include "not guilty" as an option. *State v. Covert*, 382 S.C. 205, 675 S.E.2d 740 (2009). A jury charge may not cure a verdict form that lacks a "not guilty" option. *Id.* (overruling *State v. Myers*, 344 S.C. 532, 544 S.E.2d 851 (Ct. App. 2001)).

Counsel testified that the verdict form contained both guilty and not guilty options next to each indictment. She stated that the form was not confusing to her, and noted that Applicant was not convicted of the charge relating to the large amount of drugs found across the street. She also stated that the verdict forms used in this trial were the same as the ones used in the first trial that resulted in a hung jury.

The verdict form was not introduced at the evidentiary hearing. However, the trial court described its appearance, and explained to the jury that the verdict forms were standard forms used in every case. (Tr. 796). The form consisted of three pieces of paper with the case caption. *Id.* The first sheet read "[W]e, the jury, unanimously find the defendant Nicholas A. Bonner on the charge of trafficking in crack cocaine more than 400 grams not guilty or guilty." *Id.* The second sheet indicated that it was only to be answered if the answer on the first sheet was "not guilty," and it stated that "[W]e, the jury, unanimously find the defendant Nicholas A. Bonner on the charge of trafficking in crack cocaine from 100 to 200 grams not guilty or guilty." (Tr. 796-797). Finally, the third sheet again indicated that it was only to be answered if the answer to question was "not guilty," and stated that "[W]e, the jury, unanimously find the defendant Nicholas A. Bonner on the charge of trafficking in crack cocaine between 28 and 100 grams guilty or not guilty." (Tr.

797). Each sheet contained a box to check for each option. (Tr. 797). Two additional sheets were provided for the other indictment, which appeared functionally identical to the previously described forms.[5] (Tr. 797-798). The court stressed that the jury could find Applicant guilty of both, not guilty of both, or guilty of one and not guilty of the other. (Tr. 799).

This Court finds that the verdict forms were appropriate in this case. The description given by the trial court indicates that they each expressly contained the option of "guilty" or "not guilty" for each offense Applicant was accused of committing. This is legally sufficient, and therefore counsel was not deficient in failing to take exception to them. Furthermore, the jury foreperson had been presented with the verdict forms twice, once at the previous trial which ended in a hung jury, and again at the subject trial where Applicant was convicted. There is no indication that any questions were ever raised, either by the parties or by the jurors, about how the jury should appropriately indicate its verdict. Counsel's testimony that she did not see anything objectionable about them is illustrative. Because the forms were proper and there is no evidence indicating that the jurors were confused, this Court finds that Applicant was not prejudiced whatsoever by counsel's failure to take exception to their form. Therefore, the allegation must be denied and dismissed with prejudice.

Failure to Make Reasonable Closing Arguments

Applicant alleges that counsel provided ineffective assistance in failing to make reasonable closing arguments. Specifically, Applicant asserts that counsel should have questioned Prentiss Jeffries's story about visiting his father because his father was not present at the scene, as well as questioned the veracity of his statements to law enforcement because the original search warrant

[5] The trial court did note to the jury that there was a typo on the second set of verdict forms, which included the name "Bruce." This was a result of an oversight from the standard forms used to produce the verdict forms in this case.

did not indicate that the large quantity of drugs was located across the street. This allegation is without merit.

The right to effective assistance of counsel extends to closing arguments. *Yarborough v. Gentry*, 540 U.S. 1, 5, 124 S.Ct. 1, 4 (2003). Nonetheless, counsel has wide latitude in deciding how best to represent a client, and deference to counsel's tactical decisions in closing presentation is particularly important because of the broad range of legitimate defense strategy at that stage. *Id.* 540 U.S. at 6, 124 S.Ct. at 4. Closing arguments should "sharpen and clarify the issues for resolution by the trier of fact," but which issues to sharpen and how best to clarify them are questions with many reasonable answers. *Id.* (citing *Herring v. New York*, 422 U.S. 853, 95 S.Ct. 2550 (1975)).

When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he did so for tactical reasons rather than through sheer neglect. *See Strickland,* 466 U.S. at 690, 104 S.Ct. at 2052 (counsel is "strongly presumed" to make decisions in the exercise of professional judgment). Even if some arguments would unquestionably support the defense, it does not follow that counsel was incompetent for failing to include them. *Gentry,* 540 U.S. at 7, 124 S.Ct. at 5.

Counsel testified that she attempted to tie together all issues that could be considerably support a reasonable doubt in her closing argument. This meant challenging the credibility of law enforcement, pointing out inconsistencies in the stories of witnesses, and targeting Lattimore specifically. The trial transcript shows that counsel acknowledged that drugs were found but pointed out that only Eric Lattimore, a drug criminal in his own right, said they belonged to Applicant. (Tr. 766-767). She claimed that he did so because they were Lattimore's drugs. (Tr. 769). She described the State's case as an insinuation that Lattimore was kept separate from the

other defendants while they concocted a plan to place the blame on him. (Tr. 769). She explained her theory that Lattimore was the centerpiece of the entire crime, the one who attracted the police attention, and the one who placed the drugs in the stove. (Tr. 771-772).

Furthermore, she highlighted that Prentiss Jeffries was not placed at the scene and claimed to have not given his statement to the police until days later, after being paid. (Tr. 767). She questioned why the records for the cell phone Jeffries used to communicate with police were not produced. *Id.* She attacked the credibility of Det. Parker, who was under investigation for unrelated crimes at the time of the arrest. (Tr. 767-768). She suggested that Applicant did not live in the house, but rather visited frequently because it was his mother's home. (Tr. 768-769). She described the police raid as an attempt to take Gwen Bonner's money, and described Applicant as someone who was selling his possessions to take care of his children. (Tr. 770-772).

Applicant has failed to meet his burden of showing that counsel's performance was deficient for failing to put forth reasonable closing arguments. Instead, this Court finds that counsel's closing argument was objectively reasonable under the circumstances. The argument placed crucial questions regarding witness credibility and the strength of the State's case before the jury. The fact that counsel did not go further in targeting Lattimore's testimony to show additional inconsistencies is immaterial, as it would have redundantly questioned his credibility. Counsel thoroughly covered the issue, and clearly framed his credibility as central to the jury's deliberations. Nevertheless, the jury bought Lattimore's version of events, and found Applicant guilty of trafficking the drugs found inside the house. Given that the argument counsel provided sufficiently scrutinized Lattimore's testimony, there is no reasonable probability that the outcome at trial would have been different but for counsel's failure to raise two additional, repetitive

arguments. As such, Applicant has failed to show he was prejudiced by counsel's performance. Therefore, this allegation must be denied and dismissed with prejudice.

Due Process Violation

Applicant alleges a denial of due process of law. Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make even a *prima facie* showing that his due process right to a fair trial were violated in ways other than those explained elsewhere herein, this application for post-conviction relief must be denied and dismissed with prejudice.

V. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 15 **day of** December **, 2021.**

H. Steven DeBerry IV

H. STEVEN DEBERRY, IV
Presiding Judge
Seventh Judicial Circuit

Florence, South Carolina

ALAN WILSON
ATTORNEY GENERAL

December 21, 2021

The Honorable Brandy W. McBee
Cherokee County Clerk of Court
P. O. Box 2289
Gaffney, SC 29342-2289

Re: **Nicholas A. Bonner, #290216 v. State of South Carolina**
2018-CP-11-00551

Dear Ms. McBee:

Enclosed please find the original Order Granting Applicant Belated Appellate Review pursuant to White v. State and Dismissing All Other PCR Allegations signed by the Honorable H. Steven DeBerry, IV, in the above-captioned case for filing in your office.

In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

William H. Ray
Assistant Attorney General

WHR/geh

cc: Susannah Ross, Esquire (via email)

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	)	IN THE COURT OF COMMON PLEAS FOR THE 7TH JUDICIAL CORCUIT
NICHOLAS A. BONNER, APPLICANT,	)	CASE NO. 2018-CP-11-00551
VS.	)	MOTION TO ALTER OR AMEND THE JUDGMENT
STATE OF SOUTH CAROLINA, RESPONDENT.	)	

COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SCRCP, to alter or amend the judgment of this Court filed on December 23, 2021, and received by the Applicant January 5, 2022. The Applicant takes issue with findings of fact and conclusions of law regarding allegations of ineffective assistance of counsel in the Court's Order Granting Applicant's Request for a Belated Appeal Pursuant to *White v. State* and Dismissing All Other PCR Claims with Prejudice. He further argues that while each allegation may not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 386 S.E.2d 624, 625 (1989).

Regarding the allegations of ineffective assistance of counsel for failing to move to suppress the search warrants and failure to object to the introduction to the drugs at trial, the Order states the trial attorney deliberately failed to make a pretrial motion for suppression or object to the introduction of the drugs during the trial because her strategy was to present evidence that the drugs did not belong to the Applicant. (Order pp. 17 &

30). This is not a valid strategy in this trafficking case as it fully based on evidence found pursuant to a search warrant. If the pretrial motion was lost, the defense that the drugs did not belong to the Applicant was still readily available. The jury would have had no inkling of the defendant's efforts to assert his constitutional rights and suppress the drugs used against him other than a valid objection when the drugs were put in evidence. (Tr. 440). An effective defense in this case required a pretrial challenge to the constitutionality of the search warrant because it would result in the outright dismissal of the case or the preservation of a meritorious legal argument for appellate review.

Page seventeen (17) of the Order lays out some of the trial testimony of Officer Gardner who was the search warrant's affiant. He claimed that he got the search warrant for marijuana at 126 Iris Lane after hearing over speakerphone a confidential informant (CI), Prentiss Jeffries, speaking with another officer say that a large shipment of cocaine had arrived. At trial, this testimony was expressly denied by the CI in question who testified that he never spoke to Officer Garner but was coached and paid by an Officer Ronnie Anderson to give a false statement after the fact. (Tr. 119-23). The undated statement witnesses by Anderson was entered as State's exhibit two. (Tr. 122-18). It says cocaine was in a trash can across the street from 126 Iris Lane. (Tr. 122, 17). The statement makes no mention of marijuana at 126 Iris Lane.

The trial testimony strongly supports an argument that the search warrant was improper due the lack of a sufficient indicia of reliability of the CI and the misidentification of the premises to be searched and property to be found. It further suggest the existence of a material falsehood and omission in Officer Garner's search warrant affidavit as he lacked personal knowledge of the CI's reliability and the CI's

alleged statements referenced a large shipment of cocaine in a trash can across the street, not marijuana at 126 Iris Lane. Therefore, had trial counsel moved to suppress the drugs, there is a substantial likelihood the outcome of his case would have been different.

For the foregoing reasons, the Applicant requests this Court to alter or amend the aspect of its Order dismissing all other PCR claims with prejudice.

Respectfully submitted,

Susannah Ross #11205
Attorney for the Applicant
333 E. Coffee Street,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 7 day of January, 2022.

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE	IN THE COURT OF COMMON PLEAS
Nicholas A. Bonner, Applicant, vs. State of South Carolina, Respondent.	ORDER Case No.: 2018-CP-11-00551

The Applicant, Nicholas A. Bonner, requests the Court to reconsider the Order dated December 23, 2021 and filed in the Cherokee County Clerk of Court's office.

Having duly considered the motion of the Applicant, this Court has determined that its original ruling of December 23, 2021 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion is therefore DENIED.

AND IT IS SO ORDERED.

H. Steven DeBerry, IV
Judge, Twelfth Judicial Circuit

Dated: 1/11/2022

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C
2022 JAN 21 AM 11:33
BRANDY W. MCBEE

WITNESSES

Gaffney Police Dept.

Lisa Black

ARREST WARRANT NUMBER

2012A1120200050

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 7/27/12

VERDICT

Guilty

Foreperson of Petit Jury
Date: 4/27/2017

DOCKET NO. 12-GS-11-0820

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

SEP 27 2012 **TERM**

THE STATE

vs.

Nicholas A. Bonner

Indictment for

TRAFFICKING IN CRACK COCAINE

SC Code: 44-53-375

2012 SEP 27 AM 10:47
CRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on SEP 27 2013, the Grand Jurors of Cherokee County present upon their oath:

TRAFFICKING IN CRACK COCAINE

That Nicholas A. Bonner, did in Cherokee County on or about August 6, 2012, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess (400) four hundred grams or more of Crack Cocaine, a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Kimberly J. Stevens
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Cherokee)
STATE VS.)
Nicholas Androplus Bonner)
AKA:)
Race: BLACK Sex: M Age: 36)
DOB: [redacted] SS#: [redacted])
Address:)
City,State,Zip:)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1100820
A/W#: 2012A1120200050
Date of Offense: 8/7/2012
S.C. Code § : 44-53-0375(C)(2)(a)
CDR Code #: 0392

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Trafficking in ice, crank or crack - 28 g or more, but less than 100 g - 7-25 years

in violation of § 44-53-0375(C)(2)(a) of the S.C. Code of Laws, bearing CDR Code # 0392
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: Christopher Bain 101488 Nick Bonner Carlos Taylor 73714
BAIN, CHRISTOPHER MICHAEL SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 20 ~~days/months/years~~ or ☐ under the **Youthful Offender Act** not to exceed — years
and/or to pay a fine of $ 50,000 ; provided that upon the service of — days/months/years and/or payment
of $ — ; plus costs and assessments as applicable*; the balance is suspended with **probation** for —
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐**RESTITUTION:** ☐ **Deferred** ☐ **Def. Waives Hearing** ☐ **Ordered**
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine:		$ 50,000.00
§ 14-1-206 (Assessments 107.5 %)		$ 53,750.00
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150.00
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$ 3120.75
TOTAL		$107,145.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

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

Clerk of Court/ Deputy Clerk Brandy McBee
Court Reporter: Mike Watts
Presiding Judge L. Kirkland Kelly
Judge Code: 2165
Sentence Date: April 27, 2017

SCCA/217 (07/2016)

ARREST WARRANT

2012A1120200050

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of GAFFNEY

THE STATE

against

BONNER, NICHOLAS ANDROPLUS
Address: 126 IRIS LN
GAFFNEY SC 29341
Phone: 864-000-0000 SSN: [redacted]
Sex: M Race: B Height: 604 Weight: 325
DL State: SC DL#: [redacted]
DOB [redacted] Agency ORI #: SC0110200
Prosecuting Agency: POLICE DEPARTMENT
Prosecuting Officer: RONNIE ANDERSON
Offense: TRAFFICKING ICE, CRANK OR
Offense Code:
Code/Ordinance Sec. 44-53-375

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The Accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant Bonner - Nicholas - Andropolus on 8-7-12.

Q. Fabb 425
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KAYE ALLISON
201 N. LIMESTONE ST.
GAFFNEY SC 29340

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of GAFFNEY)

AFFIDAVIT

Form Approved by S.C. Attorney General April 21, 2003 SCCA 618

Personally appeared before me the affiant RONNIE ANDERSON who being duly sworn deposes and says that defendant BONNER, NICHOLAS ANDROPLUS did within this county and state on 08/06/2012 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of GAFFNEY) in the following particulars:

DESCRIPTION OF OFFENSE:

TRAFFICKING ICE, CRANK OR CRACK-3RD OFF - 44-53-375

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON OR ABOUT AUGUST 6, 2012 THE DEFENDANT, NICHOLAS ANDROPLUS BONNER, DID HAVE IN HIS POSSESSION MORE THAN 400 GRAMS OF CRACK COCAINE, A SCHEDULE II CONTROLLED SUBSTANCE, WHILE AT 125 IRIS LANE LOCATED WITHIN THE CITY LIMITS OF GAFFNEY, SOUTH CAROLINA, COUNTY OF CHEROKEE. THIS DEFENDANT HAS AT LEAST TWO PRIOR CONVICTIONS OF THIS SAME TYPE OFFENSE. PROBABLE CAUSE BASED UPON INVESTIGATION OF THE GAFFNEY POLICE DEPARTMENT NARCOTICS DIVISION.

CASE NUMBER: 2012-9934.

Signature of Affiant Ronnie Anderson

Affiant's Address 201 N. LIMESTONE ST.
GAFFNEY SC 29340
Affiant's Telephone 864-487-8524

FILED IN OFFICE OF CLERK OF COURT CHEROKEE COUNTY, SC
2012 AUG 15 PM 1:15
BRANDY W. MCBEE

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of GAFFNEY)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 08/06/2012 defendant BONNER, NICHOLAS ANDROPLUS did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of GAFFNEY) as set forth below:

DESCRIPTION OF OFFENSE:

TRAFFICKING ICE, CRANK OR CRACK-3RD OFF - 44-53-375

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution , or as soon thereafter as is practicable.

Sworn to and subscribed before me on August 7, 2012
Kaye Allison (L.S.)
Signature of Issuing Judge
Judge Code: KS

Judge's Address 201 N. LIMESTONE ST.
GAFFNEY SC 29340
Judge's Telephone 864-487-8524

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Allison

on 8-7-12

Type and Amount: 500,000 Corsa c. plus home det

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

_____ _____

_____ _____

_____ _____

WITNESSES

Name: _____
Address: _____
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Telephone: _____

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Telephone: _____

CODEFENDANTS

_____

_____