STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable R. Lawton McIntosh, Circuit Court Judge

LANCE LEON MILES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000821

APPENDIX

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A surprised defense counsel noted ruefully "that's the first time we have heard this discussion . . . . It's getting better." R. 162, ll. 14-17. Ultimately, the trial court ruled that the prejudicial impact of Petitioner's alleged admission that he had previously picked-up packages outweighed its probative value. R. 163, ll. 4-13. The court did allow Edmonson to testify that Petitioner told him he knew he was being paid to pick-up a package containing drugs. *Id.*

Jury Instructions

Defense counsel argued that Petitioner was entitled to an instruction that "before you commit a crime, you must have criminal intent to commit the crime, meaning you must have knowledge." R. 273, ll. 23 – 295, ll. 3. The court disagreed, believing that the trafficking statute did not require an accused "to intend to possession oxycodone." R. 274, ll. 4-15. Instead, the court determined that trafficking only required Petitioner to know that there are illegal drugs in the package. *Id.* at ll. 23-24.

Unsurprisingly, the State agreed with the court's reasoning. The assistant solicitor averred - without citing to any supporting legal authority - that, "the law is clear, as long as [Petitioner] knows they are illegal drugs, we have satisfied that element." R. 276, ll. 12-17.

During its deliberation the jury submitted a two-part question: "[d]oes the State have to prove that the defendant knowingly brought into the State four grams or more of oxycodone or just any amount of illegal drugs in order to consider this trafficking?" R. 317, ll. 1-6. In response the court suggested:

> [T]he State does not have to prove that the defendant knowingly brought into the state this particular drug, just that the statute requires knowing that it was illegal drugs. . . . [Petitioner] [d]oes not have to know the particular drug that is in question. Simply that he knew they were illegal drugs. . . . My proposed response would be that the State does not have to prove that the Defendant knew the drugs were oxycodone, just that the package contained illegal drugs.

R. 317, ll. 7 - 318, ll. 4.

Defense counsel argued that the legislature created the trafficking statute, with its enhanced penalties, to punish individuals who knowingly possess a large amount of a certain drug; meaning that the defendant must know what drug they are possessing. R. 321, ll. 9-14.

Defense counsel, looking to the trafficking statute, argued that the statute clearly required that the defendant "knowingly sells, et. cetera, then it says four grams or more of morphine." R. 323 5-15. Defense counsel noted that interpreting the statute in order to fit the facts of the case was improper and that straightforward reading of the trafficking statute evidenced that the legislature intended to require the State to prove that a defendant accused of trafficking, knowingly committed any of the enumerated acts with a specific drugs. R. 320, ll. 5-11; R. 323, ll. 5-15; S.C. Code Ann. § 44-53-370(e)(1)-(8).

The court ultimately decided that because § 44-53-370(e)(3), the statute under which Petitioner was indicted, was titled "Trafficking in Illegal Drugs" that the State need only prove that the Petitioner knew that the package contained illegal drugs, not that it contained oxycodone. R. 323, ll. 16-22; R. 326, ll. 16 - 327, ll. 16. Focusing on the facts of Petitioner's case, the court concluded that, "[y]ou also have to assume that the legislature didn't draft statutes that are meaningless." R. 324, ll. 11-13.

In summary the court noted that, "the burden of proof on the state just has to prove they were illegal drugs." R. 326, ll. 21-25. The court then instructed the jury: "the law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were oxycodone, just that he knew that the package contained illegal drugs." R. 329, ll. 21-25.

ARGUMENTS

I.

The Court of Appeals erred in affirming the trial court's supplemental charge to the jury that the State did not need to prove that Petitioner knew the drugs in the package he possessed were oxycodone; rather, for Petitioner to be guilty of trafficking, the State only needed to prove that Petitioner knew the package contained any illegal drugs.

Defense counsel argued that in order to be guilty of trafficking the State had to prove Petitioner knew that the package contained oxycodone. R. 318, ll. 5 – 328, ll. 22. The trial court disagreed, specifically noting that § 44-53-370(e)(3) defined an offense known as "trafficking in illegal drugs" and reasoning that adopting the defense's argument would render trafficking cases "unprosecutable." *Id.* Thus, the court instructed the jury that "the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs." R. 329, ll. 22-25.

The trial court erred reversibly by instructing the jury that the State did not need to prove that Petitioner knew the drugs in the package he possessed were oxycodone for Petitioner to be guilty of trafficking. The court's instructions inaccurately stated the law and were based on a forced interpretation of § 44-53-370(e)(3), as well as South Carolina's other trafficking statutes. The clear legislative intent of the trafficking statutes is to ***severely punish individuals who knowingly undertake a broad variety of activities involving certain amounts of specific drugs***. *State v. Taylor*, 323 S.C. 162, 164-166, 473 S.E.2d 817 (Ct. App. 1996) (court's erroneous instruction that defendant could be convicted of trafficking in crank if she acted with criminal negligence was not harmless where the trafficking statute specifically required that a defendant act "knowingly" and the main

issue before jury was whether defendant was merely present but not participating in drug transaction or whether she was an active participant) (*emphasis added*).

The Court of Appeals found, in determining legislative intent, that by using "knowingly" in subsection (e), the Legislature did not intend to require the state to prove that a defendant knew the specific type of illegal drug he was trafficking. The Court wrote that when a statute can be read in its ordinary sense, then courts cannot engineer an extraordinary one. The Court ruled that because the Legislature titled subsection (e) as "trafficking in illegal drugs," That affirmed the Court of Appeals' decision that a defendant need not know the precise identity of the controlled substance to be guilty.

The Court of Appeals misapprehended the issue.

The Narcotics and Controlled Substances Act ("The Act") is a comprehensive statutory scheme regulating the all aspects of the use and prohibition of controlled substances. In § 44-53-110, the Act defines number of relevant terms. For instance, the Act defines "controlled substance" as a drug, substance, or immediate precursor in Schedules I through V in Sections 44-53-190, 44-53-210, 44-53-230, 44-53-250, and 44-53-270." § 44-53-110(6). The Act also defines specific drugs and narcotics such as marijuana, cocaine base, methamphetamine, and opium. § 44-53-110 (9), (27)-(30).

The Act criminalizes the possession of "a controlled substance." Possession encompasses a broad range of conduct:

> Except as authorized by this article it shall be unlawful for any person:
>
> (1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase **a controlled substance** or a controlled substance analogue;

(2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

§ 44-53-370(a) (*emphasis added*). Notably, possession of a controlled substance does not require the State to prove a defendant "knowingly" possessed a "controlled substance." *State v. Ferguson*, 302 S.C. 269, 395 S.E.2d 182 (1990) (holding that defendant must be at least criminally negligent when he or she manufactured, distributed, or dispensed a controlled substance under § 44-53-370(a)). The punishment for unauthorized possession of a "controlled substance," "counterfeit substance," or "controlled substance analogue" varies depending on the which schedule the "controlled substance" falls into. § 44-53-370(b).

Turning to § 44-53-370(e)(3), the structure of this subsection different from that of § 44-53-370(a) and § 44-53-370(c). The trafficking statute does not use the word **"controlled substance."** Rather, South Carolina's trafficking offenses are divided by drug type and then further divided by the amount of the specific drug with sentencing ranges also determined based, in part, on the number of the defendant's prior offenses. § 44-53-370(e)(1)-(8). This structure, when read in a straightforward manner, makes clear that the legislature intended to punish individuals who are "knowingly in actual or constructive possession" of four grams or more of "any morphine, opium, salt, isomer, or salt of an isomer thereof."

Our Supreme Court has held that "knowledge" can be equated with a defendant having a **"firm belief" or awareness of a particular element or fact.**" *State v. White*, 311 S.C. 276, 44 S.E.2d 741 (1947) (former receipt of stolen goods statute required that State to prove that defendant knew he was receiving stolen goods). It will often be proved by circumstantial evidence. *Id.* Our courts have rejected a definition of "knowledge" that encompasses "willful blindness" as it would

improperly "broaden the meaning of knowledge.'" *Ducworth v. Neely*, 319 S.C. 158, 456 S.E.2d 896 (Ct. App. 1995). Requiring knowledge of the specific drug being trafficked makes sense given the harsh penalties for trafficking and the lesser penalties for the two possession offenses.

In issuing its opinion, this Court of Appeals failed to consider that § 44-53-370(e) is not the only trafficking statute. Additional standalone trafficking offenses are found in § 44-53-375(c) covering trafficking in methamphetamine and crack cocaine. This statute is worded identically to the trafficking offenses found in § 44-53-370(e):

> A person who knowingly sells, manufactures, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of ten grams or more of methamphetamine or cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), is guilty of a felony which is known as "trafficking in methamphetamine or cocaine base" and, upon conviction, must be punished as follows if the quantity involved is:

§ 44-53-375(c).

A plain reading of the § 44-53-370(e)(3) requires the State to prove that Petitioner knew he was possessing oxycodone. This Court of Appeals' opinion inserted the term "controlled substance" into § 44-53-370(e). Injecting the word "controlled substance" into § 44-53-370(e)(3) would create two arbitrary classes of trafficking offenses. Under § 44-53-370(e), a defendant could be guilty of trafficking in one of the enumerated drugs, by virtue of there being evidence that he knew he was dealing with a controlled substance. By contrast, to be guilty of trafficking under § 44-53-375(c), the State would have to prove that a defendant specifically knew he was trafficking in methamphetamine or crack cocaine. This inconsistent outcome among similarly situated defendants could not have been the intent of the legislature.

Jury Instructions and Rules of Statutory Construction

A trial judge must narrowly tailor his or her response to the specific question asked by the jury. *State v. Smith*, 304 S.C. 129, 132, 403 S.E.2d, 162, 164 (Ct. App 1991). The answer provided by a trial judge must not mislead the jury as to an element charged in the indictment or improperly suggest the answer to a question of fact. *Id.* at 131, 403 S.E.2d at 163. "Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21 (2009).

The trial court has the responsibility to answer the jury's question correctly and in a way that clarifies the issues for the jury. *State v. Huckabee*, 388 S.C. 232, 244, 694 S.E.2d 781, 787 (Ct. App. 2010). In answering a question from the jury, the trial court must also keep in mind the juror's reliance on the court to instruct them on the applicable law and the great weight that jurors give to the judge's pronouncements. *State v. Campbell*, 297 S.C. 24, 26, 374 S.E.2d 668, 669 (1988).

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct.App.2002) (*citing State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct.App.1999) *cert. denied as improvidently granted, State v. Hudson*, 346 S.C. 139, 551 S.E.2d 253 (2001).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan* at 366, 574 S.E.2d 203, 547 S.E.2d at 206. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. *Id.*

Courts should consider, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997). The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. *Hudson*, 336 S.C. 237, 519 S.E.2d 577.

Finally, penal statutes must be strictly construed against the State and in favor of the defendant. *Hair v. State*, 305 S.C. 77, 406 S.E.2d 332 (1991). Any doubt as to the proper construction should be resolved in favor of the citizen against the state. *State v. Cutler*, 374 S.C. 376, 264 S.E.2d 420 (1980).

The structure of § 44-53-370(e)(3) makes clear that the legislature intended to punish individuals who are "knowingly in actual or constructive possession" of four grams or more of "any morphine, opium, salt, isomer, or salt of an isomer thereof." South Carolina's trafficking offenses are divided by drug type and then further divided by the amount of the specific drug with sentencing ranges also determined based, in part, on the number of the defendant's prior offenses. § 44-53-370(e)(1)-(8). A plain reading of the § 44-53-370(e)(3) requires the State to prove that Petitioner knew he was possessing oxycodone.

Applying the court's interpretation to the other seven drug specific sub-sections of § 44-53-370(e) demonstrates that the legislature clearly intended the "knowingly" requirement to encompass not only the criminal act, but a defendant's knowledge of the specific drug being trafficked. For example, § 44-53-370(e)(1) defines "trafficking in marijuana;" § 44-53-370(e)(2) defines "trafficking in cocaine" 3-370(e)(8) defines "trafficking in MDMA;" and so on.

Moreover, the South Carolina Judicial Department's suggested jury charges support this consistent interpretation of § 44-53-370(e): "[t]he Defendant is charged with trafficking in

_______ [*drug*]. The State must prove beyond a reasonable doubt that the Defendant knowingly sold . . . was knowingly in actual or constructive possession, [or] knowingly attempted to become in actual or constructive possession of _____ [*drug*]." *Suggested Jury Instructions - Criminal*, South Carolina Judicial Department (November 4, 2015), http://www.sccourts.org/juryCharges/GSInstructions.2015.pdf.

In contrast, the trial court's interpretation of § 44-53-370(e) would require the State to prove a defendant knew the specific drug at issue in every trafficking case, ***except when a defendant is accused of trafficking under § 44-53-370(e)(3)***. *See Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (courts must reject an interpretation which leads to an absurd result that could not have been intended by the legislature) (*emphasis added*).

This inconsistent outcome could not have been the intent of the legislature. The specific drugs identified in § 44-53-370(e)(3) show that "trafficking in illegal drugs" is more accurately described as trafficking in heroin or opiates, or its derivatives. Heroin was among the first drugs - along with marijuana, cocaine, LSD, and crack cocaine, included in the trafficking statute. McAninch, Fairey & Coggiola, *The Criminal Law of South Carolina* 447 (5th ed. 2007).

Over the years, the General Assembly has revised the trafficking statute to increase the number of prohibited acts and to include new drugs such as GHB and MDMA. *Id.* The evolution and expansion of § 44-53-370(e) strongly suggests that the "trafficking in illegal drugs" title of § 44-53-370(e)(3) is simply ill-conceived and out-of-date. *State v. Sweat*, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008) ("language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose").

720 Ill. Comp. Stat. Ann. § 570/401.1(a) (*emphasis added*).

Accordingly, the trial court committed reversible error by instructing the jury that the State did not need to prove beyond a reasonable that Petitioner knowingly possessed oxycodone, rather the State needed only to prove that the Petitioner knowingly possessed a controlled substance. This response was a misstatement of the applicable law and based on an improper construction of § 44-53-370(e) and § 44-53-370(e)(3).

II.

The Court of Appeals erred in affirming the trial court's admission of three statements of Petitioner to police because Petitioner's right against self-incrimination as guaranteed by the Fifth and the Fourteenth Amendments to the U.S. Constitution was violated by the introduction of his statements to police where the first statement was the product of an interrogation by officers who failed to advise Petitioner of his *Mirandi** rights and his subsequent statements were tainted by the initial violation and the product of an involuntary waiver.

The Court of Appeals held that at trial, the state conceded that Agent Edmonson's immediate questioning of Miles upon arrest was a custodial interrogation that triggered *Miranda.* The state had agreed not to present evidence of Miles' first two statements. Later during a bench conference, Miles agreed to the admissibility of the two statements. The court ruled that the issue of the third statement violating *Seibert* and *Navy* was not preserved for review but even so, the court found no prejudice to Miles.

Discussion

A. The court erred in admitting statements made by Petitioner prior to officers advising Petitioner of his *Miranda* rights and obtaining a valid waiver of those rights where Petitioner clearly was in custody based upon the totality of the circumstances.

The Fifth Amendment provides that no person shall be compelled to be a witness against himself in a criminal matter. U.S. Const. amend. V. The Fourteenth Amendment secures against state invasion of the same privilege that the Fifth Amendment guarantees against federal infringement. *Malloy v. Hogan,* 378 U.S. 1, 8 (1964); *see also* U.S. Const. amend. XIV.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." *Jackson v. Denno*, 378 U.S. 368, 376 (1964).

Determining whether a defendant is in custodial interrogation is an objective assessment of the facts and circumstances surrounding the questioning:

Clearly, Petitioner was in custody when Edmonson interrogated him. Bass and Edmonson (the self-described largest and strongest physicist/police officer in the world) exited their vehicles with guns drawn and ordered Petitioner to the ground. R. 37, ll. 1 – 38, ll. 13. Petitioner was physically forced to the ground and handcuffed. *Id.* Edmonson's interrogation started immediately thereafter. Accordingly, the court erred in permitting the introduction of any portion of Petitioner's pre-*Miranda* statements due to the officer's failure to inform Petitioner of his rights prior to subjecting Petitioner to a custodial interrogation.

B. The trial court erred in admitting statements made by Petitioner subsequent to the officer advising him of his *Miranda* rights and obtaining an involuntary waiver of those rights because the statement was tainted by the initial violation where the same officer questioned Petitioner in the same location with no temporal break between the post-advisement interrogation and the prior, unwarned interrogation.

The waiver has two distinct dimensions. It must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and it must be "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

In *Missouri v. Seibert*, 542 U.S. 600 (2004), the United States Supreme Court confronted a case very similar to the present case. Officers awakened Seibert at 3 a.m. and transported her to the police station. There, an officer questioned Seibert for thirty to forty minutes without giving her *Miranda* warnings and obtained an admission from Seibert that she knew a mentally-ill teenager living with her family was meant to die in a house fire, which was started to cover up the death of Seibert's own disabled child. The officer then gave Seibert a twenty-minute break. *Id.* at 604-605.

When the interrogation resumed, the officer turned on a tape recorder and gave Seibert the *Miranda* warnings. He also obtained a written waiver from her. The officer restarted questioning by confronting Seibert with her pre-warning statements. Again, the officer obtained the desired answer – that Seibert knew the teenager was supposed to die in the fire. *Id.* at 605.

At trial, the judge suppressed Seibert's pre-warning statements, but admitted the post-warning statements. *Id.* at 606. The United States Supreme Court held this was in error because "[t]he object of question-first is to render *Miranda* warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed." *Id.* at 611. The Court held "when *Miranda* warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and 'deprive a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.'" *Id.* at 613-614 (quoting *Moran*, 475 U.S. at 424).

The facts presented in Seibert were that the unwarned interrogation was conducted in the police station, and "the questioning was systematic, exhaustive, and managed with psychological skill." *Id.* at 602. Officers paused only for twenty minutes before resuming questioning after administering the warnings and "said nothing to counter the probable misimpression that the advice that anything Seibert said could be used against her also applied to the details of the inculpatory statement previously elicited." *Id.* at 617.

Our Supreme Court confronted this issue in *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010). After the death of his son, Navy gave a statement to police at the hospital. Officers later learned that the cause of death was smothering or suffocation. *Id.* at 297, 688 S.E.2d at 839. The next day, Navy was driven by police to the station and gave a statement in which he described the child having breathing problems and his ensuing panic. *Id.* at 297-298, 688 S.E.2d at 839.

Afterwards, officers informed Navy that the child had suffocated and that there was evidence of broken ribs. Navy was told he was not under arrest. The officers then asked follow-up questioning. "At this juncture, the nature of the interrogation and [Navy]'s status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." In this second statement, Navy admitted to popping the child on the back and possibly patting the child on the mouth. *Id.* at 298-299, 688 S.E.2d at 840.

After a short break, officers then advised Navy of his *Miranda* warnings. Thereafter, Navy gave his second statement, this time in writing. The statement mirrored the first adding only that Navy admitted to placing his hand over the child's mouth to stop the crying multiple times and to "popping" the child on the back. *Id.* at 299-300, 688 S.E.2d at 840. Officers contacted the pathologist who stated the actions detailed in Navy's second statement could not have caused the child's death. In response, officers obtained a third written statement from Navy admitting that he could have held his hand over the child's nose and mouth for longer than he first said. *Id.* at 300, 688 S.E.2d at 840-841.

The Court held the first statement at the hospital was admissible because there was evidence to support the trial judge's finding that Navy was not in custody. However, the second and third statements were inadmissible as they were obtained in violation of *Seibert.* Courts examine four factors to determine whether a constitutional violation occurred in this setting, including (1) the completeness and detail of the questions and answers in the first interrogation; (2) the timing and setting of the first and second interrogations; (3) the continuity of police personnel; and (4) the degree to which the interrogator's questions treated the second round as continuous with the first. *Navy*, 386 S.C. at 302, 688 S.E.2d at 841-842.

The Court found the officers initiated the questioning with the knowledge of the cause of death and with the intention of eliciting a confession. *Id.* at 303, 688 S.E.2d at 842. Once Navy was at the police station, officers "began an unwarned custodial interrogation designed to elicit incriminating information." *Id.* After receiving incriminating statements, officers permitted Navy a break, and then administered *Miranda* warnings.

The interrogation resumed with the same officers, who made no attempt to cure by warning Navy that his statement made prior to the administration of the warnings may not be admissible or by providing a substantial break in time or change in circumstances. The Court found all four *Seibert* factors were satisfied. *Navy*, 386 S.C. at 303, 688 S.E.2d at 842.

The interrogation of Petitioner presents a similar factual scenario as in *Seibert* and *Navy*. Officers interrogated Petitioner for an extended period of time prior to advising him of his rights. At the onset of the pre-advisement interrogation, Petitioner initially denied knowing the contents of the package. R. 10, ll. 4-25. Unsatisfied with this answer, Agent Edmonson continued to probe Petitioner, telling him that he believed there were drugs in the package. *Id.*

Petitioner eventually conceded that there were very likely drugs in the package. *Id.* In response to continued questioning, Petitioner also allegedly admitted that he had previously picked-up other packages in the past year, and that he did so because he could not find other employment to support his family. R. 149, ll. 20 – 150, ll. 6.

What is clear is that after obtaining a written waiver of Petitioner's rights, the same officer, Edmonson, continued to ask Petitioner the same questions and received the same answers.. Moreover, there was no break whatsoever between the unwarned statements and the warned statements as Petitioner made his written statement only thirty to forty-five minutes after being tackled and handcuffed by police. R. 176, ll. 8-18; R. 195, ll. 6-15. .

CONCLUSION

Based on the foregoing arguments, Petitioner Lance L. Miles respectfully requests that this Court grant certiorari; reverse the Court of Appeals' decision; reverse Petitioner's conviction and remand this case on Issues I and III, and issue an Order of acquittal on Issue II.

Respectfully Submitted,

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 14th day of November, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
Honorable Thomas A. Russo, Circuit Court Judge

Opinion No. 5511 (S.C. Ct. App. filed 8/23/2017)
14-GS-32-00603

THE STATE,

RESPONDENT,

V.

LANCE L. MILES,

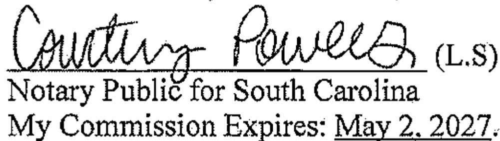
PETITIONER

CERTIFICATE OF SERVICE

I certify that a copy of the Petition for Writ of Certiorari and a copy of the Appendix in this case has been served on Megan Harrigan Jameson, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Lance L. Miles, #299857, at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 14th day of November, 2017.

LaNelle Cantey DuRant
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO BEFORE ME this 14th day of November, 2017.


(L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2017-002338

THE STATE,

Respondent,

vs.

LANCE LEON MILES,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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STATEMENT OF ISSUES ON CERTIORARI

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STATEMENT OF THE CASE

Procedural History

On September 13, 2013, Lexington County law enforcement officers arrested Petitioner Lance Leon Miles following the controlled delivery and subsequent seizure of 300 tablets of Oxycodone concealed inside a package. In March 2014, the Lexington County Grand Jury indicted Petitioner for trafficking in illegal drugs. On February 11, 2015, Petitioner proceeded to a jury trial before the Honorable Thomas A. Russo. On February 12, 2015, the jury convicted Petitioner as indicted. Judge Russo sentenced Petitioner to twenty-five years imprisonment.

Thereafter, Petitioner filed a timely notice of appeal. Following briefing and oral argument, the Court of Appeals affirmed Petitioner's convictions and sentence by published opinion filed Aug. 23, 2017. State v. Lance Leon Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017). Petitioner petitioned for rehearing, which the Court of Appeals denied on October 19, 2017. The petition for a writ of certiorari was filed on November 14, 2017.

Factual History

During the early morning hours of September 13, 2013, Agent Douglas Edmonson, a narcotics investigator with the Lexington County Sheriff's Department, was working at the Federal Express shipping and distribution center in West Columbia. (R. 8, 16, 43-44, 80-83). Edmonson was a member of the Lexington County Multi Agency Narcotics Team and focused

solely on parcel interdiction and package monitoring at major shipping companies to thwart narcotics trafficking. (R. 8-9, 16, 81-85, 185). Edmonson's shift began routinely alongside fellow officer Dennis Tracy, with the two watching the conveyor belt for suspicious packages. (R. 16-17, 82-87). During the morning, Edmonson noticed a particular box with excessive tape that roused his suspicions. (R. 8, 16-17, 44, 82-87). In accordance with standard procedures, Edmonson used his cellular phone to photograph the package's label for further investigation in the future and allowed the package to continue down the conveyor belt. (R. 8, 45, 85-88).

A few hours later, Edmonson resumed his investigation into the suspicious package. (R. 87-88). He and Tracy ran information from the label through a law enforcement database and determined the listed information for the sender and recipient was either vague or inaccurate. (R. 45-46, 88, 116). Edmonson also noted the shipper sent the box overnight from California to South Carolina via the United States Postal Service at a considerable expense. (R. 44-45, 112-15). Recognizing these factors as common signs that the package contained illegal drugs, Edmonson decided to investigate further. (R. 44, 88). Edmonson set up a team with fellow investigators, including Travis Bass and Marc Miramontes, to conduct surveillance at the delivery location, ██ Villas Court. (R. 9, 88).

Around 9:30 a.m., Miramontes drove an undercover vehicle to the Villas Court complex and parked in a location enabling him to view where the delivery was to take place and the central mailbox unit for the complex. (R. 90, 199-201). Edmonson and Bass drove two separate undercover vehicles to the complex and parked out of view. (R. 90-91). The three communicated by radio, with Miramontes relaying his observations to Edmonson and Bass. (R. 90-91).

Miramontes watched as the mail carrier filled various boxes and noticed a man, later identified as Petitioner, come out of an apartment, get on a bicycle, ride to the mailboxes to retrieve mail, and ride back to the same apartment. (R. 201). Petitioner then exited his apartment

again and milled around the parking lot until the mail carrier finished filing the boxes. (R. 201). Once finished, the mail carrier proceeded to deliver the packages too large to fit into the boxes, including the suspicious package Edmonson identified earlier that morning. (R. 201-02). The mail carrier drop the suspicious package on the doorstep of ███ Villa Court, rang the doorbell, and left. (R. 201-02). Miramontes observed Petitioner, who on his cellular phone, walking towards the apartment. (R. 201-02). He relayed this information to Edmonson and Bass by radio. (R. 201-02). Simultaneously, a young woman on her cellular phone came out of the apartment, bent down to look at the box, but went inside without picking up or otherwise touching the box. (R. 201-02). Petitioner approached the apartment, picked up the box, and started walking back towards his apartment. (R. 202).

Edmonson and Bass converged on Petitioner, who threw the package near a vehicle and began looking around as if he was trying to find an escape route. (R. 92-94, 122, 187-88). Bass exited his vehicle with his gun drawn and ordered Petitioner to the ground. (R. 121, 187-88). When Petitioner failed to comply, Bass assisted Petitioner to the ground and placed him in handcuffs. (R. 94, 121, 188). Edmonson identified himself as law enforcement and asked Petitioner what was in the package. (R. 94-95). Petitioner indicated the package likely contained illegal drugs. (R. 95, 170). Edmonson read Petitioner his rights and Petitioner orally waived his rights. (R. 9-10, 94-95). Petitioner acknowledged the package likely contained narcotics and gave consent to open the package. (R. 11, 95). Edmonson elected to call a canine unit trained to identify narcotics before opening the package. (R. 95).

Canine handler Ted Xanthakis and his dog Arcos arrived on the scene shortly thereafter. (R. 123, 218-19). Xanthakis circled Arcos around the vehicle near the package and reported that Arcos's behaviors indicated the package contained narcotics. (R. 223-24). Xanthakis informed Edmonson of Arcos's response and Edmonson took control of the package. (R. 223-24).

Edmonson contacted his partner, Dennis Tracy, who was working off-site, and asked him to get a search warrant for the package. (R. 46-47, 54-61, 96-97). Tracy obtained a search warrant from a magistrate and called Edmonson while still before the magistrate to tell him the search warrant had been signed. (R. 46-47, 54-61, 96-97, 125-26). Edmonson opened the package and saw that it contained a gift bag, a stuffed toy, child's t-shirt, and a wax candle. (R. 97-99, 132, 136-37, 224-25). Edmonson broke apart the wax candle and found three-hundred Oxycodone pills hidden inside three separate plastic bags. (R. 99-101, 133-35, 224-25).

After discovering the pills, Edmonson asked Petitioner what was going on and Petitioner agreed to give a statement. (R. 100-01). Edmonson advised Petitioner of his rights for second time and Petitioner acknowledged in writing he understood those rights and wished to waive them. (R. 101-02, 106-08). Petitioner gave a written statement that he was picking up the package for $100, was to deliver it to its owner, and knew it contained illegal drugs. (R. 106-07). Following his statement, Edmonson transferred Petitioner to the detention center. (R. 110).

Edmonson took the pills into his custody and placed them into an evidence bag, commonly referred to as a BEST Kit, before turning it over to the Lexington County Sheriff's Department evidence custodians. (R. 110-12). The pills remained sealed in the BEST Kit within the custody of the Lexington County Sheriff's Department evidence custodians until chemist Emily Homer-Conrad removed the kit for testing on February 7, 2014. (R. 238-41). Homer-Conrad tested the pills on February 10 and 18, 2014, and determined the pills were Oxycodone. In total, the 300 pills amounted to nine grams of Oxycodone, a Schedule II drug. (R. 244-60).

Petitioner proceeded to trial on February 12, 2015. During pre-trial hearings, Petitioner moved to suppress his oral and written statements made at the scene and the trial court conducted a Jackson v. Denno hearing. (R. 7). During the hearing, the State presented testimony from Edmonson, Miramontes, and Bass. Edmonson testified he and Bass ordered Petitioner to stop

and placed him in handcuffs before they asked Petitioner what he was doing. (R. 9-10, 20-21). Edmonson testified Petitioner initially denied being in possession of the package or knowing what was inside the package, but eventually indicated the package likely contained narcotics. (R. 10-11, 19-21). Edmonson then read Petitioner his rights pursuant to Miranda. (R. 10-11). After Edmonson informed Petitioner of his rights, Petitioner indicated again the package likely contained illegal drugs—likely narcotics—and agreed to waive his rights and speak with law enforcement. (R. 10-12). Petitioner agreed to give a written statement and Edmonson advised him of his rights pursuant to Miranda for a second time. (R. 12-13, 345-46, Court's Ex. No. 1). Petitioner signed a written waiver of his rights and provided a written statement that he knew drugs were in the package and he was picking it up for money. (R. 12-15, 345-46, Court's Ex. No. 1). Miramontes testified he watched Petitioner pick up the package from the doorstep, but was not present when Petitioner gave any statements. (R. 28-33). Bass testified similarly to Edmonson to the events surrounding Petitioner's statements, but recalled Petitioner receiving Miranda warnings before giving his initial oral statement that the package likely contained drugs. (R. 34-39). Petitioner did not testify and did not call any witnesses on his behalf.

Following the testimony from the three law enforcement witnesses, Petitioner moved to suppress his oral and written statements and argued he was under duress when he made the statements. (R. 40). Petitioner also argued there was conflicting testimony as to whether Edmonson questioned Petitioner prior to giving any Miranda warnings. (R. 40). The State conceded Petitioner's statements made pre-Miranda warnings were inadmissible and it would not seek to introduce those in its case in chief. (R. 41). The trial court ruled Petitioner's oral and written statements made following the advisement of Miranda warnings were given knowingly, freely, and voluntarily, and therefore, were admissible. (R. 42). However, the trial court

determined the portions of Petitioner's statements pertaining to his prior involvement in retrieving packages for money must be redacted. (R. 41-43).

During trial, the State presented Edmonson, Bass, Miramontes, Xanthakis, and Homer-Conrad as witnesses, along with Lexington County Sherriff's Department Evidence Custodian Margaret Elizabeth Holliman. During Edmonson's testimony, the State presented Petitioner's oral and written statements establishing Petitioner knew the package contained illegal drugs. (R. 95-110). During cross-examination, Petitioner's counsel questioned Edmonson if Petitioner initially denied knowing what was in the package. (R. 123). Following cross-examination, the State argued Petitioner had opened the door to allow it to question Petitioner on his pre-Miranda statements to law enforcement by questioning Edmonson if Petitioner initially denied knowing the package's contents. (R. 146-49). The trial court allowed the State to proffer its intended line of questioning, which was intended to elicit testimony regarding Petitioner's recent release from prison, his inability to find employment, and his previous involvement picking up packages he knew contained illegal drugs. (R. 148-56). After argument from both parties, the trial court ruled the preferred testimony was more prejudicial than probative, but did allow the State to elicit testimony from Edmonson that Petitioner knew the package contained illegal drugs and was picking it up for payment. (R. 152-63, 169-70).

Following the State's case and the denial of Petitioner's motion for a directed verdict, the trial court then asked both parties if they had any charge requests. (R. 269-70). The State requested the court charge all elements of the trafficking in illegal drug statute. (R. 270). The court responded it would charge only the relevant portion of the statute and asked for a proposed charge including the relevant portions. (R. 270-73). Petitioner asked the trial court to charge criminal intent as knowledge and argued Petitioner must have knowledge that the drugs were

Oxycodone. (R. 273-74). The trial court disagreed, stating Petitioner merely needed to know the package contained illegal drugs. (R. 274).

During deliberations, the jury sent the trial court a note asking, "Does the State have to prove that the defendant knowingly brought into the state four grams or more of Oxycodone or just any amount of illegal drugs in order to consider this trafficking?" (R. 317). The trial court proposed responding the State only needed to prove Petitioner knew the package contained illegal drugs, not specifically Oxycodone because the required intent is to "possess, control, deliver, [or] move illegal drugs." (R. 317-19). Petitioner objected, arguing the legislature intended that a defendant must know the specific drug he is possessing. (R. 321-27). The court disagreed, noting under Petitioner's approach, the State would not be able to prosecute unless the defendant gave a statement implicating himself as knowing the particular illegal drug enumerated in Section 44-53-370(e)(3). (R. 322-27). The court ultimately responded to the jury,

> "[T]he law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs. However, the State does have to prove beyond a reasonable doubt that the illegal drugs that were in the package was more than four grams of Oxycodone. So the State continues to carry that burden.
>
> Then your second question was, "Does the state have to prove that he intended to traffic?"
>
> And the law in South Carolina with regards to trafficking is this: The term traffic or trafficking under South Carolina law deals with or refers to the weight of the illegal drugs. To prove trafficking the State must prove that the amount of the illegal drugs was four grams or more. If it was less than four grams, then it's not trafficking. So trafficking deals with the weight, okay?

(R. 329-30). The jury then continued its deliberations, resulting in a verdict of guilt. (R. 335).

ARGUMENT

I. The Court of Appeals correctly found the trial court properly instructed the jury that the State only needed to prove Petitioner knew the package contained illegal drugs to convict him of trafficking in illegal drugs, where the jury asked the court during deliberations whether the State needed to prove Petitioner knew the package contained Oxycodone specifically or illegal drugs generally and the court properly and correctly responded to the jury's question.

Petitioner contends the trial court erred by instructing the jury the State did not need to prove Petitioner knew the drugs in the package were Oxycodone but only illegal drugs. Petitioner asserts the trial court's instructions were based on an erroneous and forced interpretation of S.C. Code Ann. §44-53-370(e)(3), as "the clear legislative intent" of South Carolina trafficking statutes is to "severely punish individuals who knowingly undertake a broad variety of activities involving certain amounts of specific drugs." (PWC 12). Petitioner avers that to be guilty of trafficking Oxycodone under §44-53-370(e)(3), the State must prove a defendant knowingly possessed Oxycodone specifically and therefore, the trial court's instructions were a reversible and incorrect statement of law. However, Petitioner's contentions are incorrect and the trial court properly charged the jury on all relevant law and then correctly re-instructed the jury on those matters necessary to answer its question. Petitioner's conviction should be affirmed.

During a trial, the law to be charged is determined by the evidence presented. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). When instructing the jury on the law, the trial court is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). A trial court's jury instructions are appropriate if they are substantially correct and adequately cover the law applicable to the particular case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately

covers the law."). Only the substance of the law must be charged to the jury, not any particular verbiage. State v. Burkhart, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). When reviewing the jury charge, the appropriate test involves determining what a reasonable juror would have understood it to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004).

"When a jury requests an additional charge, it is sufficient for the court to charge only those matters necessary to answer the jury's request." State v. Barksdale, 311 S.C. 210, 216, 428 S.E.2d 498, 502 (Ct. App. 1993). It is proper to limit a re-charge to simply answering the jury's questions. State v. Anderson, 322 S.C. 89, 94, 470 S.E.2d 103, 106 (1996); see In re McCracken, 346 S.C. 87, 96, 551 S.E.2d 235, 240 (2001) (ruling the trial judge did not improperly emphasize one portion of a jury charge over another during additional instructions given in response to a jury question when the judge merely reminded the jury about one element of an offense and then offered the statutory definition of another); State v. Nichols, 325 S.C. 111, 118-119, 481 S.E.2d 118, 122 (1997) (finding no error in the trial judge's failure to re-charge the law of self-defense when the jury did not specifically request clarification on that particular principle of law).

Pursuant to S.C. Code Ann. § 44-53-370(e)(3), "[a]ny person who knowingly sells, manufactures, cultivates, delivers, purchases, or brings into this State, or who provides financial assistance or otherwise aids, abets, attempts, or conspires to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or who is knowingly in actual or constructive possession or who knowingly attempts to become in actual or constructive possession of four grams or more of any morphine, opium, salt, isomer, or salt of an isomer thereof, including heroin, as described in Section 44-53-190 or 44-53-210, or four grams or more of any mixture containing any of these substances, is guilty of a felony which is known as "trafficking in illegal drugs." The trafficking in illegal drugs statute, like all trafficking statutes in South Carolina, is broad-reaching and covers a multitude of behaviors as detailed in the statute, including: actual or constructive

possession, sale, manufacture, cultivation, purchase, giving of financial assistance or any type of aid, or the attempt or conspiracy to do any of the above.

At issue in the present case is the legislative intent behind the "knowingly" element of Section 44-53-370(e)(3). When interpreting a statute, a court's primary function is to ascertain the intention of the legislature. State v. Robinson, 310 S.C. 535, 538, 426 S.E.2d 317, 318 (1992) (citing Gilstrap v. S.C. Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992)). The words used in a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Id. Here, the forbidden act is "knowingly" undertaking one of the specific acts with a certain substance as enumerated in the Section 44-53-370(e)(3). Under Section 44-53-370(e)(3), as well as the other trafficking statutory provisions, the "knowingly" element of the crime requires general, not specific intent. See State v. Attardo, 263 S.C. 546, 549, 211 S.E.2d 868, 869 (1975) ("This language evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense."). Accordingly, to obtain a conviction for trafficking, the State must prove a defendant either: committed, attempted to commit, or conspired to commit one of the enumerated behaviors as listed in the statute to establish a person is guilty of trafficking. However, the State is not required to establish the defendant knew the specific controlled substance to obtain a conviction for trafficking. This is true for trafficking in illegal drugs as well as all other trafficking subsections. See S.C. Code Ann. § 44-53-370.

Additionally, it is well-settled under South Carolina law that "every one may be presumed to know what he has in his possession." State v. Freeland, 106 S.C. 220, 91 S.E. 3, 3 (1916); see State v. Attardo, 263 S.C. 546, 550, 211 S.E.2d 868, 869 (1975) ("Possession [of a controlled substance] . . . gives rise to an inference of the possessor's knowledge of the character of the substance."); State v. Gore, 318 S.C. 157, 163, 456 S.E.2d 419, 422 (Ct. App. 1995)

("Possession gives rise to an inference of the possessor's knowledge of the character of the substance."); State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) ("Possession gives rise to an inference of the possessor's knowledge of the character of the substance.")

Here, the trial court's original jury instructions properly covered all relevant portions of the law, including what the State must prove to convict Petitioner of trafficking in illegal drugs pursuant to Section 44-53-370(e)(3). Following the court's charge, the jury requested clarification as to whether the State must prove that Petitioner knew the package contained Oxycodone or any illegal drug. (R. 317). The trial court suggested responding that the State only needed to prove Petitioner knew the package contained illegal drugs, not specifically Oxycodone. The trial court noted the required intent for trafficking in illegal drugs is to "possess, control, deliver, [or] move illegal drugs." (R. 317-19). Petitioner objected, averring the legislature intended that a defendant must know the specific illegal drug he is possessing. (R. 321-27). The trial court disagreed, noting if it was to adopt Petitioner's approach, the State would not be able to prosecute unless the defendant gave an incriminating statement indicating he knew the particular drug. (R. 322-27). The trial court then re-charged the jury as follows, "[T]he law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs. However, the State does have to prove beyond a reasonable doubt that the illegal drugs that were in the package was more than four grams of Oxycodone." (R. 329-30). The trial court properly instructed the jury that the State only needed to prove Petitioner knew the package contained illegal drugs in response to the jury's question.

Petitioner contends the trial court's re-charge was reversible error because a plain reading of Section 44-53-370(e) requires the State to prove that Petitioner knew he was possessing Oxycodone. Petitioner argues a review of the seven other subsections of Section 44-53-370

demonstrate the legislature clearly intended the "knowingly" requirement to encompass not only the criminal act, but a defendant's specific knowledge of the exact controlled substance being trafficked. Petitioner avers the trial court's interpretation of "knowingly" would lead to an absurd result where the State would be required to prove the defendant knew of the specific substance he was trafficking for every other subsection other than illegal drugs, effectively making it easier for the State to prosecute trafficking in illegal drugs compared to trafficking of other substances. This argument is misguided, as the "knowingly" element for all trafficking offenses, including trafficking in illegal drugs, requires general intent, not specific intent. See Attardo, 263 S.C. at 549, 211 S.E.2d at 869 ("This language evinces a legislative desire to fasten a general, but not a specific, criminal intent as an element of the offense.").

Additionally, as the trial court noted, adopting Petitioner's interpretation of "knowingly" would lead to the absurd result where the State would be essentially unable to prosecute a defendant for trafficking in illegal drugs unless the defendant gave a statement implicating himself as knowing the particular illegal drug enumerated in Section 44-53-370(e)(3). This clearly could not have been the legislature's intention as it would render the State unable to prosecute pursuant to Section 44-53-370(e)(3) in all but rare situations where the defendant has provided a statement implicating himself in knowing the specific illegal drug he is trafficking. See State v. Sweat, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (internal citations omitted) ("Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention. A statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous."). This interpretation would also lead to an absurd result where drug traffickers and the drug mules they employ would have an unfettered ability to conduct their criminal enterprise and move large quantities of controlled substances without punishment so

long as the mules knowingly engaged in the transportation of drugs **but** intentionally remained ignorant as to the exact type of drug they possessed. Simply put, adopting Petitioner's interpretation of "knowingly" would lead to absurd results the legislature could not have intended when drafting and enacting Section 44-53-370.

Alternatively, assuming Petitioner's interpretation of "knowing" was correct, the trial court's instructions would still be appropriate in this case because Petitioner was willfully ignorant of the specific illegal drug he possessed. Petitioner's deliberate and willful ignorance of the specific substance he was possessing, despite knowing it was illegal, amounts to guilty knowledge. See State v. Freeland, 106 S.C. 220, 91 S.E. 3, 4 (1916) (holding culpable ignorance is not an excuse to relieve liability from criminal acts). See also United States v. Giovannetti, 919 F.2d 1223, 1228 (7th Cir. 1990) (finding a "deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires"); United States v. Jewell, 532 F.2d 697, 700 (9th Cir. 1976), cert. denied, 426 U.S. 951 (1976) ("[D]eliberate ignorance and positive knowledge are equally culpable"). Here, Petitioner admitted multiple times he knew he possessed illegal drugs, yet intentionally avoided knowledge as to the specific controlled substance. This intentional, deliberate ignorance amounts to guilty knowledge and the trial court's instructions were a correct and proper statement of the law. See Turner v. United States, 396 U.S. 398 (1970) (holding the jury was entitled to rely on instructions that it could infer from accused's unexplained possession of heroin that he knew that heroin he possessed had been unlawfully imported, in prosecution for receiving, concealing and facilitating transportation and concealment of heroin while knowing that the heroin had been unlawfully imported into United States).

Petitioner argues the trial court's instruction allows the jury to convict Petitioner invalidly based on a lesser standard of culpable negligence rather than "knowingly," citing to State v Taylor. 323 S.C. 162, 473 S.E.2d 817 (Ct. App. 1996). However, this case is readily

distinguishable from Taylor. In Taylor, the trial court instructed the jury that it could convict the defendant of trafficking in methamphetamine if she was at least criminal negligent. Id. This Court reversed Taylor's conviction, holding a defendant could not be convicted of trafficking in methamphetamine if she was criminally negligent, as the statute specifically required the defendant act "knowingly." Id. Here, the trial court's instructions did not inform the jury it could convict Petitioner based on criminal negligence, but rather, used the correct "knowingly" standard. Furthermore, there is a significant difference between criminal negligence and a willful or intentionally lack of knowledge, which is the equivalent of actual knowledge and sufficient to prove the knowledge element of a criminal offense. Compare BLACK'S LAW DICTIONARY 1134 (9th ed. 2009) (defining "criminal negligence" as "[g]ross negligence so extreme that it is punishable as a crime" and defining "culpable negligence" as "[n]egligent conduct that, while not intentional, involves a disregard of the consequences likely to result from one's actions") with Giovannetti, 919 F.2d at 1228 (finding a "deliberate effort to avoid guilty knowledge is all the guilty knowledge the law requires") and Jewell, 532 F.2d at 700 ("[D]eliberate ignorance and positive knowledge are equally culpable"). The trial court's instructions to the jury charged the correct standard of law. Petitioner's conviction should be affirmed.

II. The Court of Appeals correctly found the trial court properly admitted Petitioner's statements to law enforcement into evidence.

On appeal, Petitioner contends the trial court erred in admitting his statements to law enforcement prior to and after he was administered Miranda warnings. Petitioner argues his pre-Miranda statements were unconstitutionally taken while he was in custody and therefore are inadmissible. However, Petitioner fails to make any argument challenging the trial court's ruling that defense counsel opened the door to these statements through his cross-examination of Edmonson, and therefore, has waived this issue on appeal. Additionally, Petitioner avers his

post-Miranda statements were inadmissible because they were tainted by the initial violation and the product of an involuntary waiver. Petitioner argues both statements therefore should have been suppressed and the trial court's refusal to do so is reversible error. To the contrary, Petitioner's post-Miranda statements were made following a knowingly, voluntarily, and intelligently waiver and Petitioner's pre-Miranda statements were admissible after Petitioner opened the door. Accordingly, the trial court properly admitted the statements into evidence during trial and his ruling was fully supported by the evidence and testimony presented during trial. Petitioner's convictions should be affirmed.

A. The trial court's ruling that Petitioner's pre-Miranda statements were admissible once the door was opened is not challenged on appeal and, therefore, is now the law of the case and not preserved for review. Regardless, the trial court did not abuse its discretion in admitting into evidence Petitioner's initial statements to law enforcement regarding his knowledge that the package contained illegal drugs because defense counsel opened to door to such testimony.

Following the Denno hearing, the State conceded Petitioner's pre-Miranda statements were inadmissible and that it would not seek to introduce them during its case in chief. However, following Edmonson's cross-examination, the State argued defense counsel had opened the door by questioning Edmonson as to whether Petitioner had denied knowing the package's contents initially. After allowing the State to proffer its intended line of questioning, the trial court allowed the State to elicit testimony from Edmonson that Petitioner knew the package contained illegal drugs and was picking it up for payment, ruling defense counsel had opened the door.

i. The trial court's ruling that Petitioner's pre-Miranda statements were admissible once the door was opened is not challenged on appeal and therefore, is now the law of the case and not preserved for review.

On appeal, Petitioner argues the trial court erred in admitting his statements to law enforcement prior to receiving his Miranda warnings because he was "clearly in custody based upon the totality of the circumstances." (App. Br. 28). However, he fails to make any argument

as to the trial court's ruling that the door had been opened. Because he has failed to present any argument as to why the trial court erred in ruling the door was opened, but instead, presents argument on a different alleged error, the trial court's ruling is the law of the case and this issue is not preserved for appellate review. See State v. Fripp, 396 S.C. 434, 441-42, 721 S.E.2d 465, 468-69 (Ct. App. 2012) (finding Fripp's argument not preserved for appellate review and the trial court's ruling was the law of the case where Fripp did not dispute the correctness of the trial court's ruling that he opened the door to Officer Heany's hearsay testimony, but challenged it on other grounds); Burton v. Cnty. of Abbeville, 312 S.C. 359, 363, 440 S.E.2d 396, 398 (Ct. App. 1994) (stating the Petitioner's failure to challenge the trial court's ruling in the appellate brief renders the unchallenged ruling the law of the case). See also State v. McCray, 332 S.C. 536, 542, 506 S.E.2d 301, 303 (1998) (finding where an appellate argument differs from the argument made at trial, the argument is unpreserved for appeal). Because Petitioner did not dispute the correctness of the trial court's ruling that he opened the door to his initial statements to law enforcement before he received Miranda warnings, this ruling is the law of the case and not preserved for this Court's review.

ii. Regardless, the trial court did not abuse its discretion in admitting Petitioner's initial statements to law enforcement regarding his knowledge that the package contained illegal drugs into evidence after defense counsel opened to door to such testimony.

Assuming this issue was preserved for appellate review, the trial court properly admitted Petitioner's initial statements to law enforcement regarding his knowledge that the package contained illegal drugs into evidence after defense counsel opened to door to such testimony.

It is firmly established that otherwise inadmissible evidence can be properly admitted after opposing counsel opens the door to that evidence. Page, 378 S.C. at 482, 663 S.E.2d at 359. "[W]hen a party introduces evidence about a particular matter, the other party is entitled to

explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially." State v. Beam, 336 S.C. 45, 52, 518 S.E.2d 297, 301 (Ct. App. 1999); see State v. Young, 364 S.C. 476, 485, 613 S.E.2d 386, 391 (Ct. App. 2005) ("The jurisprudence of this State contains a plethora of enlightening cases establishing and explicating the proposition that a defendant may open the door to what would otherwise be improper evidence."). "[A]n Petitioner cannot complain of prejudice resulting from the admission of evidence to which she opened the door." State v. Rice, 375 S.C. 302, 329, 652 S.E.2d 409, 422 (Ct. App. 2007).

During trial, Petitioner's counsel questioned Edmonson if Petitioner initially denied knowing what was in the package. (R. 123). Following cross-examination, the State argued Petitioner had opened the door to allow it to question Petitioner on his pre-Miranda statements to law enforcement by questioning Edmonson if Petitioner initially denied knowing the package's contents. (R. 146-49). The trial court allowed the State to proffer its intended line of questioning, which was intended to elicit testimony regarding Petitioner's recent release from prison, his inability to find employment, and his previous involvement picking up packages he knew contained illegal drugs. (R. 148-56). After argument from both parties, the trial court ruled the preferred testimony was more prejudicial than probative, but did allow the State to elicit testimony from Edmonson that Petitioner knew the package contained illegal drugs and was picking it up for payment based on a finding that Petitioner had opened the door based on his cross-examination of Edmonson. (R. 152-63, 169-70).

By asking Edmonson about whether Petitioner initially denied knowing what was in the box, Petitioner opened the door for the solicitor to inquire into his initial statements to law enforcement before he was read his Miranda rights. Petitioner was not permitted to introduce only the portion of his initial statement beneficial to himself and then bar the State from presenting a full and complete explanation of all of the details of those statements. See State v.

Kennedy, 143 S.C. 318, 321-322, 141 S.E. 559, 560 (1928) (finding previously inadmissible testimony elicited during redirect examination was properly admitted in response to questioning by the Petitioner of the same witness along similar lines during cross-examination). The additional testimony related to Petitioner's initial statement to law enforcement was necessary for a complete presentation of the context of his statements and was merely offered to explain the testimony elicited by Petitioner. Therefore, the trial court did not abuse his discretion in admitting the previously inadmissible testimony regarding Petitioner's initial pre-Miranda statement. See State v. Curtis, 356 S.C. 622, 632, 591 S.E.2d 600, 605 (2004) ("Given that [the defendants] maintained that PPS did not allow pornographic materials or links on the website, it is patent that they opened the door to this line of inquiry.").

B. The trial court properly admitted Petitioner's post-Miranda statements into evidence after determining the statements were knowingly, intelligently, and voluntarily made under the totality of the circumstances and because the trial court's ruling was supported by the undisputed testimony and evidence presented during trial establishing Petitioner knowingly, intelligently, and voluntarily waived his rights before making his statements.

Petitioner argues the trial court erred in finding his oral and written statements made after he received Miranda warnings were voluntary and admissible because they were tainted by the initial violation where Edmonson questioned Petitioner prior to advising him of his rights. In support of his argument, Petitioner cites to Missouri v. Seibert, 542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), both of which he asserts are factually similar to his case. However, this is unpersuasive, as Petitioner's case is readily distinguishable from both Seibert and Navy. The trial court properly admitted Petitioner's post-Miranda statements into evidence after determining the statements were knowingly, intelligently, and voluntarily made under the totality of the circumstances. Petitioner's conviction should be affirmed.

Under Miranda v. Arizona, 384 U.S. 436, 444 (1966), prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, and he has a right to an attorney. A defendant can waive these constitutional rights with a knowing and voluntary waiver. Id. A confession or statement by a defendant is not admissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). If a defendant is advised of his constitutional rights and then chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence the defendant voluntarily waived his rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990). When considering the admissibility of a defendant's statements, the trial judge should examine the totality of the circumstances surrounding the incident to determine whether the State has met its burden of proof. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). On appeal, the trial judge's decision as to the voluntariness of a statement will not be reversed unless the ruling constituted an abuse of discretion. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009).

In Missouri v. Seibert, 542 U.S. 600, 604 (2004), the United States Supreme Court determined incriminating statements elicited prior to the recitation of the required warnings were not admissible even if the statements were repeated after the appropriate warnings. In Seibert, the police arrested Seibert at 3:00 a.m. and took her to the police station for an interview. Seibert at 604. The arresting officer deliberately refrained from providing Miranda warnings and left Seibert alone in an interview room. Id. After fifteen to twenty minutes, a different officer arrived and questioned Seibert for thirty to forty minutes while squeezing her arm and encouraging her to admit her role in the crime. Id. at 604-605. After Seibert finally admitted her guilt, she was permitted a twenty-minute coffee and smoke break. Id. Following this break, the officer turned on a tape recorder, gave Seibert her Miranda warnings, and obtained a signed waiver of those

rights. Id. He then resumed questioning by confronting Seibert with the incriminating statements she made prior to the break and rehashed all of the same information. Id. The United States Supreme Court held that the "question-first" procedure employed by the police in Seibert's case was constitutionally infirm because the "midstream recitation of warnings after interrogation and unwarned confession could not effectively comply with Miranda's constitutional requirement." Id. at 604. In so concluding, the Court pointed out the following relevant factors that bear upon whether "midstream" Miranda warnings could be effective enough to accomplish their object:

(1) The completeness and detail of the questions and answers in the first round of interrogation;
(2) The overlapping content of the two statements;
(3) The timing and setting of the first and the second rounds of interrogation;
(4) The continuity of police personnel; and
(5) The degree to which the interrogator's questions treated the second round as continuous with the first.

Id. at 615. In Seibert's case, the unwarned interrogation occurred in the station house, and the questioning was "systematic, exhaustive, and managed with psychological skill." Id. In fact, when the police were finished with this first round, "there was little, if anything, of incriminating potential left to be said." Id. at 616. The warned phase of the questioning proceeded after only a short break and took place in the same location. Id. The same officer conducted the first and second rounds of questioning. Id. The officer did not advise Seibert that her prior statement might be inadmissible in court and in fact made the second round of questioning seem like two sessions that were parts of a "continuum"; under these circumstances it would be "unnatural" to refuse to repeat during the second round what had already been said before. Id. at 616-17. Accordingly, the Court found that a statement repeated after Miranda warnings in such circumstances is inadmissible. Id. at 617.

In 2010, our Supreme Court analyzed Seibert in State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). In the case, Navy's son was rushed to the hospital after being found unresponsive in

his crib. After the death of his son, Navy gave a statement to law enforcement while he was still at the hospital, but because he was "so upset and distraught," officers thought the statement was incomplete. Officers later learned from the pathologist who performed the autopsy that the cause of death was smothering or suffocation. Id. at 297, 688 S.E.2d at 839. The following day, officers went to Navy's home with the intent of transporting him to the sheriff's office for further questioning. Thereafter, Navy gave a statement in which he described noticing the child having breathing problems and his subsequent panic. Id. at 297-298, 688 S.E.2d at 839. Thereafter, officers informed Navy his son had suffocated and there was evidence of broken ribs. Navy asked if he was under arrest and was told he was not. The officers then engaged in follow-up questioning. "At this juncture, the nature of the interrogation and [Navy]'s status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." In this first statement, Navy admitted to popping the child on the back and possibly patting the child on the mouth. After this statement, Navy received another smoke break. Id. at 298-299, 688 S.E.2d at 840.

Officers then advised Navy of his Miranda warnings. Afterward, Navy gave his second statement, which was his first in writing. This statement echoed his previous oral statement except Navy admitted to placing his hand over his son's mouth to stop his crying, including possibly covering his nose area as well, popping him on the back causing the child to cry out loudly, and feeling frustrated because the child was crying. Id. at 299-300, 688 S.E.2d at 840.

Following this second statement, officers contacted the pathologist, who told them the description provided by Navy in his second statement could not have caused the child's death. In response to this information, officers obtained a third written statement from Navy. Navy then admitted that he could have held his hand over his son's nose and mouth for longer than he first said, possibly for up to two minutes. Id. at 300, 688 S.E.2d at 840-841.

Our Supreme Court held Navy's first statement was admissible because the record contained evidence to support the trial court's finding Navy was not in custody. The Court noted was "debatable whether a reasonable person would have believed himself to be in custody at the time the first statement was given." Id. at 301, 688 S.E.2d 841. Conversely, the Court held Navy's second and third statements were obtained in violation of Seibert and were therefore inadmissible. The Court found:

> The officers began the questioning of respondent with knowledge that the child had been suffocated and with the intention of eliciting a confession. After respondent's first oral statement, the officers "sprang" the suffocation/healing rib fractures information on respondent, and began an unwarned custodial interrogation designed to elicit incriminating information, that is, questioning designed to have respondent admit to having hit the child and to having smothered him. Once those incriminating answers were given—i.e. after respondent admitted he had popped the child on the back and "patted" his mouth—respondent was permitted a supervised cigarette break, then given Miranda warnings, with interrogation by the same officer resuming immediately.

Navy, 386 S.C. at 303, 688 S.E.2d at 842. The Court concluded the Seibert factors were met and "none of the curative measures suggested by Justice Kennedy, i.e. an additional warning that the answers given after the first statement but before the administration of Miranda warnings may not be admissible, a substantial break in time, or change of circumstances, occurred here." Navy, 386 S.C. at 303, 688 S.E.2d at 842.

The present case is distinguishable from Seibert and Navy and a review of the five factors set forth in Seibert weigh in favor of admission of Petitioner's post-Miranda statements. Petitioner was approached by police while he had the package of Oxycodone in his possession and upon realization that he had been caught, he attempted to discard the package and find an escape route. (R. 19). At that time, Edmonson and Bass ordered Petitioner to the ground and handcuffed him. (R. 9-10). Edmonson asked Petitioner what was in the package and he initially denied knowing it contained contraband but quickly changed his story and admitted the package

contained illegal drugs. (R. 10, 20-21, 149-50). Edmonson then administered Miranda warnings to Petitioner and asked Petitioner if he would like to talk. (R. 10-11, 21). Petitioner acknowledged he understood his rights and agreed to waive them and talk to law enforcement. (R. 11-12). Petitioner admitted he knew the package contained illegal drugs, he was picking up the package for money because he could not find a job because he had recently been released from prison, and gave consent to open the box in this second oral statement. (R. 11-12, 21, 150). After a drug-sniffing canine made a positive identification, a search warrant was obtained, and Edmonson opened the box to discover the three hundred tablets of Oxycodone, Petitioner again indicated he would talk to law enforcement. (R. 12-13). Edmonson then re-administered Miranda warnings to Petitioner and Petitioner gave a written statement approximately forty-five minutes after first encountering police. (R. 12-15, 183).

Petitioner's initial statement to law enforcement was brief and consisted of him denying then quickly admitting he knew the package contained illegal drugs. He did not provide any detail about why he had picked up the box or his role in previous drug transactions. In contrast, his second and third statements were much more detailed and lengthy, with Petitioner again admitting to knowing the box contained illegal drugs, but also informing law enforcement he was acting as a mule to support his family due to trouble finding work. Additionally, Petitioner's final written statement was taken less than forty-five minutes after officers approached him and he gave his first oral statement. During this time, there was a significant break in questioning, where Edmonson called in a drug-sniffing canine that made a positive identification of drugs inside the box, obtained a search warrant from a magistrate, opened the box, and broke apart the candle to reveal the Oxycodone. These are all marked distinctions from Seibert and Navy and establish that Petitioner's second and third statements were admissible. Cf. Seibert, 542 U.S. at 616 ("The unwarned interrogation was conducted in the station house, and the questioning was

systematic, exhaustive, and managed with psychological skill. When the police were finished, there was little, if anything, of incriminating potential left unsaid."); Navy, 386 S.C. at 303, 688 S.E.2d at 842 ("Once the incriminating answers were given—i.e. after respondent admitted he had popped the child on the back and "patted" his mouth—respondent was permitted a supervised cigarette break, then given Miranda warnings, with interrogation by the same officer resuming immediately."). Furthermore, unlike the defendants in Seibert and Navy, Petitioner has a lengthy record and was familiar with law enforcement and the criminal justice system, thereby reducing the effect of taint from a failure to initially receive his Miranda warnings. Because Petitioner's second and third statements were voluntarily made after an informed waiver of rights, the trial court did not err in admitting the statements. See, e.g., Myers, 359 S.C. at 44, 596 S.E.2d at 490 ("The totality of the circumstances does not demonstrate that Petitioner's will was overborne by the police. As there is no evidence that the confession was not voluntary we therefore hold that the trial court did not err in admitting Petitioner's confession.").

CONCLUSION

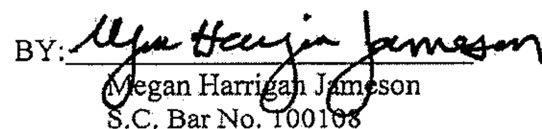
For all the foregoing reasons, it is respectfully submitted that the petition be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

S. R. HUBBARD, III
Solicitor, Eleventh Judicial Circuit

BY: 
Megan Harrigan Jameson
S.C. Bar No. 100108

ATTORNEYS FOR RESPONDENT

December 13, 2017

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
Thomas A. Russo, Circuit Court Judge

Appellate Case No. 2017-002338

THE STATE,

Respondent,

vs.

LANCE LEON MILES,

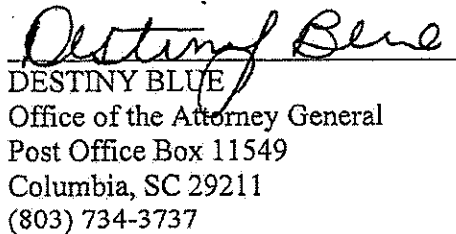
Petitioner.

PROOF OF SERVICE

I, Destiny Blue, certify that I have served the within Return to Petition for a Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lanelle Cantey Durant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 13th day of December, 2017.



DESTINY BLUE
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

The Supreme Court of South Carolina

The State, Respondent,

v.

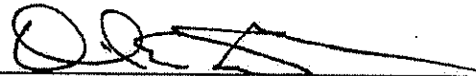
Lance Leon Miles, Petitioner.

Appellate Case No. 2017-002338
Lower Court Case No. 2014-GS-32-00603

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY 
CLERK

Columbia, South Carolina
October 18 , 2018

cc:
LaNelle Cantey DuRant, Esquire
Alan McCrory Wilson, Esquire
Megan Harrigan Jameson, Esquire
Samuel R. Hubbard III, Esquire
The Honorable Jenny Abbott Kitchings
The Honorable Lisa M. Comer

SCANNED JAN-11-2019

FORM 5

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

FILED 2019 JAN 11 AM 8:18

County of Lexington)
Lance L. Miles #299857) 2019-CP-32-00214
Full name and prison number (if any) of Applicant)

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS – READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution 4460 Broad River Road Columbia SC 29210

2. Name and location of Court which imposed sentence County of Lexington

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) Docket # 2014 GS3200603

(b) ____

SCANNED JAN-11-2019

(c)

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Feb. 12, 2015 was sentences 25 years

(b)

(c)

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6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The Appeals Court of South Carolina

ii. The Supreme Court of South Carolina

iii.

(b) the result in each such Court to which you appealed:

i. Appeal was Affirmed

ii. Supreme Court Denied Due to an Vote of The Court-

iii.

(c) the date of each such result:

i. Appeal Affirmed on Aug. 23, 2017

ii. Supreme Denied on Oct. 18, 2018

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Opinion No. 5511 (S.C. Ct. App. filed August 23, 2017)

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

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(c) ______

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Counsel / Both Trial and Appellat Court Counsel

(b) ON The Back of this Application

(c) ON The Back of this Application

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) ON The Back of this Application

(b) ON The Back of this Application

(c) ON The Back of this Application

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. ______

iii. ______

iv. ______

(b) the name and location of the Court in which each was filed:

i. N/A

ii. ______

iii. ______

iv. ______

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SCANNED JAN-11-2019

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii.

iii.

(b) the proceedings in which each ground was raised:

i. N/A

ii.

iii.

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16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
    (a) 10 A
    (b) ______
    (c) ______

17. Were you represented by an attorney at any time during the course of:
    (a) your arraignment and plea? N/A
    (b) your trial, if any? yes
    (c) your sentencing? yes
    (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
    (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
    ______

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18. If you answered "yes" to one or more parts of (17), list:-
    (a) the name and address of each attorney who represented you:
    i. Robert T. Williams, SR
    P.O. Box 849, 200 East Main St, Lexington, SC 29071 (803-359-1550)
    ii. (SCCID) Division of Appellate Defense
    P.O. Box 11589 Columbia SC 29210 (John Strom) 3
    iii. (La Nelle Cantey DuRant) (803) 734-1330
    ______

    (b) the proceedings at which each such attorney represented you:
    i. Trial and Sentencing
    ______
    ii. Direct Appeal (South Carolina Appeals Court)
    ______
    iii. ______
    ______

Revised 3/2003

SCANNED JAN-11-2019

19. State clearly the relief you seek in filing this application:
Reverse my Conviction and remand this case to the Lexington County Courts General Sessions (Issues I & III) OR in the alternative, issue an Order of Acquittal.

20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Lexington)

I, Lance Leon Miles, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[signature]

SWORN to and subscribed before me this 7th
day of January, ______.
[signature] (L.S.)
Notary Public
My Commission Expires: May 23, 2020

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CLERK OF COURT
LEXINGTON SC

Revised 3/2003

SCANNED JAN-11-2019

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Lance L. Miles, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Lance Miles
Applicant

SWORN or affirmed to and subscribed before me this 7th day of January, ______.

Kemolet S. Miles
Notary Public

My Commission Expires: May 25, 2020

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CLERK OF COURT
LEXINGTON CO

Revised 3/2003

SCANNED JAN-11-2019

2019-CP-32-00214

10(A).

The Defendant Lance L Miles Trial Attorney Robert Theo. Williams is ineffective for failing to investigate my case properly. Important documents was not issued from Defendant Motion of Discovery.
Brady V. Maryland, 373 U.S. 83 (1963)

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CLERK OF COURT

11(A)

The Defendant Lance L. Miles Trial Attorney Robert Theo. Williams was ineffective for failing to investigate my case properly.

Defendant Trial Counsel asked the Trial Court for a copy of Indicator Form that was used to identify the package contained Drugs. During Trial was when these documents was produced along with Mrs. Emily O. Homer-Conrad the chemical analyst never provided information dealing with her Analyzed Dates. She Tested The Pills on 2/10/14. She re opened The Best Kit seal again on 2/18/14 Never stating why going into The Best Kit again. Never had The date she returned The Best Kit on 3/5/14 @3:06pm was only revealed to The Defense at Trial only. The Narcotic Parcel Indicators was never investigated nor Chain of Custody.

Defendant Trial attorney Mr. Williams; OH. Referring to this Parcel indicator sheet. Your honor could I get a copy of this to look at this? Because your honor this indicator sheet wasn't provided.

MR. Caskey Responded it should be in your Discovery, which none of this information

2019-CP-32-00214

wasn't provided. The Defense counsel only knew these things during Trial.

Due to these issues, my Trial attorney wasn't prepared for Trial.

By not having these documents was clearly a violation of the Brady Motion. This Sabotaged my Trial Defense.

Trial Attorney failed to properly go over the Rule 5 motion with the Defendant to provide a defense during my Trial. These missing documents could have changed the course of Trial to where these Documents could have been a issue, to where the case could have been Dismissied. Due to the Brady Motion Violation.

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10(B)

The Defendant Lance L Miles Trial Court attorney Robert Theo. Williams ineffective for failing to file a Motion to Suppress The whole entire Custodial Statement made without receiving administrating Miranda Warning.

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11(B)

The Defendant Trial Attorney was ineffective by allowing The some parts of the Statement, when it was made without Miranda warning was given.
The Defendant Lance L. Miles right's against Self-incrimination as guaranteed by The Fifth and Fourteenth Amendments To The U.S. Constitution was violated by The introduction of his statement to police, where The first statement was The product of an interrogation by officer who failed to advise Mr. Miles of his Miranda, and his subsequent statements were Tainted by The Initial Violation and were The product of an involuntary waiver never was signed.

The Fifth Amendment provides That no person shall be compelled to be a witness against himself in a Criminal matter.

By not putting in a Motion to Suppress The Statement or Pre-Miranda Statements due to The Officer failure to inform Defendant of his Rights prior to subjecting Defendant to a Custodial Interrogation.

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10(c)

The Defendant Lance L Miles Trial Court
attorney Robert Theo Williams was ineffective
for not objecting to the characterized
Trial Judge instructions as erroneous and
confusing because it mislead the Jury
to misinterpertation of Trafficking Illegal Drugs
statue 44-53-370(E)(3)(A)2 Indictment
to writ; Oxycodone.

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As seen during deliberations, The Jury inquired if or do The State have To Prove beyond a reasonable doubt, That The Defendant Knowingly brought into The State four grams or more of Morphine, opium, Salt, isomer including heroin, To wit; Oxycodone or Just any amount of Illegal Drugs in order To consider This Trafficking for The Defendant? Tr. p. 338 ll (1-6). There was no evidence put forward at Trial that Defendant Knew That The Box Contained oxycodone. At Trial The Jury Asked The Court did They have To prove Mr. Miles Knew Oxycodone, or Just Any Illegal Drugs? 44-53-0370 (E)(3)(A)2 which is Titled "Trafficking Illegal Drugs"

Trial Judge Honorable Thomas A. Russo instructions To The Jury that the State did not need To prove that Defendant Knew The drugs in The package were oxycodone To be guilty of Trafficking. The Judge instructions inaccurately Stated The law and were based on a forced interpretation of §44-53-370(E)(3)

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as well as South Carolina's other Trafficking Statues. Defense Counsel argued that in order to be guilty of Trafficking the State had to prove Defendant knew the package contained Oxycodone. Tr.p. 339 ll.5 - 349, ll 22. The Trial Court Judge and Counsel went back and fouth with proving every element of The Trafficking Illegal Drug Knowingly requires The Defendant to know that Oxycodone was constructive possession of 9 grams of Oxycodone. A Trial Judge must narrowly tailor his or her respone to the speeific question asked by the Jury. State v. Smith, 304 S.C. 129, 132, 403 SE 2d 162, 164 (Ct. App 1991).

The answer provided by a Trial Judge must not mislead the Jury as to an element charged in the indictment or improperly suggest the answer to a question of fact, but shall also keep in mind the Juror's reliance on the Judge to instruct them on the applicable law and the great weight that jurors give to the Judge's pronouncement. State v. Campbell, 297 SC 24, 26, 374 SE 2d 668, 669 (1988).

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The legislature's intent should be ascertained primarily from the plain language of the statue.
Morgan at 366, 574, SE 2d 203, 547 SE 2d 206.
Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statue's operations.
MR. Lance L Miles Trial Attorney Mr. Robert Theo Williams argued the Legislature Created the Trafficking Statue, with it's enhanced. penalties, to punish individuals who knowingly possess a large amount of a certain drug; meaning that the defendant must knew what drug they are possessing. Tr. p. 342 ll, 9-14.

The Court Voiced Concern that requiring the State to prove that a defendant knowingly trafficked in a certain drug would render the law unenforceable except in circumstance where the defendant Confessed to knowing the type of drug he was trafficking. Tr. p. 343, ll 11-24. Defendant Trial Counsel noted that interpreting the statue in order to fit the facts of the case was improper and that strictly construing the trafficking statue evidenced that the legislature intended to require the State to prove that a defendant

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accused of Trafficking, Knowingly Committed any of The enumerated acts with a specific drugs. Tr. p. 341, ll 5-11; Tr. p. 344 ll 5-15; SC Code Ann § 44-53-370 (e) (1) (3)

The Trial Court Judge ultimately decided that because 44-53-370 (e) (3), The Statue under which defendant was indicted, was Titled "Trafficking in Illegal drugs" That The State need only prove that The defendant Knew illegal drug and not that it was Oxycodone. Tr. p. 344 ll, 16-22 Tr. p. 347 ll, 16- P 348 ll. 16.

The answer provided by a trial Judge must not mislead The Jury as to an element charged in The indictment or improperly suggest The answer to a question of fact, but shall declare The law. S.C. Const. amend. V, § 21 (2009).

The Trial Court Judge committed error by instructing The Jury That The State did not need to prove That beyond a reasonable doubt That Mr. Miles Knowingly possessed oxycodone, rather after This respones The applicable law and based on an improper misstatement was error Trial Court Counsel never objected to The improper construction of 44-53-370 (e) and 44-53-370 (e) (3).

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH JUDICIAL CIRCUIT
Lance L. Miles, #299857,	)	Case No.: 2019-CP-32-00214
Applicant,	)	
v.	)	**RETURN, PARTIAL MOTION TO DISMISS, AND MOTION FOR A MORE DEFINITE STATEMENT**
State of South Carolina,	)	
Respondent.	)	

The State of South Carolina (Respondent), making its Return to the Application for Post-Conviction Relief filed on January 11, 2019, would respectfully show this Court:

I. Procedural History

Lance L. Miles (Applicant) is presently incarcerated in the South Carolina Department of Corrections pursuant to orders of the Lexington County Clerk of Court. During its March of 2014 term, the Lexington County Grand Jury indicted Applicant for trafficking in illegal drugs (2014-GS-32-00603). Applicant was represented by Robert Theo Williams, Sr., Esquire, and Assistant Solicitors Micajah Pickett Caskey, IV, and Casey Rankin Smith prosecuted the case on behalf of the Eleventh Circuit Solicitor's Office. On February 11-12, 2015, Applicant proceeded to a trial before a jury, with the Honorable Thomas A. Russo, presiding, and was convicted as indicted. On February 12, 2015, Judge Russo sentenced Applicant to twenty-five years' imprisonment and fined him $100,000.

On February 19, 2015, Mr. Williams filed a Notice of Appeal on behalf of Applicant. Appellate Defender John Harrison Strom perfected the appeal. Assistant Deputy Attorney General David A. Spencer represented Respondent. During his appeal, Applicant argued that:

> the trial court erred by: (1) instructing the jury, in reply to a question they posed during deliberation, that the State did not have to prove Miles knew the drugs were oxycodone; (2) denying his directed verdict motion; and (3) admitting three statements he contends were obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1960).

State v. Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017).

The South Carolina Court of Appeals affirmed, and the South Carolina Supreme Court denied the petition for writ of certiorari by Order dated October 18, 2018. The Remittitur was sent on October 22, 2018.

II. Application for Post-Conviction Relief

In his Application for Post-Conviction Relief, Applicant alleges that he is being held in custody unlawfully based on:

1. Ineffective assistance of trial counsel
    a. Failure to investigate
    b. "Important documents was not issued from Defendant Motion of Discovery."
    c. Failure to prepare
    d. Failure to discuss discovery with Applicant
    e. Failure to move to suppress Applicant's custodial statement
    f. Failure to object to jury instructions
2. Ineffective assistance of appellate counsel

Applicant prays for relief as follows: "Reverse my conviction and remand this case to the Lexington County Courts of General Sessions . . . or in the alternative, issue an Order of Acquittal."

Attached to this Return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, the records from Applicant's direct appeal, Applicant's records from the South Carolina Department of Corrections, and Applicant's Post-Conviction Relief Application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Claims of Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Second, counsel's deficient performance must have prejudiced the 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.

Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland v. Washington, 466 U.S. 668, 688-689 (1984). "Representation is an art, and an act or omission that is unprofessional in one case

may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

As to Applicant's allegations that trial counsel was ineffective for not objecting to the trial court's jury instructions regarding whether the State had to prove beyond a reasonable doubt that Applicant knew that he was transporting Oxycodone, Respondent moves to dismiss these allegations since they are conclusively refuted by the record. Trial counsel engaged at length with the State and with the trial court regarding the jury instructions, and even objected to the jury instructions that Applicant has identified. Tr. 360-61. Furthermore, Applicant appealed upon this jury instruction, and our Court of Appeals found that the instructions "conveyed the pertinent legal standards to the jury." Miles v. State, 421 S.C. at 165, 805 S.E.2d at 210. This issue should be summarily dismissed because Applicant's allegation that trial counsel did not object to this jury instruction is explicitly contradicted by the trial transcript, and no deficiency or prejudice can be found since the Court of Appeals affirmed the trial court's decision on this issue.

When an application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing." Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). In this case, Applicant makes multiple allegations that his trial counsel was

ineffective. Since the record alone may not conclusively refute the allegations, other than those identified above that deal with jury instructions, Respondent requests an evidentiary hearing in order to resolve the matter.

IV. Motion for a More Definite Statement

Applicant's allegations lack specificity or supporting facts. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). 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 before an evidentiary hearing will be scheduled and held. 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). Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include "a short and plain statement of the facts showing that the pleader is entitled to relief."

Applicant has failed to state with any specificity the specific facts giving rise to his allegation that his appellate counsel was ineffective. Respondent therefore moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of this allegation and to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss this allegation or claim.

V. Discovery Issues

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil

Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the post-conviction relief hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI. General Denial of Allegations

Each and every allegation contained within the Application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Conclusion

WHEREFORE, Respondent requests that this Court require Applicant to amend his Application in order to provide a more definite statement and supporting facts as to the allegations identified herein; summarily dismiss Applicant's allegations regarding jury instructions; and convene an evidentiary hearing on the remaining allegations.

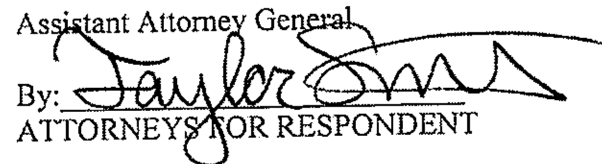
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR Z. SMITH
Assistant Attorney General



By: ______________________
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 29, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	2019-CP-32-00214
LANCE L. MILES, #299857	)	
Applicant,	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
STATE OF SOUTH CAROLINA,	)	
Respondent.	)	

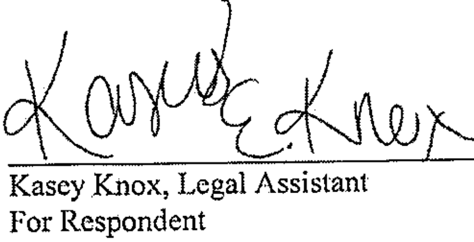
1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the original **Return, Partial Motion to Dismiss, and Motion for a More Definite Statement** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ashley A. McMahan
McMahan & Taylor, Attorneys, LLC
Post Office Box 5501
West Columbia, South Carolina 29169

DATED this 29th day of May, 2019.



Kasey Knox, Legal Assistant
For Respondent

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LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 11th JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2019-CP-32-00214
Lance L. Miles, #299857,	)	
Applicant,	)	AMENDED POST-CONVICTION RELIEF APPLICATION
v.	)	
State of South Carolina.	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on January 11, 2019, to add the following allegations:

1. Ineffective Assistance of Counsel of Robert T. (Theo) Williams, Sr.:

   A. Counsel's defense was ineffective as the defense should have been Applicant did not know there were drugs in the package, rather than Applicant didn't know what kind of drugs were in package.

   B. Failed to adequately challenge the Miranda warnings/detention of the Applicant.

   C. Did not ask for lesser included offenses at the trial.

   D. Did not adequately challenge the search warrant and the chain and interception of the package.

   E. Did not call witnesses at trial who would testify regarding the package.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been

specifically addressed in the Application. *See* Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,

ASHLEY A. MCMAHAN, ESQUIRE
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PO Box 50536
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803-219-1110
ashley@mcmahantaylor.com
SC Bar No. 71676
ATTORNEY FOR APPLICANT

December 6, 2021

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Lillian L. Meadows
Assistant Attorney General
lillymeadows@scag.gov

This 6th Day of December, 2021.

ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

1 STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS NONJURY
2 COUNTY OF LEXINGTON)

3

4 LANCE LEON MILES,) TRANSCRIPT
)
5 APPLICANT,) OF
)
6 vs.) RECORD
)
7 STATE OF SOUTH CAROLINA,) 2019-CP-32-214
)
8 RESPONDENT.)

9

10 December 15th, 2021

11

12 B E F O R E:

13 THE HONORABLE R. LAWTON McINTOSH, Judge.

14

A P P E A R A N C E S:

15

16 ASHLEY A. McMAHAN
ESQ.
17 Attorney for the Applicant

18

MEGAN JAMESON
19 SENIOR ASSISTANT ATTORNEY GENERAL
Attorney for the State

20

21

22

23

24 Transcribed by Pamela E. Green, from
DCRP, Digital Courtroom Recorder Project

25

1 I N D E X

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1 P R O C E E D I N G S
2
3 MS. JAMESON: May it please the Court.
4 THE COURT: Yes, ma'am.
5 MS. JAMESON: Megan Jameson on behalf of the State of
6 South Carolina.
7 This is a post-conviction relief matter of Lance Miles
8 versus the State. Docket Number 2019-CP-32-0214.
9 On September 13th of 2013, Lexington County law
10 enforcement officers arrested Mr. Miles following a
11 controlled delivery and subsequent seizure of a -- 300
12 tablets of oxycodone in a concealed packet inside a candle
13 in a packet -- package.
14 He was subsequently indicted by the Lexington County
15 Grand Jury for trafficking in illegal drugs. And, on
16 February 11th of 2015, he proceeded to a jury trial before
17 Judge Russo and the jury convicted him as indicted and Judge
18 Russo sentenced him to the mandatory minimum 25 years of
19 imprisonment.
20 Thereafter he filed a timely notice of appeal -- excuse
21 me. He was represented by Theo Mitchell in that trial.
22 Thereafter, he filed a timely notice of appeal, and, on
23 appeal, argued that the Trial Court erred in providing the
24 jury with a subsequent instruction advising the jury that
25 applicant did not need to know the specific type of drug

1 that was in the package to have the requisite mental state
2 under the statute, erred in denying his motion for a
3 directed verdict on the same ground, and erred in admitting
4 his statements to law enforcement.
5 Following briefing and oral argument, the Court of
6 Appeals affirmed in a published opinion which is in Your
7 Honor's packet. Thereafter, a subsequent petition for
8 rehearing and petition for certiorari to the Supreme Court
9 was denied and remittitur was issued.
10 He then initiated this instant post-conviction relief
11 action on January 11th of 2019 asserting claims of
12 ineffective assistance of both trial and appellate counsel.
13 The State made its return and requested an evidentiary
14 hearing after applicant provided a more definite statement
15 of his claims.
16 Ashley McMahan was appointed to represent Mr. Miles,
17 and, thereafter, filed an amended application with specific
18 grounds of ineffective assistance of counsel against counsel
19 Theo Williams including that counsel was ineffective as the
20 defense should of been that Mr. Miles did not know there
21 were drugs in the package rather than that he did not know
22 what type of drugs were in the package, that counsel failed
23 to adequately challenge the Miranda warnings and detention
24 of Mr. Miles, that counsel was ineffective for failing to
25 ask for a lesser included offense, that counsel did not

1 adequately challenge the search warrant and the chain of
2 custody and interception of the package, and that counsel
3 did not call witnesses at trial regarding the package. And
4 it's the State's understanding that these are the only
5 claims that we'll be going forward on today and that
6 applicant will be waiving any claims of ineffective
7 assistance of appellate counsel.
8 THE COURT: Is that correct?
9 MS. McMAHAN: That's correct, Your Honor.
10 THE COURT: Okay. All right. You ready to go?
11 MS. McMAHAN: I am.
12 THE COURT: Call your first witness.
13 MS. McMAHAN: Your Honor, the applicant calls Jennifer
14 Gillespie.
15 JENNIFER GILLESPIE, being first
16 duly sworn, testified as follows:
17 DIRECT EXAMINATION
18 BY MS. McMAHAN:
19 Q Ms. Gillespie, would you spell your last name for the
20 record?
21 A G-I-L-L-E-S-P-I-E.
22 Q And how do you know Mr. Miles?
23 A We was dating. We was in a relationship.
24 THE COURT: Let, let me ask if you would to move this.
25 Speak into the microphone. If you'd pull it to you.

1 THE WITNESS: Okay.

2 THE COURT: Thank you, ma'am.

3 THE WITNESS: Uh-huh. (Affirmative).

4 Q So you were dating?

5 A Yes, ma'am.

6 Q And were you present the day that the incident went

7 down regarding a box---

8 A Yes.

9 Q A mail package?

10 A Yes, ma'am.

11 Q And were you in the house?

12 Were you there outside?

13 Where were you at the time that the cops just showed

14 up?

15 A I was standing outside.

16 Q And what did they do?

17 A They all came like in cars at one time. They had they

18 weapons drawn and telling him to get down, get down on the

19 ground, get down now.

20 Q Were they yelling anything about like whether or not it

21 was marijuana in the box, things like this?

22 A One cop did.

23 Q So one cop was yelling there's marijuana in the box?

24 A Yes.

25 Q Was he yelling it to you or to anyone?

1 A He was saying it to Mr. Lance.

2 Q Okay. What else did he wanted (sic) Lance to do?

3 A To admit that it was marijuana in the box.

4 MS. JAMESON: I'm sorry, Your Honor. I'm having

5 trouble hearing cause of the (indiscernible) conversation.

6 THE COURT: Ma'am, please raise your voice.

7 A Oh, to admit that it was marijuana in the box.

8 Q Okay. And how many times did he say that?

9 A He said it a, a couple of times, quite a few times.

10 Q And was Lance on the ground when he was talking to him?

11 A Yes, ma'am.

12 Q And does Lance specifically in -- indicate or that it

13 was guns or anything like that?

14 A No.

15 MS. JAMESON: Objection. Hearsay.

16 THE COURT: Sustained.

17 MS. McMAHAN: I have no further questions.

18 THE COURT: Ma'am?

19 MS. McMAHAN: I have no further questions.

20 THE COURT: Okay.

21 Q Please answer anything (indiscernible).

22 A Okay.

23 CROSS-EXAMINATION

24 BY MS. JAMESON:

25 Q Ms. Gillespie, you said you were dating Mr. Miles at

1 the time.

2 That is -- (indiscernible) is that correct?

3 A Yes, ma'am.

4 Q Were you subsequently married?

5 A No, ma'am.

6 Q Okay. Were you present at his trial?

7 A Yes, ma'am, I was.

8 Q Did you hear the State and his attorney reference that

9 you would be married and had two kids?

10 A Yes, he do have two kids but not with me.

11 Q You guys were not married at the time of trial?

12 A Well you could say common law marriage.

13 Q Okay. And you said you were standing -- you were

14 originally in the home and then you started standing

15 outside?

16 A No, I came outside.

17 Q Why, why did you come outside?

18 A Because I heard all the commotion. I just -- the

19 sirens and all the cars pulling in.

20 Q You heard sirens?

21 A No, the -- all the cars pulling in.

22 Q You heard cars pulling in?

23 A Yeah.

24 Q What specifically did you hear?

25 A Like it was a lot of cars. There was---

Jennifer Gillespie - Cross-examination
By Ms. Jameson

1 Q What noises cause you said there weren't sirens?
2 A Like---
3 Q So what noises did you hear?
4 A Like cars -- like tires screeching like they was
5 speeding cause you could hear them as they was like pulling
6 in.
7 Q All right. So, other than tries screeching, what other
8 car noises did you hear?
9 A That's about it.
10 Q How many cars were there?
11 A A lot.
12 Q Can you give an estimate for us?
13 A It was maybe like over 10. It was marked cars,
14 unmarked cars.
15 Q They, they were 10 marked and unmarked cars --
16 A Yes, ma'am.
17 Q -- that day?
18 All right. And when you came outside of your house,
19 Mr. Miles was laying on the ground?
20 A No, not yet. They was telling him to get down on the
21 ground.
22 Q Did he get on the ground?
23 A Yes, ma'am, he did.
24 Q And you said there was a gun drawn.
25 How many officers had guns drawn?

1 A As I recall, I seen two at the time.

2 Q Can you give a description of those two officers who

3 had their guns drawn?

4 A One, he was Caucasian, and, the other one, I want to

5 say he's like -- he's not Caucasian but like a -- not

6 Spanish but like Latin I guess.

7 Q When you came outside, was Mr. Miles holding a package?

8 A It was already like on the ground cause they told

9 him -- as they was telling him to get down, I guess he

10 already put it down.

11 Q Did you ever see him holding a package?

12 A Not when I came outside. It was already on the ground.

13 MS. JAMESON: No further questions, Your Honor. Thank

14 you.

15 THE COURT: Redirect.

16 MS. McMAHAN: Just briefly.

17 REDIRECT EXAMINATION

18 BY MS. McMAHAN:

19 Q Ms. Gillespie, did you ever talk to Attorney Mitchell

20 about Mr. Miles' case?

21 A His attorney?

22 Q Yeah, Theo Mitchell.

23 A He asked me some questions, yes.

24 Q Do you remember what he asked you?

25 A Not really.

1 Q Okay. Did he ask you to testify or anything like that?
2 A No, ma'am.
3 MS. McMAHAN: Okay. I have nothing further.
4 MS. JAMESON: No recross, Your Honor.
5 THE COURT: All right. May this witness be excused?
6 MS. McMAHAN: Yes.
7 THE COURT: Thank you, ma'am.
8 THE WITNESS: Uh-huh. (Affirmative).
9 MS. McMAHAN: Your Honor, the applicant calls Lance
10 Miles.
11 THE WITNESS: How y'all doing?
12 Morning.
13 LANCES MILES, being first duly
14 sworn, testified as follows:
15 THE CLERK: Thank you.
16 THE WITNESS: You welcome.
17 MS. McMAHAN: Can you hear him, Your Honor?
18 THE COURT: Speak up a little louder.
19 THE WITNESS: Testing one, testing two.
20 THE COURT: I'll let you know.
21 DIRECT EXAMINATION
22 BY MS. McMAHAN:
23 Q Did you file this PCR application?
24 A Yes, ma'am.
25 Q And do you understand today that if you are successful

1 in this PCR application you eventually go back to
2 (indiscernible)?
3 A Yes, ma'am.
4 Q And you still want to go forward?
5 A Yes, ma'am.
6 Q And who was Mr. Mitchell?
7 A Mr. Mitchell?
8 Q Yeah.
9 Who is Theo Mitchell?
10 A Oh, he was my trial attorney.
11 Q You hired him?
12 A Yes, ma'am.
13 Q Were you in the detention center the whole time after
14 you got arrested?
15 A No, ma'am.
16 Q You were out on bond?
17 A Yes, ma'am.
18 Q Okay. How long were you out on bond before your trial?
19 A I was out on bond for like a year and a half I would
20 say, yes.
21 Q In, in those 18 months, how many times did you meet
22 with Mr. Mitchell about your case?
23 A I would say like what -- like once. I think -- I want
24 to say that was like around the time of December when they
25 sent the letter saying you taking an open plea to the, the

1 allegations that was against me.
2 Q And he sent you a letter about a plea offer?
3 A It was the Clerk of the Court. Well both.
4 Q And was the plea to everything you were charged with or
5 just one thing?
6 A It was just saying an open plea at the time.
7 Q Okay. Did it say that you had to be in court at a
8 certain time or anything?
9 A No, ma'am.
10 Q Did you go meet him in person after that or --?
11 A Yes, I went to his office and --.
12 Q Okay.
13 A I think we had a conver -- we had -- talked with Donnie
14 Myers at the time about the, the plea agree -- the plea
15 agreement, the plea arrangement, which was open to -- which
16 was, which was an open plea.
17 Q So you were there with Theo Mitchell?
18 A Theo and Ben I think.
19 Q Was that Ben Stitely?
20 A Yes. Yes.
21 Q And was -- Donnie Myers, is that who you're talking
22 about?
23 A Yes, I think he was on the phone with Theo at the time,
24 was discussing it.
25 Q The actual elected solicitor, Donnie Myers?

1 A Yes, ma'am.

2 Q Yes.

3 And what was Mr. Mitchell telling you about his

4 conversation of a plea -- Donnie with him about a plea

5 offer?

6 A It was -- we were just discussing about the plea. I

7 think Theo was like it was his first time hearing it I

8 guess. So it was just like out of the blue. So we didn't

9 really know what the angle to take because, like I said, we

10 wouldn't had any strategy or nothing down.

11 Q And so was that -- the time that you were meeting with

12 Theo and Ben, was that just to talk about a plea offer or

13 was it to talk about the trial or anything else?

14 A It was just about the plea offer and everything.

15 Q So how did you guys end up going to trial?

16 A I guess the day -- well, the, the time that we came

17 before where they was offering the open plea from seven to

18 25, and, at that time, I, I was thinking it was seven years

19 to a plea but it was like no, it was an open plea. And from

20 that point, you know, I, I -- he was like go to trial would

21 be the, you know, best solution if you -- cause any way you

22 went they would of used your background against you --

23 Q So the 7 to 25---

24 A -- whatever.

25 Q ---was what you were actually exposing yourself to on a

1 trial (indiscernible)?
2 A Yeah, I---
3 Q Is that your understanding?
4 A Yes, ma'am.
5 Q So, I don't want to put words in your mouth, but, at
6 that point, you felt it was best just to roll the dice and
7 see what you could end up getting from a trial?
8 A Not really. I would rather have got like something
9 lesser included, included into what it was saying. I know
10 it was 25 was the main thing that we were saying, yes. So
11 --.
12 Q Okay. And so you did end up getting the maximum you
13 could get?
14 A Exactly.
15 Q So you were hoping that there -- the solicitor would
16 let you plead to something less than (indiscernible)?
17 A Exactly.
18 Q But that never happened?
19 A It never happened.
20 Q Did Mr. Mitchell have a conversation -- I'm sorry.
21 Mr. Williams.
22 MR. WILLIAMS: I was wondering, Your Honor. I was
23 wondering.
24 MS. MCMAHAN: No, I'm sorry. There's a---
25 A I was with Mr. Mitchell.

1 MS. MCMAHAN: ---(indiscernible).

2 Okay. I'm sorry. My bad. My bad.

3 Mr. Williams -- no wonder everybody was confused.

4 A Cause I was like Mitchell?

5 Q No wonder everybody was confused. I'm sorry.

6 For the record, Your Honor, in my references to Theo

7 Mitchell, I meant Theo Williams.

8 THE COURT: Okay.

9 Q So when you met with Mr. Williams about the plea offer,

10 was there any indication that the solicitor was gonna let

11 you plead to a lesser?

12 A No, ma'am.

13 Q Okay. So how did -- where did it come about that you

14 decided I'm just gonna go to trial?

15 A I asked Theo what was the best thing and he was -- it

16 was like hey, I guess this is -- you know, the case was,

17 was -- oh, I was looped up with, with kind of mistakes where

18 it was oh, you know, that would of been the best suggestion

19 to go to trial.

20 Q Okay. And when you guys were talking about the

21 defenses at your trial, what were y'all talking about?

22 A It wasn't really a defense. I wouldn't say it was

23 really a defense.

24 THE COURT: What was that response please?

25 THE WITNESS: It---

1 MS. McMAHAN: It wasn't really a defense.
2 THE WITNESS: It wasn't really a defense.
3 Q What, what was it, what you guys -- what Mr. Williams
4 argued about at the trial or just --?
5 A Like because when we went into trial, I guess it was
6 really like a lot of things that he didn't know, and he kind
7 of found all those things out through cross-examination with
8 the officers. And that's kind of like how we kind of
9 like -- it was all in the trial. It was nothing like we was
10 prepared for this or anything.
11 Q And you felt it was kind of like a trial by fire I
12 guess a little bit?
13 A Yes, ma'am.
14 Q Did you ever have a conversation with Mr. Williams
15 that -- about having a defense so that you could actually
16 know what was in the box altogether rather than, you know,
17 that you thought it was a different type of drug rather than
18 marijuana?
19 A Right. It was -- it wasn't suppose to be that. It was
20 the fact that I didn't know any -- what type of drug was in
21 it period. The officer inquired that it was marijuana
22 inside the box numerous of times and I denied it. So, at
23 this point I'm in handcuffs.
24 So, I was thinking that he was charging me with
25 marijuana, and if you see in the transcript through trial,

1 he denied those facts. I'm saying that -- but other than
2 that, I was having assumption that it was marijuana inside
3 the box due to the tape and how he said it was.
4 Q So you heard Ms. Gillespie earlier?
5 A Uh-huh. (Affirmative).
6 Q When you were -- were you down on the ground when the
7 officers were yelling at you---
8 A Right.
9 Q ---about it being marijuana?
10 A I was already in handcuffs on the ground and all.
11 Q Okay. Did, did the box smell at all like marijuana?
12 A I didn't, I didn't even know. I just -- I wasn't even
13 gonna have the box no less than probably a second or two.
14 Q What were you suppose to be doing with it?
15 A I was suppose to been giving it to a friend of mine
16 that was right there in the parking space that morning
17 and---
18 Q Okay. So your friend was there waiting and---
19 A Right. Because he didn't know the, the neighbors.
20 They only knew me. So that what kind of like got me into
21 that cycle to go down there and get the box and bring it
22 back. But, at that time, cops converted on me and then it
23 was, it was all marijuana at that time.
24 Q Did anybody ever talk about (indiscernible)?
25 A No, ma'am.

Lance Miles - Direct examination
By Ms. McMahan

1 Q Did you tell the officers that you (indiscernible)?
2 A Well, I was -- I lived there. So I, I basically just
3 went down to like apartment a couple doors down.
4 Q Uh-huh. (Affirmative).
5 A Yeah. So --.
6 Q Okay. And so tell me about what the Miranda warnings
7 and everything you were given when you were picked up.
8 A It wasn't really a Miranda warning at that time. It
9 was just guns out, forced to the ground. I was told that it
10 was marijuana at the -- it's what's inside the box and he
11 was telling me that you should -- you know it's marijuana
12 and all this and that and the third. So, I was, I was under
13 assumption that that's was, was inside.
14 Q Okay.
15 A So being that the box was in my possession, you know,
16 he saying I would be charged with it.
17 Q So, at no point while the guns are out and they've got
18 you in handcuffs have they been given you Miranda rights?
19 A No Miranda warnings.
20 Q So when were you finally given Miranda warnings?
21 A Like I was given Miranda warning when he brought the
22 statement out and wanted me -- and it was, it was still
23 never given. It was just written on the paper and he was
24 checking boxes saying that I was---
25 THE COURT: When was that please?

1 THE WITNESS: Excuse me?

2 THE COURT: When were you given Miranda?

3 THE WITNESS: Probably about -- probably like 45
4 minutes after the encounter when I was tackled and put to
5 the ground. He had me in the car. So, when I was in the
6 car, he never gave me the Miranda warning. He just gave me
7 a, a statement with the Miranda warnings written down on
8 there.

9 Q Okay.

10 A All right. So but --.

11 Q So was he reading what was on the paper to you?

12 A No, he had me read it.

13 Q Oh, okay.

14 A So, yeah. So but -- at this time the box was never
15 opened. The box was closed. So, you know, at this point it
16 was on a, a marijuana belief at this time.

17 Q Yeah.

18 A So, like I said, after about -- they brung the drug dog
19 out there, and, after that, he opened the box and they
20 revealed what was oxycodone I guess.

21 Q Okay.

22 A And from, from that point it---

23 Q So, you're sitting in the back of the cops car and
24 they're handing you paperwork with your Miranda rights
25 written on it and you're reading it to the officer or just

1 reading it---
2 A I'm just reading---
3 Q ---to yourself?
4 A ---within my -- yes.
5 Q Okay. Did you have to sign that piece of paper?
6 A Yes, ma'am.
7 Q Did you ask for an attorney at that time?
8 A No, they took me, took me straight to the county jail
9 after that.
10 Q So they didn't ask you any questions after they gave
11 you that?
12 A Right. After they, they there, then the box was
13 opened. And then once they seen what it was, he came to me,
14 asked me what was this, and I was like I don't know. I
15 thought it was marijuana and then they took me to the county
16 jail. Now when I -- when officer come down and called me to
17 intake, he say I was charged with trafficking in heroin and
18 I was like wow, how, you know.
19 Q And you said you thought it was marijuana.
20 Did you think it was marijuana because that's what
21 everybody was yelling?
22 A That's what the officer -- yeah, the officer already
23 had me down on the ground and was telling me like look how
24 it's taped. You can tell it's -- you masking a smell and
25 all this and I was like the box doesn't even belong to me

1 period.

2 Q So was it just -- help me understand.

3 Was it your friend that was having the package

4 delivered to your place (indiscernible)?

5 A To a neighbor in my neighborhood. Like a little young

6 guy that used to hang around, come to, you know, come to my

7 house all the time. So, I guess, behind my back, I didn't

8 know that that was tooken place until that morning. I woke

9 up and my cousin was there, you know, asking about him.

10 So -- and I end up getting myself involved in something

11 that, you know.

12 Q So you were just -- was going out to hand this box to

13 this guy sitting in the car?

14 A That's it.

15 Q And who asked you to do that, your cousin?

16 A He, he was suppose to.

17 Q Oh, okay.

18 A All right.

19 Q And you really weren't involved at all in---

20 MS. JAMESON: Your Honor, I would object.

21 A Not at---

22 MS. JAMESON: This is direct and she's asking---

23 THE COURT: Sustained.

24 MS. JAMESON: ---testifying questions.

25 A But, nah, he -- excuse me.

1 What the question was again?
2 She startled me with that.
3 Q Yeah.
4 So when you were at the detention center --
5 A Right.
6 Q -- what happened?
7 A Oh, when I was at the detention center, that's what I
8 say, he came through with the -- then -- the
9 warrant/affidavit saying that I was charged with oxycodone
10 and his number -- here's my number and call me. I was
11 like---
12 Q The investigator?
13 A Yeah, Doug Edmonson. Yeah, Edmonson. Doug -- yeah.
14 Q That showed you the warrant?
15 A Saying that I was charged with---
16 Q Did you sign the warrant?
17 A Nah, he just gave it to me.
18 Q Did you have a bond hearing later that day or was there
19 (indiscernible)?
20 A I think it was like a couple of days later. Like the
21 next day later and then I think I had bail bondsman get on
22 my bond and I still had to stay in there for like three days
23 I want to say. They have to do an N.C.I.C. I, I want to
24 say.
25 Q (Indiscernible).

1 A Uh-huh. (Affirmative).
2 Q And so when you guys were sitting in trial, what were
3 you and Mr. Williams talking about---
4 A We---
5 Q ---during the trial?
6 A During trial, we -- it was really -- we were just
7 getting information through the officers at the time through
8 his cross-examination. I mean that was the most that we,
9 you know, can get out of that. But other than that, he knew
10 that the officer had me believing it was marijuana and I
11 guess, during trial, he did everything he could to do to,
12 you know, say that oh, I didn't say nothing about marijuana.
13 Those are pills and, and just trying to switch up
14 everything.
15 Q Okay. And what else would you like the Court to know
16 today about Mr. Williams' representation?
17 A I think it was like a couple of witnesses that had --
18 could have been looked into at that possible time when the
19 case was fresh. Like when they finally -- when I finally
20 hired him, I guess the, the motion of discovery had revealed
21 that it was an unidentified black female that -- which came
22 to the door which was the sister of the guy who, you know,
23 vouched to get the box I guess.
24 Q Was Ms. Gillespie one of those witnesses?
25 A She was -- was she -- I think she was out -- nah, she

1 wasn't outside but she knew I was going down there. Like I
2 was going out the house. She know the neighbor that's down
3 there. So --.
4 Q I have no further questions at this time. Answer any
5 questions Ms. Jameson may have.
6 A All right.
7 CROSS-EXAMINATION
8 BY MS. JAMESON:
9 Q Good morning, Mr. Miles.
10 A Morning.
11 Q When did you retain Mr. Williams?
12 How quickly after you had gotten (indiscernible)?
13 A I would say -- yeah. I would say right when I got out.
14 Probably like two months or so, two or three months or so.
15 Q Was he the only attorney, attorney who represented you?
16 A Nah, I was looking in to hiring someone else at that
17 time. But, you know, it didn't work out. So, I was
18 referred to Theo by a friend.
19 Q And I believe you testified before you only met with
20 him one time?
21 A Like once or twice but the one time before -- after
22 the, the, the sentencing, the plea agreement form came out
23 for me to take a plea or whatever. That's when we met. But
24 other than that occasion, it was just jury -- was it,
25 general session roll call count?

1 But I really didn't have to come because I had a job at
2 the time. So, it was kind of --.
3 Q But did you attend roll call or not?
4 A I attended a few of them.
5 Q How many?
6 A Probably like three.
7 Q Did you meet with --?
8 A Ben.
9 Q With Mr. Williams (indiscernible)?
10 A Nah, it was Ben.
11 Q It was Ben.
12 Is Ben the other only attorney whose office you met
13 with?
14 A That I met him?
15 Q Uh-huh. (Affirmative).
16 A Yes, ma'am.
17 Q How many times did you meet with Ben?
18 A Like I said, about -- it was -- about three times.
19 Q Three times.
20 Okay. So maybe two times with Theo and three times
21 with Ben?
22 A Right.
23 Q All right. And then you said there was a plea offer
24 for you to plead for seven to 25 years, correct?
25 A It's an open plea, yes, ma'am.

1 Q Open plea.
2 And that would of been for a lesser included offense,
3 correct?
4 A No, ma'am, it was -- you know, it's an open plea and
5 saying -- due to my background, I could have -- you know, it
6 could have enhanced it whatever.
7 Q So you're not aware that, based on the weight of the
8 drugs, you were facing a mandatory minimum 25 years?
9 A No, ma'am.
10 Q Why did you turn down that plea offer?
11 A Why did I turn down the plea offer?
12 Q Yes.
13 A Well, it really wasn't a plea offer. It was an open
14 plea at -- from my understanding. So, it wasn't that I was
15 gonna be getting a lesser included offense or anything. It
16 was just that I was going in -- from my knowledge, I was
17 going in on an open plea and my background and stuff could
18 had of enhanced my -- the time they would be giving me.
19 Q When you say your background, are you talking about
20 your prior record?
21 A Right.
22 Q And you have prior convictions regarding that, correct?
23 A Right. When I was younger, yes.
24 Q Okay. And, and Judge Russo discussed that with you
25 when you were determining whether to testify at trial,

1 correct?
2 A No, ma'am.
3 Q He didn't?
4 A Hu huh. (Negative).
5 Q You gave several statements to law enforcement within
6 that span of 45 minutes, correct?
7 A One.
8 Q You only gave one statement to law enforcement?
9 A Right.
10 Q Okay. So, you didn't give any oral statements before
11 your written statements?
12 A Nah, the oral statement was something that I -- like
13 during trial, I wish I would of been able to took the stand
14 then because that was, that was something I never said.
15 That was the officer saying that.
16 Q Okay. You never spoke to law enforcement before you
17 provided this written statement?
18 A No, they was, they was doing all the talking about what
19 was inside the box at the time.
20 Q And you never responded to law enforcement?
21 A Yeah, we was -- they, they asking me what was inside
22 the box and I was like I don't know. I guess -- I don't
23 know and they was saying that oh, it was marijuana. Well,
24 if it is, then hey, just open it up and see like on -- but
25 they was telling me that it was marijuana inside.

Lance Miles - Cross-examination
By Ms. Jameson

1 Q So, you told law enforcement open it up and -- correct?
2 A I mean that -- yeah, cause I was already in cuffs at
3 the time, uh-huh.
4 Q And when law enforcement surrounded you --
5 A Right.
6 Q -- you threw the box, correct?
7 A Nah, I placed it down. It was---
8 Q You weren't holding the box?
9 You had discarded it, correct?
10 A Nah, I just -- when they, when they came in with guns
11 out cause I was really confused. I didn't know what was
12 going on. It happened so fast.
13 So I just -- when they was like -- when the guns came
14 out, I just put the box down gently. The officer the one
15 that refer that I had a look in my eye like I wanted to run
16 or something. But at the end of the day, I wasn't running
17 cause I wasn't -- I didn't figure I was doing nothing wrong
18 at the time until they come out, guns out, had me in cuffs,
19 and telling me it's marijuana in the box and all this extra
20 stuff.
21 Q How many officers approached (indiscernible)?
22 A It was Edmonson. There was -- and it was probably like
23 three officers cause I want to say all three had guns drawn
24 while Edmonson put his up and put handcuffs on me. I mean
25 he was telling me to get -- I was on the car but he was

1 telling me to get on the ground and I'm looking at the
2 ground like, you know, and I just, just---
3 Q You got on the ground?
4 A He just forced me---
5 Q Or maybe they forced---
6 A ---to the ground.
7 Q ---you on the ground?
8 A Yeah, they forced me on the ground.
9 Q So your testimony today is that all three officers had
10 guns drawn on you?
11 A Right.
12 Q All right. And at that time you told officers you, you
13 didn't know what was in the box, correct?
14 A Right.
15 Q And then the officers start questioning you about
16 whether the box contains marijuana, correct?
17 A Really it was telling me it was.
18 Q And at that time you told the officers you knew the box
19 likely contained drugs but you didn't know what type,
20 correct?
21 A No, I was---
22 Q You didn't tell the officers that?
23 A I was telling them if it's marijuana in there, then
24 open up and see. I don't know.
25 Q But you know something illegal was in the box?

1 A No, ma'am, not at the -- not at the present time.
2 Q Okay. Why were you picking up this box then?
3 A Because I was just doing a favor for my cousin at the
4 time that was there earlier that morning out of my knowledge
5 of knowing why he was there.
6 Q Were you paid to pick up this box?
7 A I was paid to stay home.
8 Q Why were you paid to stay home?
9 A Because I was fixing to go fishing that morning. I was
10 fixing to go fishing to Lake Murray that morning and I had
11 put -- paid for gas and, you know, bait and everything and,
12 you know, he wanted me to stick back cause he was coming, he
13 was coming from like a two drive away from where we're
14 originally from. So --.
15 Q He paid you to stay home that morning?
16 A Right.
17 Q And retrieve this box?
18 A Right. Just make -- if he -- if he's -- if the guy
19 wasn't home, yeah.
20 Q And, and who paid you for that?
21 A Nah, I really didn't get paid. I just was the --.
22 Q Who was the arrangement with?
23 A Who was the arrangement with?
24 It was with me.
25 Q With your cousin---

1 A Right.
2 Q ---or your friend?
3 A My cousin. Yeah, my cousin. Yeah.
4 Q Okay. And how many times has, has your cousin received
5 these boxes?
6 A Nah, he never done paid me to get any box before.
7 Q This was the first time?
8 A This just was me saying hey, I, I spend some money. I
9 was about to go fishing. It was like hey, man, you know,
10 you just stay back. I just get -- pay you money back for
11 that, what you spent on going -- doing what you was about to
12 do.
13 Q Okay. And you eventually gave a written statement to
14 law enforcement, correct?
15 A Right.
16 MS. JAMESON: Your Honor, may I approach?
17 THE COURT: Yes, ma'am.
18 Q I'm handing him what is Page 243 from the record on
19 appeal, which is already part of the record in this case.
20 A Uh-huh. (Affirmative).
21 Q Is, is this the statement you were talking about before
22 with your attorney, Ms. McMahan?
23 A Right.
24 Q Okay. And you were talking about how it just had boxes
25 for you to check.

1 Where are the boxes you were referring to?
2 A Well, where I put my initials are the lines right
3 there.
4 Q Okay. So, so the middle portion right here, that's
5 where you're talking about the Miranda warnings, correct?
6 A Uh-huh. (Affirmative).
7 Q You know, is that your initials, the L.M. right there?
8 A Yes, ma'am.
9 Q Okay. And then below this, this narrative portion, is
10 that your handwriting?
11 A Uh-huh. (Affirmative).
12 Q You wrote this for law enforcement, correct?
13 A Right.
14 Q Can you read what the statement says please?
15 A It say I got called about picking up a package.
16 THE COURT: I can't hear you.
17 Would you just make me a copy of that?
18 MS. JAMESON: Yes, Your Honor. It should be in your
19 judge's packet but I'll---
20 A I say I got called.
21 Q You, you can go on, Mr. Miles. I think I have another
22 copy for the judge.
23 MS. McMAHAN: Here. I have one.
24 A I was like I got called to pick up a package. Not pick
25 up a package but this is how I wrote it was at the time it

1 wasn't---
2 Q Can you read just what's on this statement right there
3 that you wrote in your own words?
4 A I say I got a -- called about a package yesterday. No,
5 not yet. See on -- but on yesterday and was going to get
6 paid a hundred to pick it up but hand it off to the owner of
7 the box and I was picking up the box. When I picked up the
8 box, cops was on the scene. So, as soon as the mail ran, I
9 get a call from Mark, the guy who had the owner use his
10 address I guess to -- for -- to get the box mailed to him.
11 I picked it up. I got caught in this mess. The only guy's
12 named by Stacks. Lieutenant C don't know any government
13 names.
14 Q Is Stacks your cousin?
15 A Oh, no, ma'am.
16 Q Okay. Can you flip that over please to the back?
17 A All right.
18 Q Is that the other part of your statement right there
19 where officers asked you questions and you provided answers?
20 A Right. Saying it -- due to the marijuana now that was
21 --.
22 Q And so obviously the package (indiscernible)?
23 A Right, cause it got drugs on it.
24 Q So the question is did you know that there were drugs
25 in the parcel and then -- and it quotes box and you answered

1 yes?
2 A Right. Do the---
3 Q And then in the portion that's redacted, officers asked
4 you if you've done this before, correct?
5 A Asked me have I ever got a package from anyone. That's
6 what -- at -- that's what I thought he was pertaining at the
7 time that I had like, you know, like a neighbor can order a
8 box and be like hey, can you hold this until I get off from
9 work. I done that a few times and that's what we was
10 referring to. But he wrote in his own words putting the
11 drugs in -- that inside the, the sentencings.
12 Q But, but you, you do acknowledge that you told law
13 enforcement that you knew there were drugs in that box,
14 correct?
15 A Not -- I mean marijuana.
16 Q You knew that there was some illegal substance in the
17 box (indiscernible)?
18 A Not some. Just was marijuana. Just a---
19 Q Marijuana.
20 A Yeah, just---
21 Q Okay. All right.
22 A Off of what he was saying.
23 Q And I believe you testified before you gave consent to
24 the officers to open the box, correct?
25 A Yeah, that's -- yeah, that -- cause they was -- they

1 had me in cuffs at the time. So, I was -- they was saying
2 marijuana. I just wanted to know if it was marijuana
3 myself. You know, I just -- cause he was charging me with
4 that at the time, you know.
5 Q And, and officers didn't open the box at that time,
6 correct?
7 They called a drug dog in?
8 A Yeah, they called a drug dog in.
9 Q Okay. And the drug dog alerted to the package that
10 there was an illegal substance.
11 Is that correct?
12 A From my understanding, the dog didn't but -- cause Doug
13 Edmonson testified that he did and then like on the scene of
14 the -- the officer was telling the dog -- well, you know,
15 saying that he did a lousy job from that point. I guess
16 they said they had a search warrant and they still end up
17 going inside the box. I never opened the box. I never
18 would be opening the box. So --.
19 Q But you recall the, the dog handler, Ted---
20 A Is it---
21 Q ---I don't recall his last name right now, testifying
22 at trial?
23 A Yes, ma'am.
24 Q And he testified the dog alerted to the box that there
25 were illegal drugs in there, correct?

1 A I think he, he testified and said that the dog -- I
2 think he said that it -- he testified and said that the dog
3 wasn't trained on oxycodone he was saying.
4 Q Your attorney questioned him on that, correct?
5 A Right.
6 Q Okay. And at that time officers still didn't open the
7 box. They went and got a search warrant.
8 Correct?
9 A Right. They were there -- opened it before the search
10 warrant was even there. They just opened it. I don't know
11 if I was suppose to see a search warrant or anything before
12 they opened it or -- but he just opened the box and brought
13 what was inside to me and asked me.
14 Q You testified that you wanted your attorney to look
15 into some additional witnesses, correct?
16 A Uh-huh. (Affirmative).
17 Q And one of them being Ms. Gillespie who testified this
18 morning, correct?
19 A That and the mother and the daughter that was at that
20 ██ Villa Court, Mrs. Davis. That's where the box were
21 went -- that's when the little young guy, that's who live at
22 that address and -- but, nah, none of those was called to be
23 subpoena or anything.
24 Q Okay. No further questions. Thank you.
25 A You welcome.

1 REDIRECT EXAMINATION
2 BY MS. McMAHAN:
3 Q Mr. Miles?
4 A Yes, ma'am.
5 Q You had just told Ms. Jameson that you knew there was
6 marijuana in the box.
7 How, how and why did you know there was marijuana in
8 the box?
9 A Due to the officers telling me that it was marijuana
10 inside and I would be charged with marijuana or they wanted
11 to say how many states this box came through. You could be
12 charged with that. So, at that approximate time, I'm
13 thinking it's marijuana and I'm charged with marijuana at
14 the time. That's why I just really had just complied and
15 getting the situation over with.
16 Q Okay. And did you have these discussions with
17 Mr. Williams?
18 A Yes, ma'am.
19 Q Did Mr. Williams tell you anything about having --
20 trying to keep your witness out -- your statement out of the
21 record or anything?
22 A No, ma'am, cause everything was kind of -- I feel like
23 it was rushed, yeah. So it been really enough time to
24 really go over it properly.
25 Q Why do you think it was rushed?

1 A I don't know. They came with the -- they came with the
2 plea. I want to say that was in December. Like I went to
3 trial in February.
4 So, at that time, we -- I went to Mr. Theo office and
5 that's when we talked -- he talked to Donnie Myers, Donnie
6 Myers at the time and, you know, we wasn't taking the plea
7 at that point because it was, it was saying 25 years and,
8 and I could of been, you know, subject to that.
9 Q So you, you said it was rushed between December and
10 February?
11 A Right, cause like -- yeah, cause from December -- cause
12 I was working too. So I mean when we -- when trial -- when
13 they was ready for trial, then that's when we kind of like
14 he dug into it a little bit before we stepped and go through
15 trial. But then I think he didn't really know much
16 unless -- until he start cross-examining the officers for
17 the State, right.
18 Q Did he ever talk to you about that -- did he ever
19 indicate to you that he was talking to the officers about
20 (indiscernible)?
21 A No, ma'am.
22 Q Anything else you want the Court to know today?
23 A That's about it.
24 Q Okay. No further questions.
25 THE COURT: Thank you, sir.

1 MS. JAMESON: No recross, Your Honor.

2 THE COURT: You may step down.

3 THE WITNESS: Thanks.

4 THE COURT: All right. Call your next witness.

5 MS. McMAHAN: Your Honor, the applicant rests.

6 MS. JAMESON: Your Honor, the applicant would call

7 trial counsel Theo Williams or the State. I am sorry.

8 THEO WILLIAMS, being first duly

9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. JAMESON:

12 Q Good morning, Mr. Williams.

13 You were retained to represent Mr. Miles?

14 A I was.

15 Q Do you recall when approximately?

16 A I don't.

17 Q Okay. But shortly before trial?

18 A Oh, no.

19 Q (Indiscernible).

20 A It was, it was several months before the trial.

21 Q Do you recall how many times you met with him?

22 A I don't know. Probably -- I -- he's already mentioned

23 at least three times with Ben. He says two with me.

24 Probably a lot more than that. So, I'd probably say about

25 six or seven, something like that.

1 Q And when you were referring to Ben, that's Ben Stitely
2 (indiscernible)?
3 A He's my law partner.
4 Q All right. Did he handle the case too?
5 A He -- well, he -- we work together. I think I tried it
6 but I mean he -- we work together on discovery and talking
7 to the client and all the other stuff.
8 Q Is that a, a common arrangement between you and your
9 partner?
10 A It is particularly dealing with roll calls and stuff
11 like that because, back then, we had numerous, numerous roll
12 calls and numerous people had to come.
13 Q And Mr. Miles was out on bond?
14 A He was.
15 Q (Indiscernible).
16 A We talked a lot of times over the phone actually.
17 Q And he was charged with trafficking in illegal drug
18 over (indiscernible), correct?
19 A Correct.
20 Q Did you explain that this was based on the weight of
21 the drugs that were recovered?
22 A Right. I did.
23 Q Did you explain elements of that offense to him?
24 A Right. And he was -- I want to say he was actually
25 charged with a second or greater offense also. And it was

1 over like four, four grams I think.

2 Q It was 300 pills of oxycodone.

3 A Correct.

4 Q Is that correct?

5 A Correct.

6 Q In that trial there was -- do you recall there being a

7 debate where the initial officer thought (indiscernible) 200

8 pills rather than 300 which was the total count?

9 A Right.

10 Q Would that 200 pills still have been over the 4-gram

11 threshold?

12 A It, it would. So it, it wouldn't make any difference

13 in terms of sentencing.

14 Q And, at trial, did you ask for any lesser included

15 offenses?

16 A No.

17 Q Why not?

18 A Well, because his theory was that it wasn't his drugs,

19 he didn't know about these drugs, these oxycodone drugs,

20 which is the only way he could possibly win that case.

21 Q (Indiscernible) you about the drugs being less than

22 4-grams, correct?

23 A Oh absolutely not.

24 Q (Indiscernible) is presented guilty or not?

25 A That's true.

1 Q So he would not have been entitled to a lesser included
2 offense being (indiscernible)?
3 A No.
4 Q Correct?
5 A No.
6 Q Which is the only, if he had a lesser included, on a
7 trafficking (indiscernible) charge?
8 A That's---
9 Q Correct?
10 A That's true.
11 Q Did you explain the potential sentences
12 (indiscernible)?
13 A Yes. And actually Ben, Ben -- Ben, Ben pushed him a
14 little bit to see if he could go ahead and do the seven to
15 25. I think if he thinks about it he'll remember Ben was
16 the one kind of pushing him on that. I told him I said
17 look, man, it's up to you but, you know, here's, here's
18 what'll happen. You know, it's -- he was concerned that he
19 might get as much as 25. The minimal he would of had to
20 have got would of been seven.
21 Q Uh-huh. (Affirmative).
22 A So I -- you know, I would of focused on the seven if
23 a -- you know, as opposed to worrying about the 25 part.
24 Q Did you explain to Mr. Miles that if he proceeded to
25 trial and he was found guilty that the mandatory minimum

1 sentence he could receive (indiscernible)?
2 A Sure. And, and, and really what he was really worried
3 about is his record because there was a chance that Russo
4 might not give him the seven. Judge Russo. I'm sorry.
5 Q His cousin had pled guilty, correct?
6 A Correct.
7 Q Because, at trial, Judge Russo's only choice for a
8 minimum sentence was 25 years?
9 A Correct.
10 Q Correct?
11 A Correct.
12 Q And that was explained to Mr. Miles?
13 A Yes, he understood that.
14 Q And he rejected the offer?
15 A He did.
16 Q And that was to a lesser included offense, correct, a
17 lesser weight?
18 A Yes.
19 Q Did you receive appropriate discovery responses from
20 the State (indiscernible) Brady?
21 A Yes.
22 Q Can you summarize what you received in discovery?
23 A Well, we got incident reports. We got drug analysis.
24 We got the -- we got the copy of the search warrant with the
25 return and, in the return, it referenced the pills.

1 The pills were actually inside, if I remember right, a
2 candle. So, they weren't readily observed, and, if you open
3 up the package, you wouldn't necessarily know there was a
4 bunch of oxycodone in there. So, you know, I guess it was
5 always a possibility that the police officers wouldn't open
6 up those candles but they did. If I remember right, they,
7 they were actually inside the candle.
8 Q Correct.
9 And, and you did (indiscernible).
10 A Right.
11 Q ---inside?
12 A Right.
13 Q So concealed. It wasn't just (indiscernible)?
14 A Yeah, you couldn't just open it up and say here's a
15 bunch of drugs.
16 Q In discovery, did you get statements from Mr. Miles?
17 A From him?
18 Q Yes.
19 A Sure. Like he, he had, had written statements and he
20 made oral statements also.
21 Q Can you summarize what those statements are?
22 A Well, basically that he knew that there were drugs
23 inside the package but he is -- he's correct on one thing.
24 I, I don't think he referenced that he knew that there was
25 oxycodone in, in that package or not. And one of the major

1 issues that was argued on appeal was that issue about do you
2 really have to know that the drugs -- that the illegal drugs
3 that you're picking up or actually oxycodone and whether or
4 not -- and what amount there is, which is an interesting
5 argument. But obviously we didn't -- we were not successful
6 with that point of view.
7 Q But the statements he gave law enforcement were only I
8 knew there was something in there illegal but I didn't know
9 specifically that it was oxycodone?
10 A True.
11 Q Is it a fair assessment to say your defense strategy
12 was (indiscernible) in there and he didn't know it was
13 oxycodone at the time (indiscernible) actually know
14 specifically this type of illegal drug?
15 A Yes. And, and what's -- and it was verified by the
16 fact that the jurors sent out a note that said do we have to
17 find that he knew that the drug that was in there was
18 oxycodone. So, obviously people on the jury were concerned
19 about whether he was just kind of duped into picking up this
20 package thinking it was weed and it turns out to be a bunch
21 of oxycodone.
22 Q In response to that jury note, (indiscernible) Judge
23 Russo proposed (indiscernible)?
24 A He, he instructed the jury that if -- as long as he
25 knew that there were illegal drugs that were in that

1 package, he didn't have to understand the extent or what
2 kind.
3 Q And that was given -- that supplemental instruction was
4 given over your objection, correct?
5 A It -- it was.
6 Q And was preserved for appellate review?
7 A It was.
8 Q It was the issue that the published opinion that --
9 correct?
10 A It was.
11 Q Unfortunately the Appellate Court's did not bite,
12 correct?
13 A They did not.
14 Q And you also argued for a directed verdict on that
15 (indiscernible) grounds, correct?
16 A Yes.
17 Q And going back to these statements, the, the first
18 statement, that was given through your (indiscernible),
19 correct?
20 A It was.
21 MS. McMAHAN: Objection to leading.
22 Q Do you, you remember his first statement
23 (indiscernible)?
24 A Yes.
25 Q Was it given, was it given (indiscernible)?

1 A Not at that stage because, if I recall correctly, the
2 officers -- I think they had -- did tackle him. They had
3 him handcuffed. There were talking to him about why did he
4 run, what's the stuff in the package, and that kind of
5 thing. So that would of been before Miranda.
6 Q Do you recall what he said at that time?
7 A Yes.
8 Q What did he say?
9 A I want to say he, he first denied that he knew that
10 there was anything in the package or that there were illegal
11 drugs in the package.
12 Q He was given -- is he given Miranda warnings
13 (indiscernible), correct?
14 A He was.
15 Q Was he provided with (indiscernible)?
16 A He does. He does and there was actually -- and there
17 were actually Denno hearings on all of that and the judge --
18 the, the judge was creative in terms of didn't let him --
19 he, he kept out part of the statements that he made. But
20 then, when he got to the statements dealing with the written
21 statements, he said that well, they're in. You know, he
22 obviously had been, been Mirandized and there was nothing
23 that was coercive in regards to the questioning or anything
24 that was done to him.
25 So, it was like taking a bite of the apple. He was

1 still gonna be screwed over because he's admitted in the
2 statements that are coming into the record that he knew
3 there were illegal drugs in there and he'd done it before.
4 Q And you had a Jackson v. Denno---
5 A We did.
6 Q ---to suppress these statements, correct?
7 A We did.
8 MS. McMAHAN: Objection to leading. She's leading.
9 THE COURT: Is that you?
10 You got to speak up. I'm sorry. Overruled.
11 Q (Indiscernible) trial in front of the jury, you were
12 aware these statements were coming in --
13 A Yes.
14 Q -- he knew of the drugs?
15 A Absolutely we knew it.
16 Q How did that impact your trial strategy?
17 A Well, we tried to slide around how much knowledge he
18 had in regards to the packaging.
19 Q And the jury --?
20 A The jury bit on it because obviously that was the
21 question that they asked. I think it's a -- and I think
22 it's a fair thing. I mean somebody was paying him money to
23 pick up packages. I don't know about staying home though.
24 Q In that statement about him picking up packages
25 (indiscernible), correct?

1 A Yes.

2 MS. MCMAHAN: Objection. Leading.

3 THE COURT: Sustained.

4 Q Did the initial statement, pre-Miranda, what -- were
5 the statements (indiscernible)?

6 A Yes.

7 You talking about the, the written?

8 Q The first oral statement pre-Miranda --

9 A Right.

10 Q -- at Jackson v. Denno hearing -- I'm sorry.
11 (Indiscernible).

12 A I don't know what the State was planning on doing. But
13 I knew that the State were gonna, were gonna be able to get
14 in the statement that he did know that there were illegal
15 drugs and that he had done it before.

16 Q The initial statement that he did not know drugs were
17 in the package, did you want that in front of the jury?

18 A Yes.

19 Q Did you question the officers (indiscernible)?

20 A Yes.

21 Q Why?

22 A Because I wanted somebody on the jury to think that he
23 didn't know what was in the package because I'm really not
24 sure he actually did know what was in the package meaning
25 the drug itself.

1 Q Did you challenge the drug report?
2 A I did. Wait a minute. I think I did. I can't
3 remember if I did actually. Truthfully, no, and that's what
4 I'm here for, judge. I don't remember.
5 Q If the record reflects that there was a suppression
6 hearing regarding the third warrant, could you briefly touch
7 on that?
8 A I don't have a bit -- reason to doubt that.
9 Q Do you believe the officers had probable cause to get a
10 search warrant for this box?
11 A I, I do particularly based on -- I mean you got one guy
12 who says that it's got some unusual way it's wrapped. It's
13 not the kind of case where -- you know, they're, they're
14 different types of ways you intercept, you intercept these
15 types of packages. Sometimes, you know, you sniff it. You
16 get the dog to sniff it. You open it up. You repackage it.
17 You put it back in. Then you send it out and let the guy go
18 deliver it.
19 This particular case, I want to say there was something
20 about the wrapping, where it came from, and he thought well,
21 that's just a suspicious package. But they didn't actually
22 open up the package until it got to this location, and then
23 they were real funky about how they were doing that. They
24 went and got a search warrant after he ran, which is an
25 indication something was going on, and then --.

1 Q Did he discard the box?
2 A No, the box was there.
3 Are you---
4 Q Was the applicant -- was Mr. Miles by it -- by the---
5 A Oh, he threw it. He didn't want it close to him
6 because he was trying to -- he obviously knew there was
7 something about the box that he didn't need to have it in
8 his hands cause that's why he threw it. But I'm not sure he
9 knew exactly what was in the box.
10 Q Did Mr. Miles ever give consent for law enforcement to
11 open the box?
12 A I think he -- I think he's -- I think he's correct what
13 he said on his direct testimony that he said well, go ahead
14 and open it.
15 Q And officers did not open it, correct?
16 A No, they didn't -- they went -- because I think they
17 thought -- they were, they were concerned about just opening
18 the box. So they wanted to get a search warrant even though
19 they had a dog out there.
20 Q (Indiscernible.)
21 (Pause.)
22 A K-9 was called to the scene, correct?
23 A It was.
24 Q Do you recall what the (indiscernible)?
25 A He did. At least according to the dog handler he did.

Theo Williams - Direct examination
By Ms. Jameson

1 Q And you -- do you recall cross-examining the dog
2 handler?
3 A I've, I've cross-examined Ted a million times. I don't
4 remember what I particularly did on this particular one. I
5 think his last name is like Stancokus (phonetic) or
6 Stanacokus (phonetic). Something like that.
7 Q And do you recall when the first warrant was obtained?
8 A It was obtained while he was on scene if I remember
9 correctly because they had one of the officers talking to
10 the magistrate who was issuing the search warrant and -- the
11 total number of officers were not like 10 vehicles down
12 there. They had, they had Miramontes who would of been the
13 Latin looking guy who was actually on the drug task force
14 and they had the big guy who was -- I can't remember it.
15 Any -- he's, he's, he's -- the black gentleman who is the
16 big guy who was actually probably charged as it---
17 Q Is it Edmonson?
18 A Edmonson, that's correct, the, the rocket scientist.
19 He, he, he is the big guy who was there along with -- so
20 there were a total of maybe no more than probably five maybe
21 law enforcement people there. I, I don't know that there
22 would be 10 vehicles there.
23 Q Did you ever have any discussions with Mr. Miles about
24 (indiscernible)?
25 A Well, obviously we talked to him to see if we had any

1 witnesses. The, the, the only people that would have known
2 anything about what occurred would of been the lady that
3 looked at the package and did not pick it up. I think that
4 would of been the only lady that would of known about it.
5 He didn't tell me the name of his cousin or who he was
6 picking it up for or that type of information anymore than
7 he did that just a little while ago. But I'm not sure he
8 knows the guy's last name, the guy from Tennessee or
9 something like that, Stacks or something like that.
10 MS. JAMESON: Beg the Court's indulgence, Your Honor.
11 (Pause.)
12 MS. JAMESON: No further questions (indiscernible).
13 CROSS-EXAMINATION
14 BY MS. MCMAHAN:
15 Q Mr. Williams.
16 A Thank you.
17 Q Was -- did -- are you sure that Mr. Miles ran from the
18 scene?
19 A Yes, I'm s---
20 Q Did he, did he tell you that?
21 A It was described that, that he took off when law
22 enforcement approached him. I don't think he denied that.
23 Q Did -- was the box addressed to him?
24 A No.
25 Q Who was it addressed to?

1 A I don't remember right now. I want to say it was
2 addressed to a female who lived at that address or something
3 like that. And it had on the -- the box itself also had a
4 return address on it or it, or it had something on the box
5 itself which indicated where it was mailed from, cause when
6 I was cross-examining the -- I think I did this when I was
7 talking to the police officer. I asked them. I said well,
8 did you talk to so and so or to find out where it came from,
9 did you check that out. Of course, they, they didn't check
10 out where it came from or anything like that.
11 Q Okay. But was it his specific address or --?
12 A It was not his address if I remember right. It was the
13 address for that lady that came out.
14 Q It was the address nearby?
15 A Yes, address nearby.
16 Q And the lady that came out, was that Ms. Davis?
17 A Yes.
18 Q Was it Tasha Davis?
19 A I don't (indiscernible).
20 Q And you said that the officers never talked to her?
21 A I don't know that they did or they didn't. They never
22 said they did. I thought maybe there was some comment made
23 about it but maybe not.
24 Q So Mr. (indiscernible) was a cousin that -- of Ms.
25 Tasha Davis?

1 A I don't think he gave me a name. He said the lady came
2 out from the house or something like that. That's how he
3 described her. I don't know that he knew.
4 Q Okay. What kind of group was this of officers that had
5 showed up?
6 A NET. NET team.
7 Q What's the NET team?
8 A NET team consists of people who have an alliance if you
9 will. They have their various departments enter into an
10 agreement where they all work together, they actually sign
11 something known as a NET agreement where -- cause you got
12 different jurisdictions, and like Miramontes actually works
13 with the Town of Lexington Police Department.
14 So, there was an agreement signed by the sheriff and
15 the head -- chief of police for Lexington as well as with
16 the consent of the Town Council to allow use of one officer
17 from another jurisdiction to work with these other officers
18 in terms of making arrests because, if you didn't do that,
19 then it would be an illegal arrest because you had somebody
20 outside of his jurisdiction to make an arrest and, and their
21 agreement that they had was proper because I've actually won
22 a case on that basis before where it was not actually signed
23 by the council and/or the mayor. So, the person who made
24 the arrest didn't have permission.
25 Q So would it be called a multi-jurisdictional team?

1 A It would.

2 Q Are you aware of these (indiscernible)?

3 MS. JAMESON: Your Honor, objection based on relevance.

4 This is not an allegation that's been pled.

5 THE COURT: What, what is the relevance?

6 MS. McMAHAN: (Indiscernible).

7 THE COURT: Sustained.

8 Q Was this some sort of versatile interdiction unit or

9 something (indiscernible)?

10 A Yes, there was.

11 Q Did you look into that?

12 A What?

13 When you say look into it, I don't know -- it, it --

14 if, if you're thinking about could I challenge the fact that

15 they did a, a, a sniff at a post office or not?

16 Q Yes.

17 A No. But that's actually an int -- that's actually an

18 interesting thing. But, but, but what they do is they don't

19 actually conduct a search. I guess it's a question of what

20 you constitute a search. They simply view packages, and

21 then once they view packages, they would have to do more

22 than just open it up.

23 They'd have the same requirements of getting a search

24 warrant. I guess they're in an opportunity to see it maybe.

25 Maybe, maybe by being at the, at the postal service, they

1 might be in an opportunity to find it more likely than not.
2 Q Do you know how they can find it and (indiscernible)?
3 A What---
4 Q And did you ever ask them how (indiscernible)?
5 A Well, I know how they do it.
6 Q How do they do it?
7 A They, they, they look at a package, and if it, if it
8 looks unusual, they bring a dog in. They'll sniff around it
9 or -- and then they'll use that as a basis to open it up.
10 In this particular case they didn't open it up because they
11 couldn't find -- they couldn't smell anything on the package
12 or they would of had the dog there.
13 They, they chose that particular package simply because
14 it came from a location which they had some inside poop.
15 They didn't say this. But I know they had inside poop that
16 packages were being mailed from that location.
17 Q Do you know if (indiscernible)?
18 A No.
19 Q (Indiscernible)?
20 MS. JAMESON: Your Honor, I'd object to these questions
21 because they are mischaracterization of the record. A dog
22 was not used at the FedEx location in this case. The record
23 is clear on that.
24 THE COURT: What's your response?
25 MS. McMAHAN: (Indiscernible) FedEx but my question was

1 leading onto the, the---

2 THE COURT: Is there any evidence in the record about

3 the postal service and the dog sniff at the postal service?

4 MS. McMAHAN: Not that I'm aware of.

5 THE COURT: I'll sustain the objection.

6 Q But the (indiscernible) interdiction unit, who was

7 involved in that?

8 A Well, no, I mean it, it, it depends on who's working.

9 Q I mean is it just at the U.S. Postal Service?

10 Is it at FedEx?

11 A It depends---

12 Q Is it (indiscernible)?

13 A It depends on what type of service that you're talking

14 about. They could be working at the FedEx. They could be

15 working at the UPS. More than likely if it's, if it's the

16 United States Postal Service, they probably had their own

17 people who were doing interdiction there.

18 Q In, in this situation when you just said

19 multi-jurisdictional type officers at these facilities or

20 sheriff's deputies kind of going through or --?

21 A It wouldn't be sheriff's deputies. It would be those

22 guys who have training about drug transportation.

23 Q Okay.

24 A So, it would be, it would be like, like Edmonson or the

25 other guys who were like -- there was -- they'd be similar

1 to gang task force people but they're not. They'd be people
2 who might work with the U.S. Marshal Service on pickups and
3 stuff like that.
4 Q Okay.
5 A There's, there's a lot of cross-training between all of
6 law enforcement nowadays.
7 Q And the cross-training, would one of them have notified
8 wherever the package was going and notified that to
9 multi-jurisdictional (indiscernible) as a package---
10 A No.
11 Q ---and that's what happens (indiscernible)?
12 A No, they're just sitting out there. It's -- it's like,
13 it's like, it's like going to West Columbia on a, on a
14 Saturday night at nine o'clock, where you know that they've
15 made a hundred arrests in the last three years, sitting out
16 there on the corner watching people drive by and deciding
17 well, that's suspicious and they, they check him out or
18 something like that. It's, it's that type of search thing.
19 It, it -- police officers are not magic. They go to a
20 location where they think that a crime might be committed.
21 And they wouldn't go to a church to start checking for
22 packages inside the church but --.
23 Q So, this is---
24 A So they're using their common sense just like anybody
25 else.

1 Q So my question is how would these officers know to
2 track down this one box?
3 A There was something about this box which looked unusual
4 to them, and probably -- well, you see, I don't know any
5 more than that because I don't know -- you know, they don't
6 put down there inside tips and that kind of thing.
7 Q They would just notify someone through law enforcement
8 hey, here's a, here's a package that we might all look into
9 it?
10 MS. JAMESON: Your Honor, I object again cause this is
11 a mischaracterization of the record. The officers provided
12 testimony both in pretrial and before the jury that, as part
13 of their routine job duties, they were at this FedEx
14 location and saw the package go across the conveyor belt and
15 it had several of the indicators. So, there -- there's no
16 evidence there was any tip and this is a mischaracterization
17 of the record.
18 MS. McMAHAN: (Indiscernible). All I'm trying to do is
19 find out from Mr. Williams what was his understanding of all
20 (indiscernible) while he was in trial. It's one thing for
21 an officer to testify about (indiscernible). But if you're
22 the attorney looking into that information, what did you
23 know before you walked into the trial.
24 THE COURT: She---
25 MS. McMAHAN: Did you know any of this?

1 THE COURT: I'll let you get into it a little. Let's
2 move it on.
3 Q What was---
4 A Just---
5 Q The questions---
6 A If, if you want me to ask that question, I can ask---
7 Q Yeah.
8 A ---I can answer that question.
9 Q Answer that question.
10 A All right. What I knew about this was that law
11 enforcement had viewed a package -- when I started
12 representing him, they had viewed a package as being
13 suspicious, and because it was suspicious, they checked out
14 the address of where it was going, and they placed someone
15 in that area to observe what happened when the package was
16 dropped off.
17 They had people in three different locations. They had
18 Miramontes in one location. They had Edmonson in another
19 location. Then they had another officer in another location
20 so that they could view the entire area and they could have
21 contact with -- be able to observe who actually touched the
22 package.
23 And when they saw one lady, I guess, look at it and not
24 pick it up and take it inside the house, then they saw my
25 client walk around it, not necessarily pick it up the first

1 time, but then he goes ahead and picks it up and then he
2 starts walking with it, that's when they make their
3 approach. My client looks at law enforcement, drops it,
4 gets scared. They pull guns out and then it's on.
5 Q So officers at FedEx that are looking at all these
6 boxes (indiscernible) boxes, are those the specially trained
7 ones on the -- on this NET unit or could it just be any type
8 of officer?
9 A You want me to speculate?
10 Q No.
11 Did you determine whether or not the officer that was
12 looking at the box had the jur -- authority to look at the
13 box and notify (indiscernible)?
14 A I think any law enforcement officer who is, who is
15 assigned to a location to observe packages, he can't open
16 them up because he doesn't have the authority to open them
17 up but he can observe things that look suspicious just like
18 any other public place. He could sit in the Hardee's, and
19 if he sees something that looks like a drug activity getting
20 ready to happen, he can observe that.
21 He can't necessarily go and arrest the guy. He can't
22 necessarily pull the door open and check inside the car
23 door. But he can at least be observant and that's what I
24 think we actually pay them to do is to keep their eyes open
25 if they view something that might be a crime.

1 They can't just violate somebody's rights but they
2 still are not allowed to cover their eyes when they see
3 something that might be dangerous particularly after stuff
4 like, you know, 9-1-1 or stuff like---
5 Q Anthrax.
6 A ---that. Anthrax, people dropping bombs and blowing
7 people up. I don't think you want law enforcement just to
8 close their eyes when they see things.
9 Q So, the law enforcement officers -- how far away from
10 the FedEx facility from where this (indiscernible)?
11 A I have absolutely no idea.
12 Q Is the FedEx facility in West Columbia?
13 A I don't know. I can look it up.
14 Q (Indiscernible)?
15 A I -- not only would I not dispute it but I really don't
16 care.
17 Q (Indiscernible).
18 Oh, to the search warrant, (indiscernible) earlier
19 testimony that one of the officers that was on the phone
20 (indiscernible) search warrant, (indiscernible) dog with
21 (indiscernible)?
22 A I didn't say that.
23 Q (Indiscernible) that it was more likely
24 (indiscernible).
25 He did have a search warrant (indiscernible)?

Theo Williams - Cross-examination
By Ms. McMahan

1 A I said they had one officer with the magistrate getting
2 the search warrant.
3 Q Yeah, that's what I'm -- okay.
4 A Well, in terms of -- I mean I would like to be I'm --
5 to know those types of things occurring at the same time but
6 I couldn't testify to that because I wouldn't know that and
7 I'm not sure anybody else would know.
8 Q Yeah.
9 When officers get a search warrant (indiscernible), do
10 they have to leave a copy of that search warrant where they
11 just searched?
12 A They have to leave a copy with the person -- they have
13 to leave a copy with the person or -- no, they don't. They
14 can put it in the house or they could put it on the door.
15 They could hand it to the person who's there. The more
16 important thing that they have to do is bring that return
17 back to the magistrate which is not often done --
18 Q But---
19 A -- promptly.
20 Q But they do have to leave a copy of the search warrant
21 with someone?
22 A They're, they're suppose to leave a copy.
23 Q Do you recall whether or not they, they (indiscernible)
24 left a copy of the search warrant (indiscernible)?
25 A Don't know. My guy didn't own that house. I had a

1 copy of the search warrant.
2 Q And the return?
3 A And the return.
4 Q Was the return (indiscernible)?
5 A Yes.
6 Q Did you explain to Mr. Miles that if he went to trial
7 (indiscernible)?
8 A Yes.
9 MS. MCMAHAN: No further questions, Your Honor.
10 THE COURT: Redirect?
11 MS. JAMESON: No redirect, Your Honor.
12 THE COURT: May this witness be excused?
13 MS. JAMESON: Yes, Your Honor.
14 THE COURT: Thank you, sir.
15 THE WITNESS: Thank you, Your Honor.
16 MS. JAMESON: Your Honor, the State does not have any
17 additional witnesses to call but would like to make a brief
18 argument if Your Honor would---
19 THE COURT: Any reply from the Applicant?
20 MS. MCMAHAN: One second. Court's indulgence.
21 (Pause.)
22 MS. MCMAHAN: Nothing further from the applicant, Your
23 Honor.
24 THE COURT: No -- nothing further?
25 MS. MCMAHAN: Nothing further.

1 THE COURT: Let me ask you something, Ms. McMahan.
2 I -- I've got you -- four different grounds.
3 One is the defendant didn't know drugs were in the
4 package. They didn't challenge Miranda. Didn't ask for a
5 lesser included charge and when -- your last one is what?
6 MS. McMAHAN: It's on the -- my amended application,
7 Your Honor. It's at -- didn't adequately challenge the
8 search warrant in the chain, and then did not call the
9 witnesses -- any witnesses at trial that would testify
10 regarding that and I -- our witness for that, for E, was Ms.
11 Gillespie.
12 THE COURT: I'll be glad to hear from the State.
13 MS. JAMESON: Thank you, Your Honor.
14 As Your Honor's aware, to be entitled to
15 Post-Conviction Relief, Mr. Miles must show both that
16 counsel was deficient according to professional norms and
17 that he was prejudiced by these deficiencies to the extent
18 that there's a reasonable probability the results of his
19 trial would have been different but for counsel's errors.
20 In here, the State submits he can not meet that burden of
21 proof as to any of these five grounds.
22 First, to the allegation that Mr. Williams was
23 ineffective for presenting a defense that he did not know
24 the specific type of drug rather than that he did not know
25 the -- that the package contained drugs at all, the record

1 reflects that Mr. Miles repeatedly gave statements to law
2 enforcement that he knew the package contained an illegal
3 drug substance but he did not know which type, counsel moved
4 to suppress these statements in a pretrial Jackson v. Denno
5 hearing without success. And so at that time counsel
6 employed the only objectively reasonable strategy he could
7 to argue that he did not have the requisite mental state
8 because he did not know it was oxycodone. It would of been
9 unreasonable for trial counsel at that time to argue
10 something against all of the statements showing that he knew
11 that there were gonna be illegal drugs coming in.
12 And so the State would submit, as to ground number one,
13 that counsel employed the only reasonable strategy and he
14 was not deficient and no prejudice can be shown.
15 As to the second allegation that counsel is ineffective
16 for failing to adequately challenge Miranda warnings in his
17 detention, again, the State submits this claim is without
18 merit. The record reflects that counsel did challenge these
19 statements. There was a pretrial Jackson v. Denno hearing.
20 The record reflects that, after this hearing, the
21 initial statement to law enforcement where he denied knowing
22 that there were any drugs or what was in the package at all,
23 the State conceded that that would not be admissible cause
24 it was pre-Miranda but that counsel strategically wanted
25 that statement to come in so the jury might have a question

1 as to whether he knew or had been coerced by law enforcement
2 after the gun was drawn and he was, he was thrown to the
3 ground.
4 It, it -- so, he made a strategic decision to let that,
5 that first statement in, which he argued to the jury,
6 particularly if you look at counsel's closing argument on
7 Page 331 of the trial transcript, he discusses that
8 applicant initially says he did not know what was in the box
9 and then officers swarm him. A gun is drawn. Then he says
10 it might be some type of drug. I don't know what it is.
11 Please open it and they still don't open it.
12 And so he used these statements to his benefit after
13 the suppression was already denied and he knew they were
14 going to come in. So the State would submit there's no
15 deficiency of counsel. He performed objectively reasonable
16 and no prejudice can be shown from these allegations. And
17 so we'd ask the Court to deny the second allegation in full.
18 As to the third allegation that counsel was ineffective
19 for failing to request a lesser included instruction, the
20 State submits that this claim must fail as a matter of law.
21 The only evidence that was introduced to the jury was that
22 Mr. Miles was in possession of over that 4-gram threshold.
23 And so it would not have been appropriate to request a
24 lesser included instruction and a lesser included
25 instruction would not have been given by Judge Russo.

1 And so the State submits that that claim needs to be
2 denied as a matter of law.
3 As to the fourth claim that Mr. Williams was
4 ineffective for failing to adequately challenge the search
5 warrants, again, the record refutes this. He did challenge
6 the search warrants after a pretrial suppression hearing.
7 He did acknowledge to Judge Russo that probable cause
8 had been established based on the testimony of the officers
9 there, which was the correct decision. The State did
10 establish probable cause at that suppression hearing.
11 The State would also submit that no prejudice can be
12 shown for several reasons. First, Mr. Miles abandoned the
13 box. When he was approached by law enforcement officers, he
14 attempts to discard it under a car is what the record will
15 show.
16 So the State will submit -- submits that, at that time,
17 the box was abandoned and they did not even need to get a
18 search warrant.
19 Second, Mr. Miles gives officers consent to open the
20 box. And so, at that time, the State would submit that he
21 still did not need, need a search warrant. But, at that
22 time, instead of opening it, the State -- law enforcement
23 officers then have a drug dog come and do a -- walk around
24 the package and the drug dog alerts and it's at that time
25 that the State goes and gets a search warrant.

1 The State submits that there was the appropriate
2 probable cause to get that search warrant. And so no
3 prejudice can be established from that allegation. And so
4 we'd request the Court deny relief on that ground.
5 And as to the final ground that counsel was ineffective
6 for failing to call witnesses regarding the package, the
7 State first submits, as to other witnesses who were not
8 here, perhaps the mother and daughter who lived at the home
9 where, where the package was, was to be delivered, those
10 witnesses are not here to testify. Any testimony would be
11 speculative.
12 And so, the State submits that, as a matter of law,
13 that those claims must be denied as to those witnesses who
14 are not present here today.
15 As to Ms. Gillespie, first, the State, with all due
16 respect, would, would argue that her testimony is not
17 credible. It's not supported by the record.
18 She testifies that 10 law enforcement officers in
19 marked and unmarked cars come screeching out and they have
20 multiple guns drawn. That's not what the record shows. The
21 record shows that there were three or more officers in
22 unmarked cars and only one officer had his gun drawn.
23 So, the State would submit that her testimony is, is
24 not credible in that regard. The State would also submit
25 that her testimony that officers repeatedly asked him if

1 there was marijuana in the box is something that trial
2 counsel already -- argued to the jury and cross-examined law
3 enforcement officers on and got law enforcement officers to
4 admit that they questioned Mr. Miles as to whether there was
5 marijuana in the package or -- and kind of insinuated to him
6 you know there's marijuana in this box.
7 And so this testimony doesn't really add anything into
8 the case. And so counsel can not be deficient for failing
9 to call her nor can any prejudice be established.
10 And so we'd ask the Court to deny on that fifth and
11 final ground and deny this application in full.
12 THE COURT: All right.
13 MS. McMAHAN: Judge, first off, the applicant would
14 just ask that you take opportunity to review the record in
15 the whole before you make a decision.
16 And as to the, to the allegation regarding Gillespie,
17 she actually is credible. She said she was there. Her
18 testimony corroborates what Mr. Miles testimony was.
19 (Indiscernible). And Mr. Miles also said there were a
20 lot of cops that showed up and had guns drawn. Ms.
21 Gillespie says the same thing. Ms. Gillespie says there
22 were a few with their guns drawn. Three or four is still a
23 few. People with their guns drawn showed up, had him on the
24 ground yelling we think that's your marijuana.
25 She added credence to the defense attorney's entire

1 strategy that they were asking him if it was marijuana,
2 trying to get him to admit it's marijuana. Even if he said
3 yeah, I think it's marijuana, it goes against everything
4 (indiscernible) it wasn't marijuana and that (indiscernible)
5 question that she would absolutely added credibility to the
6 whole strategy (indiscernible).
7 THE COURT: All right. Anything further?
8 MS. JAMESON: No, Your Honor.
9 THE COURT: All right. Thank you. I, I am gonna go
10 through the entire submissions before I make a decision.
11 But thank you for your presentation.
12 MS. JAMESON: Thank you, Your Honor.
13
14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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1 CERTIFICATE

2

3 I, Pamela E. Green, Official Court Reporter for the
4 State of South Carolina, do hereby certify that the
5 foregoing is a true, accurate and complete Transcript of
6 Record of the proceedings had and evidence introduced in the
7 trial of the captioned case, relative to appeal, in the
8 Court of Common Pleas Nonjury for Lexington County, South
9 Carolina, on the 15th day of December, 2021.
10 I do further certify that I am neither of kin, counsel
11 nor interest to any party hereto.
12
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15 August 11th, 2022
16
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19 [signature]
20 PAMELA E. GREEN, Court Reporter
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19 Pamela E. Green
20 PAMELA E. GREEN, Court Reporter
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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
LANCE LEON MILES , S.C.D.C. No. 299857 Applicant,	)	Case No. 2019-CP-32-000214
v.	)	**ORDER OF DISMISSAL**
STATE OF SOUTH CAROLINA, Respondent.	)	

FILED
2022 JUN -6 AM 10: 05
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

INTRODUCTION

This matter comes before this Court by way of an application for post-conviction relief filed on January 11, 2019, by Applicant Lance Leon Miles alleging he was entitled to post-conviction relief based on constitutionally ineffective assistance of counsel. In response, Respondent filed its return, partial motion to dismiss, and motion for a more definite statement. Thereafter, Applicant, through counsel Ashley A. McMahan, filed an amended application raising five specific allegations of ineffective assistance of trial counsel.

An evidentiary hearing was convened December 15, 2021, before this Court at the Lexington County Courthouse. Applicant was present, represented by counsel McMahan, and proceeded forward solely on the five enumerated claims in his amended application. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson of the South Carolina Attorney General's Office. At the hearing, testimony was taken from Applicant, his then-girlfriend, and his prior attorney.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to post-conviction relief and denies this application with prejudice.

FACTUAL & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During the early morning hours of September 13, 2013, a narcotics investigator with the Lexington County Sherriff's Department was working package interdiction at a Federal Express shipping facility in West Columbia and identified a package he suspected contained illegal narcotics based on several distinguishing factors. The investigator photographed the package and it continued to be processed in accordance with routine Federal Express procedures. As a result of further investigation, three law enforcement officers conducted surveillance at the delivery location in unmarked, undercover vehicles. Officers observed the mail carrier deliver suspicious package to the address on the label and watched Applicant, while on his cellular phone, walk over and pick up the package. Two of the officers then converged on Applicant, who threw the package and looked around as if searching for an escape route. One officer drew his weapon and ordered Applicant to the ground. Applicant failed to comply and was assisted to the ground by an officer and handcuffed. In response to questions about what was in the package, Applicant indicated it likely contained illegal drugs. Officers then read Applicant his Miranda rights, and, at that time, Applicant orally waived those rights and again indicated the box likely contained illegal drugs. Applicant also gave consent to open the box. Rather than opening the box based on this consent, officers requested the assistance of a canine unit. A canine unit arrived shortly thereafter, and the canine alerted that the package contained narcotics. Law enforcement then obtained a search warrant for the package. Upon opening the package, law enforcement discovered three-hundred Oxycodone pills hidden inside three separate plastic bags concealed inside a wax candle. Upon discovery of the pills, Applicant was then advised of his rights for a second time, waived his rights, and gave a written statement

that he was picking up the package for $100, was to deliver it to its owner, and knew it contained illegal drugs. Applicant was placed under arrest and transported to the detention center at this time.

In March 2014, the Lexington County Grand Jury indicted Applicant for trafficking in illegal drugs pursuant to S.C. Code Ann. § 44-53-370(e)(3) (Supp. 2016). Applicant retained the services of Robert Theo Williams, Sr., Esquire, to represent him. On February 11, 2015, Applicant proceeded to a jury trial before the Honorable Thomas A. Russo, circuit court judge. Assistant Solicitors Micah Caskey and Casey Rankin of the Eleventh Circuit Solicitor's Office prosecuted the case. During pre-trial hearings, Applicant moved to suppress his oral and written statements made at the scene and the trial court conducted a Jackson v. Denno hearing. Following testimony from the three law enforcement officers at the scene, the State conceded Applicant's statements made pre-Miranda warnings were inadmissible and it would not seek to introduce those in its case in chief. The trial court ruled Applicant's oral and written statements made following the advisement of Miranda warnings were given knowingly, freely, and voluntarily, and therefore, were admissible. However, the trial court determined the portions of Applicant's statements pertaining to his prior involvement in retrieving packages for money must be redacted.

Following pre-trial matters, the State presented its case in chief. Applicant elected not to testify or present witnesses in his defense. Following the denial of direct verdict motions, the case proceeded to the jury, who convicted Applicant as indicted. Judge Russo sentenced Applicant to a mandatory-minimum term of twenty-five years of imprisonment.

Thereafter, Applicant filed a timely notice of appeal, and on appeal argued the trial court erred in providing the jury with a subsequent jury instruction advising the jury that Applicant did not need to know what specific drug was in the package to have the requisite mental state under the statute, erred in denying his motion for directed verdict on whether he knew the specific type

of illegal drug in the package, and erred in admitting his statements to law enforcement. Following briefing and oral argument, the South Carolina Court of Appeals affirmed his conviction and sentence published opinion filed Aug. 23, 2017. State v. Lance Leon Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017). Specifically, the Court of Appeals found the trafficking in illegal drugs statute (section 44-53-370(e)(3)) did not require the State to prove Applicant knew the specific type of illegal drug he possessed to be convicted, thereby affirming the subsequent jury instruction and the denial of the directed verdict motion. The Court of Appeals also affirmed the trial court's admission of Applicant's statements.

Applicant petitioned for rehearing, which the Court of Appeals denied on October 19, 2017. Applicant then petitioned for a writ of certiorari to the South Carolina Supreme Court. Following submission of the State's return, the Supreme Court denied certiorari on October 18, 2018. The Remittitur was returned to the circuit court on October 22, 2018. Thereafter, Applicant initiated this current proceeding with the filing of an application for post-conviction relief.

CURRENT ACTION BEFORE THE COURT

In his *pro se* application for post-conviction relief, Applicant alleged he is being held in custody unlawfully due to:

1. Ineffective assistance of trial counsel
   a. Failure to investigate and prepare for trial
   b. Failing to ensure all discovery was provided to the defense and reviewed with Applicant
   c. Failure to move to suppress Applicant's custodial statements to law enforcement
   d. Failure to object to jury instructions
2. Ineffective assistance of appellate counsel, without any supporting grounds

In response, Respondent filed its return, partial motion to dismiss, and motion for a more definite statement.

In his amended application served on December 6, 2021, by counsel McMahan, Applicant raised the additional allegations for relief against trial counsel:

A. Counsel's defense was ineffective as the defense should have been Applicant did not know there were drugs in the package, rather than Applicant didn't know what kind of drugs were in package.

B. Failed to adequately challenge the Miranda warnings/detention of the Applicant.

C. Did not ask for lesser included offenses at the trial.

D. Did not adequately challenge the search warrant and the chain and interception of the package.

E. Did not call witnesses at trial who would testify regarding the package.

At the evidentiary hearing, Applicant proceeded forward on the claims as set forth in his amended application. Applicant testified on his own behalf and presented testimony from Jennifer Gillespie, who was dating Applicant at the time of the incident. Respondent presented trial counsel Robert Theo Williams, Sr., Esquire.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of trial counsel and asserts that as a result of counsel's purported errors, he is entitled to relief in the form of vacation of his conviction and sentence and a remand back to the court of general sessions for a new trial.

Under the Uniform Post-Conviction Procedures Act, an applicant may seek post-conviction relief upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;

2. That the court was without jurisdiction to impose sentence;

> 3. That the sentence exceeds the maximum authorized by law;
>
> 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
>
> 5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
>
> 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP.

This Court has thoroughly reviewed the record in its entirety, including the trial transcript, the appellate records, and the records for this current action. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented at the evidentiary hearing, which allowed the Court to scrutinize the credibility of all witnesses presented. Based on this comprehensive review, this Court finds Applicant has failed to meet his burden of proof as to any of his allegations and finds this action must be denied and dismissed with prejudice. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

Applicant has alleged trial counsel was constitutionally ineffective in his representation for five specific allegations as set forth in his amended application. After a thorough review of all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof as

to each allegation of ineffective assistance of counsel and denies each allegation, which will be specifically addressed below.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he 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, 466 U.S. at 686

Strickland does not guarantee perfect representation, only a " 'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U.S. 759, 770 (1970)). Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). 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 v. State, 286 S.C.

441, 442, 334 S.E.2d 813, 814 (1985). "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). 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 Petitioner 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.

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. 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. Strickland, 466 U.S. 668.

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance" required of a criminal defense attorney." Id. at 690.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins v. Smith, 539 U.S. 510, 526-527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for his or

her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687. See Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010), and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." United States v. Timmreck, 441 U.S. 780, 784 (1979). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the

record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U.S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. 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." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693. Harrington, 562 U.S. 86.

This Court finds Applicant has failed to meet his requisite burden of proof as to each allegation of ineffective assistance of trial counsel. Each allegation is addressed below.

Allegation that counsel failed to present a defense that Applicant did not know there were drugs in the package rather than that Applicant did not know what kind of drugs were in the package

Initially, Applicant asserts trial counsel was ineffective for failing to present a proper defense on behalf of Applicant. Specifically, Applicant asserts that the defense should have been that Applicant did not know that any drugs were in the package, not that Applicant did not know what type of drugs were in the package. At the evidentiary hearing, Applicant denied knowing

there were drugs in the package, but then acknowledged he thought it contained marijuana based on the comments of the law enforcement officers when they approached him and during his arrest. He did not learn the box contained Oxycodone until officers opened the box. He testified he was supposed to pick up the box and deliver it to someone who was waiting in the apartment complex parking lot. Applicant denied ever giving any oral statements to law enforcement and asserted he did not provide a statement until his written statement. He asserted he never told law enforcement illegal drugs were in the box and insisted he did not know anything illegal was in the box. However, Applicant later acknowledged that he told law enforcement he knew illegal drugs were in the package in his written statement and elaborated that he thought marijuana was in the box.

In response to this allegation, counsel testified Applicant gave oral and written statements to law enforcement wherein he admitted that there were illegal drugs in the package but denied knowing the specific type of drug. He testified that he moved to suppress these statements but once the suppression motion was denied, the only plausible defense that he could make is that Applicant was not guilty because the trafficking in illegal drugs statute required Applicant to have the requite knowledge of the specific drug for a conviction. He elaborated that Applicant's initial statement to law enforcement, given before he was provided with Miranda warnings, was that he did not know what was in the package, and counsel testified he wanted this statement to come in as a matter of strategy as further evidence that he did not have the requisite mental state required for trafficking in illegal drugs. He again testified that all of Applicant's subsequent oral and written statements were that he knew the package contained illegal drugs and, accordingly, the only viable defense was that Applicant lacked the necessary mental state based on a lack of specific knowledge as to drug type.

This Court finds this allegation is directly refuted by the record, which clearly establishes that Applicant repeatedly informed law enforcement that he knew illegal drugs were in the package, albeit he did not know what specific type of substance was in the package. His written statement includes the following:

QUESTION: DID YOU KNOW DRUGS ARE IN THE PARCEL "BOX"?

ANSWER: YES.

(ROA p. 344). Based on Applicant's written and oral statements to law enforcement, trial counsel made a strategic decision to craft a defense strategy based on a lack of requisite mental status for trafficking in illegal drugs pursuant to Section 44-53-370(e)(3)). This was the only plausible defense counsel could have made based on the evidence that was going to be admitted at trial following the denial of his motion to suppress Applicant's statements. This argument was the subject of Applicant's direct appeal and resulted in a published opinion analyzing the required knowledge for a conviction in trafficking in illegal drugs. State v. Lance Leon Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017). Counsel was not deficient for his strategic decision to present this defense on behalf of Applicant. This allegation is denied.

Allegation that counsel failed to adequately challenge the Miranda warnings and detention

As his second ground for relief, Applicant asserts trial counsel was ineffective for failing to properly challenge his statements and detention. However, the record directly refutes this allegation. Counsel properly made a motion to dismiss Applicant's various oral and written statements and the trial court conducted a ~~through~~ thorough hearing pursuant to Jackson v. Denno. During this hearing, the State presented testimony from three law enforcement officers who testified as to their interactions with Applicant at the scene. Following the testimony from the three law enforcement witnesses, Petitioner moved to suppress his oral and written statements and argued

he was under duress when he made the statements. Petitioner also argued there was conflicting testimony as to whether Edmonson questioned Petitioner prior to giving any Miranda warnings. The State conceded Petitioner's statements made pre-Miranda warnings were inadmissible and it would not seek to introduce those in its case in chief. The trial court ruled Petitioner's oral and written statements made following the advisement of Miranda warnings were given knowingly, freely, and voluntarily, and therefore were admissible. However, the trial court determined the portions of Petitioner's statements pertaining to his prior involvement in retrieving packages for money must be redacted. The record is clear that Applicant did indeed challenge the admission of Applicant's statements and was able to successfully keep out Applicant' s initial, pre-Miranda statement based on a concession from the State (which he then later admitted based on a matter of sound trial strategy to present to the jury that Applicant initially denied anything illegal was in the package). This Court finds this allegation is without merit and denies it.

Allegation that counsel was ineffective for failing to ask for a lesser-included offense at trial

As a third allegation, Applicant asserts trial counsel was ineffective for failing to request a jury instruction on a lesser-included offense at trial. However, this claim fails as a matter of law, as the only evidence presented at trial was that Applicant was in possession of over four grams of Oxycodone, the requisite amount for trafficking in illegal drugs pursuant to Section 44-53-370(e)(3)). Specifically, the evidence established Applicant was in possession of three-hundred pills of Oxycodone that amounted to nine grams of Oxycodone, a Schedule II drug. (R. 244-60). Accordingly, as the only evidence presented was that Applicant possessed over the requisite amount of Oxycodone for trafficking, he was not entitled to a jury instruction on any lesser-included offenses. See Sellers v. State, 362 S.C. 182, 190, 607 S.E.2d 82, 86 (2005) ("Second, as to the trafficking charge, Respondent did not present evidence that he possessed less than the

minimum required for trafficking. In fact, the only evidence before the jury was that the amount of methamphetamines in question would constitute trafficking. In addition, the State presented the only evidence as to the amount of drugs at issue, which included testimony that Respondent possessed enough methamphetamines to warrant a trafficking charge. As a result, Respondent was not entitled to a lesser-included charge, such as possession with intent to distribute, for the trafficking charge."), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). Counsel was not deficient for failing to request a jury instruction that was not supported by the evidence and could not have been given as a matter of law. This Court finds this claim must be denied.

Allegation that counsel was ineffective for failing adequately challenge the search warrant, the chain of custody, and the interception of the package

As a fourth allegation, Applicant asserts trial counsel was ineffective for failing to adequately challenge the search warrant, the chain of custody, and the interception of the package. Trial counsel testified that he did not challenge the search warrant because law enforcement had sufficient probable cause based on Applicant's statements admitting the package contained illegal drugs and the canine's alert that the package contained illegal substances. All of this evidence was presented during the thorough Jackson v. Denno hearing before trial and established that law enforcement had probable cause to obtain a search warrant. The only evidence before this Court is that the magistrate had sufficient probable cause to issue a search warrant. See State v. Dupree, 354 S.C. 676, 685, 583 S.E.2d 437, 442 (Ct.App.2003) ("The magistrate's task in determining whether to issue a search warrant is to make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in the particular place to be searched." (citing

Illinois v. Gates, 462 U.S. 213, 238 (1983)). Accordingly, Applicant has failed to meet his burden of establishing any deficiency of counsel. This claim is denied.

Allegation that counsel was ineffective for failing to call witnesses at trial who would testify regarding the package

As a fifth allegation, Applicant asserts trial counsel was ineffective for failing to call witnesses who would testify at trial regarding the package. At the evidentiary hearing, Applicant testified there were witnesses who could have been investigated when the case was "fresh", such as an unidentified black female who was the sister of the guy who was supposed to get the box or his girlfriend.

The sole witness Applicant presented was his girlfriend at the time of the incident, Jennifer Gillespie. She testified that she was present when Applicant was arrested, although she clarified that she was in her apartment when law enforcement first approached Applicant and did not come outside until law enforcement had descended on Applicant. She testified that Applicant was being told to get on the ground by numerous officers with guns drawn. She estimated that more than ten law enforcement cars were present at the scene, and they were a mix of marked and unmarked cars. She testified the package was already on the ground when she came out of her apartment, and she never saw Applicant holding the package. She testified she talked to trial counsel before the trial but was not asked to testify on Applicant's behalf.

When questioned about this allegation, counsel testified that he discussed calling witnesses with Applicant. He testified that the only possible witness who would have anything to add would have been the woman who came out of the apartment and looked at the box while on the phone, but that they were not able to identify her. He testified Applicant did not provide him the names of any other potential witnesses.

This Court finds Applicant cannot meet his requisite burden as to this allegation. Initially, Applicant failed to present the woman who he asserts was related to the person picking up the box. Since this witness was not called, the claim must fail as a matter of law. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (noting our courts have "repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial"); Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) (holding a PCR applicant's mere speculation as to what the witnesses' testimony would have been cannot, by itself, satisfy the burden of showing prejudice); Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (Ct. App. 2012) (holding an applicant failed to meet his burden of proof where he failed to present testimony from any of the witnesses he assets should have been called at trial).

As to the sole witness that Applicant did present, his then-girlfriend provided testimony that lacked credibility when compared with the record. For example, she testified that more than ten law enforcement vehicles were present on the scene when the record reflects that a much, much smaller number were present and all the vehicles were unmarked. Moreover, her testimony would not have changed the result of Applicant's trial, as it would not have resulted in suppression of Applicant's statements or the package in a pre-trial hearing, and there is not a reasonable probability of a different result at trial had she testified. Accordingly, this allegation is denied.

CONCLUSION

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

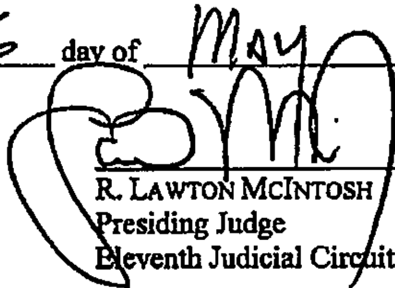
This Court notes that if Applicant wishes to appeal this order, Applicant, though his counsel of record, must file and serve a notice of appeal within thirty days from the receipt of this Order. See Rule 203 and 243, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant shall remain remanded to the custody of the State of South Carolina.

AND IT IS SO ORDERED this 26 day of May, 2022.



R. LAWTON MCINTOSH
Presiding Judge
Eleventh Judicial Circuit

Anderson, South Carolina

WITNESSES

Lexington County Sheriffs Department

D Edmonson

Law Enforcement Case #: 13016529

MDR

ARREST WARRANT NUMBER

2013A3210201824

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 3/10/14

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS3200603

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2014

THE STATE
vs.

Lance Leon Miles

CDR #: 0156

Indictment for

Trafficking in Illegal Drugs

§ 44-53-0370(e)(3)(a)

DONALD V. MYERS, SOLICITOR

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

665

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Trafficking in Illegal Drugs

§ 44-53-0370(e)(3)(a)

At a Court of General Sessions, convened on March 2014, the Grand Jurors of Lexington County present upon their oath:

That **Lance Leon Miles** did in Lexington County, South Carolina on or about **September 13, 2013** knowingly, intentionally, willfully, and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise, aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession of any morphine, salt, isomer, or salt of an isomer thereof, as described in Section 44-53-190 or Section 44-53-210, or any mixtures containing any of these substances; To Wit: **Oxycodone**, in a quantity of four (4) grams or more but less than fourteen (14) grams. All in violation of § 44-53-370 (e)(3)(a), Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

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

ASSISTANT SOLICITOR

25 years and $100,000 NO PROBATION, NO SUSP. SENTENCE

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS. Lance Leon Miles

AKA:

Race: Black Sex: M Age: 30
DOB: [redacted] SS#: [redacted]
Address: [redacted] Villas Court
City,State,Zip: West Columbia, SC 29170
DL#: [redacted] SID#:
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

INDICTMENT/CASE#: 2014GS3200603
A/W#: 2013A3210201824
Date of Offense: 9/13/2013
S.C. Code § : 44-53-0370(e)(3)(a)2
CDR Code #: 0156

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐PLEADS TO: Drugs / Trafficking in Heroin, morph., etc, 4 g or more, but less than 14 g - 2nd or sub. offense

in violation of § 44-53-0370(e)(3)(a)2 of the S.C. Code of Laws, bearing CDR Code # 0156
☐ 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: [signature]
Solicitor 100350 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 25 ~~days/months~~ (years) or ☐ under the **Youthful Offender Act** not to exceed _____ years (and)~~/or~~ to pay a fine of $ 100,000.00; 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 (Criminal 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:

Item	Amount	$
*Fine: $100,000		$ 100,000.00
§ 14-1-206 (Assessments 107.5 %)		$ 107,500.00
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforc. Funding)	$25	$ 25
§ 14-1-213 (Drug Court Surcharge)	$150	$ 150
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$
3% to County (If paid in installments)		$
TOTAL		$ 207,780

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, § 47.12 requires $500 be paid to Clerk during probation.

Presiding Judge [signature]
Judge Code: 2141
Sentence Date: 2-12-2015

A TRUE COPY

Clerk of Court/ Deputy Clerk [signature]
Court Reporter: [signature]

SCCA/217 (03/2011)