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OCT 11 2013

STATE of South Carolina
In The Supreme Court

S.C. SUPREME COURT

Certiorari to Pickens County
Edward W Miller, Circuit Court Judge

Jackie Boyd

Petitioner

STATE of South Carolina

Respondent

Appellate Case NO, 2013-000081

Petitioner's Pro-se response to Appellate
Counsel's Johnson Petition
for Writ of Certiorari

Jackie Boyd # 298278

F2-A, 175

M^{rs}. Cormick Correctional Institution

386 Redemption Way

M^{rs} Cormick SC, 29899

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Petitioner Jackie Boyd received a letter dated August 23rd 2013 from the Supreme Court of South Carolina informing him that his Counsel has submitted a petition for writ of certiorari indicating that his appeal is without merit and moves to be relieved as his Counsel. Johnson v State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that Counsel served him with a copy of the Petition and Appendix. Petitioner were further informed that he may, within forty-five (45) days of the date of the letter, to file with this Court a pro-se response to the petition filed by his Counsel. In the response, he may raise and argue any issue he believe the Court should consider in this appeal and that upon receipt of his pro-se response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

The Petitioner's pro-se response is as follows in that he believe this Court should consider the following issues on Appeal:

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Jessica Kennedy who was a state witness about the Pill Bottle in states Exhibit # 4. because it opened the door and allowed the judge to find some evidence and then he couldn't therefore direct a verdict of acquittal; and that had it not been for trial counsel deficient performance in opening the door, there is a strong probability the outcome of the trial would have been different.

see Id on Appendix page 149 line 17-24.

and Appendix page 214-216

Petitioners Motion for a directed verdict of acquittal was denied based on the evidence elicited by Trial Counsel's cross examining state witness Jessica

Kennedy about states Exhibit # 4 pill Bottle; and on Appeal S.C. Court of Appeals agree with trial Judge grounds for denying Trial Counsel Robert Newton's Motion for a directed verdict.

again. Id at Appendix page 149 line 17-24

and page 214-216.

Supporting argument

Trial Counsel Robert Newton testifies during PCR's Evidentiary hearing, that his strategy was

basically to shift the blame on the co-defendant.
That, Petitioner just didn't know anything about it,
this was his entire approach and he discussed that
with Petitioner that that would be the approach
he would take at trial. Id at Appendix page 26
lines 25 - page 284 line 6.

Based on the evidence presented, the assistant attorney
General Ms. Ratigan even argued what she believed
Robert Newton was trying to prove at trial, that
the pill bottle was not Petitioner's and somehow
while the female was unattended that she tossed
the pill bottle out the car and that's how
it ended up outside the car. Counsel Robert
Newton tries to characterize it as being in her
custody. Id in Appendix page 291 lines 16 - 23

If this is what Petitioner trial Counsel Robert
Newton expected state witness Jessica Kennedy
to give in response to his questioning her
about the pill bottle in state's Exhibit #4.

Her answer was non-responsive, and opened
the door for the introduction for state Exhibit
#4 into evidence as well as evidence of

Constructive Possession, and allowed the prosecution to on re-directed Examination, once the door was open on cross examination about the pill bottle in states Exhibit # 4 to testify as follows:

Id at Appendix page 138

line 10 Q. okay Now you said you saw this pill bottle
11 in the car, is that correct?

12 A. Yes sir

13 Q. when you saw it in the car, did it belong to
14 you

15 A. No sir

16 Q. who had it

17 A. I was just in the car

18 Q. where

19 A. I was in the floor

23 Q. Okay. Does that bottle of drugs right here
24 belong to you, ma'am

25 A. No sir?

An attorney must be careful on cross-examination not to open the door to a matter

see State v Washington, 315 S.C. 108, 432 S.E.2d

448 (1993); State v Goodwin, 250 S.C. 403, 158

S.E.2d. 195 (1967). If the attorney

opens the door, the witness answer may not be what the attorney wants. When a witness does not give a responsive answer, the questioning party should object and move to strike the answer.

State v Whitener, 288 S.C. 244, 89 S.E.2d 701 (1955), cert denied, 350 U.S. 861; Wardlaw v Rayford, 27 S.C. 178, 3 S.E. 71 (1887) If the attorney does not move to strike a non-responsive answer, it remains in the case and can be considered by the jury.

Petitioner also raised this issue that trial counsel Robert Newton performance fell below an objective standard of reasonableness pursuant to the first prong test of Strickland v Washington, 466 U.S. 668, 687-88 (1984) in failing to object to state witness Jessica Kennedy non-responsive answer Id at Appendix page 134 line 12 through page 135 line 6 and move for a motion to strike her answer to his questions about state exhibit # 4, as non-responsive to prevent the trial court judge from using it to deny Counsel motion for a direct verdict, and send the case to the jury Id at Appendix page 149 lines 17-24 Under the second prong test of Strickland v Washington Supra, had it not been for Counsel's deficient

performance in failing to object to Jessica Kennedy non-responsive answer given on Cross-Examination and failure to Motion to Strike her non-responsive answers, there is a strong probability the outcome of the trial would have been different.

This issue and argument was argued and briefed out in Petitioner's PCR Application; But were not articulated by PCR counsel in his assistance under S.C.R.P. 71.1(d). During the PCR Evidentiary hearing, nor did appellate counsel include Petitioner entire PCR application in the Appendix he filed with his Johnson petition. Therefore to prejudice Petitioner of a full review of all relevant issues and arguments that is supported by the trial transcript and Record on Appeal that would entitle the Petitioner to relief sought in his PCR application. Therefore Petitioner also asks this Court to have the Pickens County office of the Clerk of Court of Common Pleas send up to the S.C.

Supreme Court, the original PCR application # 2011-CP-39-1320 in its entirety, and asks this Court to review his PCR application and issue and grounds raised thereof, in which without it, Petitioner is being denied a full appellate review by S.C. Court of Appeals of error in violation of his Constitutional Right both state and Federal that resulted

in his conviction: U.S.C.A 5th 14th; S.C. Const. Article 1 § 3
1 § 14.

Petitioner also believes that the S.C. Supreme Court should review the entire Record of the trial Court proceeding that lead to his conviction due to ineffective assistance of Counsel, or Constitutional violations of Petitioner due Process of Rights to a fair trial in which, pursuant to SCRCP 71.1(d) The County of Pickens, Office of the clerk of Court of Common Pleas appointed PER Counsel Chase Harbin to ensure that all available grounds for relief are amended in Petitioner PER Application. Petitioner Believes S.C. Supreme Court in order to prevent a miscarriage of justice and a conviction of one who is actually innocent and that had it not been for his conviction due to violation of his Constitutional Rights to effective assistance of Counsel and to a fair trial, He would not have been found guilty of Trafficking Cocaine under Indictment 2008-GS-39-1339. Petitioner protection of his Constitutional Rights are now dependent upon The S.C. Supreme Court to review the entire lower

Court Record, to ensure the State of South Carolina Government has not failed the public interest in ensuring that the violations of Petitioner's Constitutional Right in order to convict Petitioner will not stand, because such conduct would diminish the public confidence and integrity in the Judicial system.

Issue # 2

Issue # 1

Other issue of relevance, Petitioner believes this Court should consider is the constructive amendment of the indictment in which the Grand Jury under the Due Process clause and 4th Amendment found based on the evidence presented to it on August 19, 2008 by Easley Police Department officer Jeremy Benjamin, that on September 3rd 2007 Petitioner violated S.C. 1976 Code of Law § 44-53-370.

See Id in Appendix page 305-306.

Under the Grand Jury Clause, Petitioner has a due Process of Right to be tried and found guilty on the information returned by the grand jury in the indictment. Petitioner believes it is a question based on law, to whether the trial Court judge can amend the date to an indictment, when it has not be presented to the grand jury, and that

in doing so, this violated Petitioner's rights under the Due Process Clause, and whether or not the constructive Amendment divested the trial Court of subject matters jurisdiction.

See Id at Appendix page 7 lines 3-16 trial Courts constructive Amendment. This also brings to this Court discretion whether or not the variance in the indictment returned by the grand jury that petitioner violated S.C. 1976 Code of Law § 44-53-370 on September 3rd 2007, when based on the evidence presented at trial, prove that the crime occurred on a different date, and whether the indictment is valid, and whether this court finds that trial Counsel was ineffective for not objecting to the validity of the indictment before the jury was sworn, and object to the constructive amendment of the indictment before the jury.

further Petitioner's Right under the Grand jury Clause was violated, when the trial judge omitted all information in Indictment, to lessen the states Burden of proof invalidation of Due Process, to allow the jury to find Petitioner guilty on knowing in actual or constructive possession of more than 10 grams

of Cocaine. Id on Appendix page 173 lines 12
Through page 175 line 1. Petitioner has a right to
be found on each and every element in the
Indictment as charged by the grand jury.
To Amend the indictment by omitting other elements
in which the grand jury returned a true bill upon,
allowed the jury to find Petitioner guilty on an
offense for which he was not charged.

Trial Counsel was ineffective for not objecting
to omission of information from Indictment by trial
Judge, where the state could not meet its burden
under the due process clause to prove ask
stated in Indictment return by grand jury. Petitioner
Did in Pickens County, on or about 3rd day of September
2007, knowingly sell, manufacture, deliver, or bring into
the state of South Carolina, or did knowingly provide
financial assistance or otherwise aid, abet, attempt,
or conspire to sell, manufacture or bring into the state
more than 10 grams of Cocaine. The grand jury
believe that all the information in the indictment
constituted a violation of S.C. 1976 Code of Law
§ 44-53-370. When after the state had closed
its case and, the evidence was insufficient to

prove beyond a reasonable doubt the aforementioned elements and information, it was a violation of Petitioner's due process right under the 5th 14th U.S.C.A., for the trial judge to omitted those elements and information in his charge to the jury, base on the lack of evidence produced by the state, to lessen the state's Burden of Proof. Trial Counsel was ineffective in not objecting to the trial judge only charging jury on 'Knowledge (knowingly) and actual or constructive possession'. T.d. at Appendix page 173 line 12 - page 175 line 1.

Petitioner claims that had Counsel objected to the judge not charging the jury on the elements and information in the entire indictment, and force the trial judge to charge the jury on the entire element and wording in the indictment as charged by the grand jury as required under the Due Process clause of 5th 14th U.S.C.A.

In re Winship, 397 U.S. 358. There is a strong probability the outcome of the trial would have been different.

Issue #3

• Petitioner also believes this court should consider whether or not PCR Court abused its discretion in finding Petitioner did not prove his trial Counsel was ineffective assistance of Counsel and that he was prejudiced by trial Counsel's failure to request curative instruction to the jury, and Motion to strike the Comment and Motion for a Mistrial, when Prosecutor in closing argument stated the co-defendant was "the alleged drug trafficker's girlfriend; and the trial Judge sustained trial Counsel's objection. The prosecutor then stated the co-defendant was "the allege drug trafficker's girlfriend" and trial Counsel objected. The trial judge sustains and stated "you can only argue what's in evidence in the case and reasonable inferences from the evidence in the case. See Id at Appendix page 307, 165, 166.

Petitioner states that PCR Court abused its discretion in finding that the trial Judge's admonishment to the prosecutor was tantamount to a curative instruction to the jury and trial Counsel was not deficient in failing to formally request a curative instruction. Further, in that the Petitioner failed to prove any resulting prejudice as the state presented.

Petitioner claims his PCr Counsel misrepresented the facts and failed to amend PCr Application 711(d) SCRP to assist him to prove that (1) the curative instructions given to the prosecutor in his closing argument Id at Appendix 166 lines 10-13 does not cure the prejudice effects, the prosecutor's introduction of evidence outside the Record. Id at Appendix page 165 line 15-20, page 166 lines 2-7. (1) because trial Counsel's curative instructions was to the prosecutor and not the jurors who heard the inadmissible evidence, in which placed Petitioner's character into evidence, which is not admissible to prove that a person acted in conformity therewith on a particular occasion. State v Perake, 302 S.C. 378, 396 S.E.2d 362 (1990); State v Coleman, 301 S.C. 57, 389 S.E.2d 659 (1990); Bedenbaugh v Southern R. Co., 69 S.C. 1, 48 S.E. 53 (1904) character has been defined as an generalized description of one's disposition or of one's disposition in respect to a general trait, such as honesty, temperance or peacefulness. State v Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998) McCormick in Evidence, § 195 (3rd Ed. 1984)

Petitioner claims he was prejudiced because the jury convicted him based on their consideration of the evidence introduced into evidence outside

Record by the prosecutor in his closing argument,
calling him a drug dealer; see *Id.* at Appendix page
165 lines 165 lines 15-20; page 166 line 2-17.

Petitioner claims that this character evidence was inadmissible
and that it was introduced by the prosecutor to prove
action in conformity therewith on a December 3, 2007
that he was knowingly in constructive possession of
more than 10 grams of Cocaine, which is a violation
of 52 C.F.R. Rule 404(a). When trial counsel objected
to the introduction of the character evidence *Id.* at Appendix
page 165 line 15-21; page 166 line 2-9. In order
to prevent the jury from considering the inadmissible
evidence the trial counsel made an objection to
and that were sustained by the trial court judge.
Trial counsel had a responsibility to motion the trial
court to strike the inadmissible character evidence and
motion the trial court for a mistrial. Because trial
counsel failed to motion the trial court to strike the
introduction of the character evidence that was sustained
by trial court judge after his objection, the inadmissible
evidence heard by the jury, lead the jury to find him
guilty. Petitioner claims had it not been for trial
counsel's deficient performance there is a strong probability
the outcome of his trial would have been different.

Issue #4

Petitioner believes this court should look at the following facts: that his trial counsel constructively conspired with the County of Pickens Solicitor Peter Thera to convict him.

His trial counsel claims that his trial counsel, during this PCR Evidentiary hearing testified that his reason for questioning state witness Jessica Kennedy about state Exhibit #4. Pill bottle containing 4.37 grams of crack Cocaine and 10.90 grams of Cocaine on cross-examination after the state on direct Examination didn't question state witness Jessica Kennedy about State Exhibit #4... was because

The state had marked it as an exhibit. He presumed it had been admitted already; and to his knowledge it did not harm the case. See Trial Appendix page 283 line 19-24.

and that his strategy was basically to shift the blame on the co-defendant ("Jessica Kennedy"); that his client ~~didn't~~ (Petitioner) didn't know anything about it; that was the entire approach and he had discussed that with (Petitioner) Mr. Byrd that that would be the approach he would take at trial. Trial Appendix page 283 line 25 - page 284 line 7.

~~Cross Examination~~ Basis for the Rule. The primary basis for the ~~cross examination~~ rule is to fully develop the truth.

It is believed that the truth can be ~~more~~ more fully and accurately developed by allowing a party to confront

~~That because he is considered "stated"~~

Generally, the attorney can cross-examine on any evidence brought out on direct examination. State v Taylor, ~~supra~~ SC, 508 S.E.2d 870 (1998); Squires v Henderson, 208 S.C. 58, 36 S.E.2d 738 (1946); State v Kennedy, 143 S.E.2d 409 (Ct. App. 1993) As the Court said in State v Allen, 266 S.C. 468, 224 S.E.2d 881, 887 (1976), overruled on other grounds, State v Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991) and overruled on other grounds, State v Evans, 302 S.C. 477, 415 S.E.2d 816 (1992). "A [ny] matter is a proper subject of cross-examination which is responsive to testimony given on direct examination, or which is material or relevant thereto, and which tends to elucidate, modify, explain, contradict or rebut testimony given in chief by the witness. The attorney must also be careful on cross-examination not to open the door to a matter. State v Washington, 315 S.C. 108, 432 S.E.2d 448 (1993) If the attorney opens the door, the witness answer may not be what the attorney wants, but it may be a responsive to the question asked. See State v Sullivan 277 S.C. 35, 282 S.E.2d 838 (1981). In this particular instance where trial counsel apparent strategy was on cross-examining state

158 st 45

~~Applicant claims that instruction~~ Witness Jessica Kennedy about state exhibit #4, that she would introduce into evidence, evidence that would support Petitioner's defense that he didn't know anything about it and that it belonged to co-defendant state witness Jessica Kennedy. When her answer to his questioning her on cross examination was not responsive to the question that he want, trial counsel should have objected and move to strike the answer. *state v Whitener*, 228 S.C. 244, 89 S.E.2d. 701 (1955), cert. denied, 350 U.S. 861; *Wardlaw v Rayford*, 27 S.C. 178, 3 S.E. 71 (1887) when trial counsel failed to move to strike a non-responsive answer, it remains in the case and can be considered by the jury. *state v Hester*, 137 S.C. 145 134 S.E. 885 (1926)

~~at~~ Petitioner asks this court to consider, the absence of the ^{non-responsive} answers to his trial counsel's questioning of state witness Jessica Kennedy about state exhibits #4, whether or not, the state, based on the rest of the evidence produced by the prosecution, proved its burden of proof pursuant to *In-re Winship*, 397 U.S. 358 (1970). the element of constructive possession, to determine the prejudice effect of his trial counsel cross-examining

take a photo state witness Jessica Kennedy about
the claim as ~~found~~ state exhibit # 4 containing 4.37 grams
of crack cocaine and 10.90 grams of cocaine, that the
state on direct examination only introduced into evidence
that it was found outside the ~~drive~~ ^{drivers} side door of the
~~the ground~~ vehicle on the ground. see Id. at Appendix
page 74 lines 7-19. The same officer that found this
pill bottle on the ground outside the vehicle testified
that petitioner did not claim ownership. Id. at Appendix
page 76 line 24 - page 77 line 1. This officer had
removed petition from the drivers side of the car.
Id. at Appendix page 68 lines 10 through page 65 line
8; page 66 line 21 - page 67 line 4. please take
notice that, all other evidence found inside of vehicle
a picture was taken off of. That was introduced
into evidence. Id. at Appendix page 72 lines 17-
page 73 line 25 page 70 line 17 ~~to~~ through page 73 line

25
why isn't there a picture of where this state exhibit # 4
containing the pill bottle containing 4.37 grams of crack
cocaine, and 10.90 grams of cocaine is?

Trial Counsel should have never allowed the prosecutor
on direct examination of Officer Jeremy Benjamin testify to
and mark and X on a photograph of a picture of the

vehicle without the pill bottle indicated in the picture,
to claim that that's where he found the pill bottle.
Trial Counsel was ineffective for not objecting to such
inadmissible evidence. see Id at Appendix page
74 lines 13 through page 78 line 12.

Under South Carolina Rules of Professional Conduct
Rule 407, Rule 3.2: Expediting Litigation
a lawyer shall make reasonable efforts to expedite
litigation consistent with the interest of the client.

For the trial Counsel to employ that his strategy
in questioning on Cross Examination the state witness
Jessica Kennedy about states exhibit #4. Pill Bottle
containing 4.37 grams of Crack Cocaine and 10-90 grams
of Cocaine. on ~~the subject~~ that he ^{presumed} thought the prosecutor
had already admitted it into evidence. Id at Appendix
page 283 line 12 through line 21. and that his strategy was
basically to shift the blame on the co-defendant.

Please take notice that the question is a
leading question by the attorney general who is basically
testifying herself on the stand, because she is giving
in her leading question, the answer in which she
wants Petitioner Trial Counsel to answer to:

2/1/45

Based on the argument and belief why this Court should consider the PCR judge abused his discretion in finding that trial counsel did not render deficient performance in this regard because the defense strategy at trial was to argue all of the drugs the and drug paraphernalia in the car belonged to the Co-defendant and that Petitioner failed to meet his burden of proving trial counsel should have requested curative instructions during the states Closing argument etc Id at Appendix page 301 is not correct. Petitioner briefed out each issue raised in his PCR Application in which was disassembled, and left out Appendix and was not litigated properly by Court Appoint PCR Counsel Chase Harbin because of third party interest Mr Harbin were appointed by the same Pickens County Government in which convicted the violation of my State and Federal Constitutional Rights to ineffective assistance of Counsel a fair trial PCR appointed Counsel, and was appointed as to throw counsel to his represent me during PCR proceeding to make sure that each issue raised by Petitioner in his PCR Application was not litigated in Petitioner interest where PCR Counsel did not help Petitioner litigate the issue properly in his interest in order to Prove the 2 prong test that Petitioner must prove under Strickland vs Washington

464 US 668. 687-88 (1989) where the state appoints
Counsel under § 2254 7.11d to assist Applicant in
that they are to ensure that all available grounds
for relief are amended to PCR application, being
that there is no Constitutional Right to appointment
of Counsel during Civil Proceedings or Effective
assistance of Counsel Applicant subject to PCR
Counsel errors. Petitioner believe the only remedy
available to correct the state use on Post Conviction
Relief Procedures as a formality to prevent Applicant
from prevailing during Extermination of State Violation of
his Federal Constitutional Rights to Claim of ineffective
assistance of Counsel, is that the SC Supreme Court to
Prevent a miscarriage of justice in the conviction
of a person who is actually innocent and had
it not been for the Constitutional violation that
is apparent in the Record. Petitioner would
have not be convicted.

Issue #5 Whenever Both Parties during the PCR Evidentiary
hearing has Closed. Both Parties are to submit an
order to the PCR Court judge failure of my PCR
Counsel to submit an order to why his order for
Relief should be granted was never Drafted

submitted to the PCR Court the only order that was drawn up was the attorney General's order. Id in Appendix page 296 - 304. If only one order is presented to the PCR Judge failure of my PCR Counsel to submit a order on Petitioner be of prejudice him of any relief, and turns a adversary procedure into an Ex parte Procedure.

Very Important

Petitioner's PCR counsel did not submit into evidence during his PCR order hearing the following exhibits that Id on Appendix Page 242 that were included and attached to Petitioner's PCR Application. Petitioner is therefore including these exhibit with Petitioner's Prose Respondent Brief to Appellate defense Counsel's Johnson Brief.

I have include the exhibit, if the PCR Judge reviewed my PCR application the ~~was~~ Judge was aware of everything briefed out. I ask the 5th & Supreme Court to review ~~my~~ everything done with included exhibits with the Appendix and my entire PCR Application.

Issue # 6

Ineffective Assistance of Appellate Counsel

The lawyers of South Carolina work together, they do not point the finger at each other. as in the case where pursuant to SCRPC 71.1(d) - Petitioners PCR counsel, should ~~have~~ ^{have} insured that the issue of ineffective assistance of appellate counsel Elizabeth Franklin Best was raised properly in the PCR evidentiary hearing. But like aforementioned the lawyers do not point the finger at each other in South Carolina; they work together. Therefore although petitioner Briefed the issue out in his PCR Application his PCR counsel fail to aid and assistance him in properly presenting the issue during the evidentiary hearing before the PCR proceeding, and Appellate Counsel fail to include the entire PCR Application in the Appendix he filed along with his Johnson Brief to be relitigated as counsel. In which Petitioner believes this court should also review the PCR application in its entirety pertaining to the issue briefed out, that no evidentiary hearing was necessary for in the PCR courts determining that Petitioners Appellate Counsel performance fell below an objective stand of reasonableness pursuant to Strickland v Washington 466 US 668 687-88 (1984) in

failing to file a petition for a rehearing to enable petitioner to (1) exhaust his state remedies.

(2) And to afford S.C. Court of Appeals an opportunity to review the evidence in the case in which there may have been facts overlooked, that would have resulted in a different outcome pursuant to the 2nd prong test of Strickland v Washington supra.

See Id. Appendix page 214 - p. 216

The S.C. Court of Appeals in determining that the jury, based on the substantial circumstantial evidence permits the jury to reasonably infer guilt, is based on a unconstitutional mandatory presumption charge of state law, that shifts the burden of proof, and lessens the states Burden of Proof. violation of The Due Process clause of the 5th 14th In re Winship 397 U.S. 358. Here Petitioners Appellate Counsel Elizabeth Franklin Best was ineffective assistance of Counsel in failing to challenge the law applied by the S.C. Court of Appeals to base its judgment that permits the jury to reasonably infer guilt. Further more "in order to prove that Petitioner had dominional control over the Pill Bottle, for the jury to find Petitioner guilty of constructive possession of more than 10 grams of Cocaine, to find him guilty of trafficking Cocaine.

Also Petitioner stated that the law in which SC Court of Appeals uses under State v Weston, 367 S.C. 279, 292, 625 S.E.2d 691 (1998) (2006) is unconstitutional, which allows the appeals court judges to interfere to a directed verdict review the evidence and all reasonable inferences in the light most favorable to the state because it's a "mandatory presumption" charge to the appellate court to allow the court to only look at the evidence with prejudice against the petitioner. Here the evidence only raises a suspicion that based on state witness Jessica Kennedy testimony

Id at Appendix page 134-135

That "she knew what was inside Bottle page 134 lines 12-16 when she was asked did she have it on her as well.

She said No p. 134 line 17-18 when she was asked where was it, she said she aint for sure pg 134 lines 19-20

She testified that she saw states exhibit #4 Pill Bottle in the car, and when she was asked where she said she can't remember sir page 135 line 1-7 she said the pill bottle was on the floor in the car, and she did not throw it from the car. Id Appendix pg 138 lines 10-25

no one knows how this pill bottle got

from the floor of the car, that was only seen by Jessica Kennedy to the ground outside the drivers side door.

But there is substantiated evidence that:

The officer who found the Pill Bottle state witness Jeremy Benjamin was on the scene 20 minutes before he found this pill bottle. Id. Appendix page 90 line 9-12.

There is no evidence that anybody saw Petitioner or state witness Jessica Kennedy throw this Pill Bottle out of the vehicle onto the ground.

The state has to prove how it got their, and who would the state charge? Why would the state charge the Black male Jettie Lee Boyd, instead of the white female Jessica Kennedy? If she received a deal to turn state evidence, why if she saw Petitioner with Pill Bottle, that he had it, she saw him with it? she testified she knew what was in it. But changed her testimony because she knew that if she knew what was in it, she had to have possession of it, so she changed her testimony to say she doesn't know what's in it. Id. Appendix page 134 line 12-16, page 135 line 8-9p.

The state knew based on the substantial circumstances

That an reasonable inference could be drawn
That Jessica Kennedy, had time to throw the pill Bottle
from the vehicle, that was found 20 minutes later after
Petitioner had been arrested.

Drugs and Page 93 L-10 thru 19
Jessica Kennedy had paraphernalia in her possession,
She also admitted to smoking crack Cocaine, she testimony
that she saw pill Bottle in car, proves she had knowledge
of the Pill Bottle and what was in it. To establish actual
and constructive possession of more than ten (10) grams of
Cocaine, to be guilty of trafficking Cocaine. But she
was not on trial, she was given a deal to help the
Prosecution convict Petitioner of this crime.

There is a South Carolina law, that states
where two or more inferences can be drawn from
the evidence introduced into evidence at trial, one
consistent with guilt, and one consistent with innocence.
The defendant is entitled to the inference that is
consistent with his innocence. Yet under state
v. Weston, 367 S.C. 279, 625 S.E. 2d. 641. (2006) The
Appellate Court reviews the denial of a directed verdict
by reviewing the evidence and all reasonable inferences
in the light most favorable to the state. This law
is unconstitutional and should have been challenged
in a petition for a writ of habeas corpus by appellate defense Counsel.

~~Issue # 7~~ Issue # 7

Petitioner also believes this court should take into consideration how the PCR counsel chose ~~the~~ Harbin. Because Petitioner does not have a right to effective assistance of PCR counsel, that, through court appointed counsel, the County of Pickens is constructively prejudicing him of any relief he may receive in reference to violation of his constitutional Right to effective assistance of counsel and a fair trial violation of U.S.C.A. 5th, 14th, 5th Const Article 13, 14, where PCR counsel chose Harbin fail to aid and assist Petitioner during PCR Evidentiary hearing in proving the 2 prong test of Strickland v Washington, 466 U.S. 688 687-88 (1984) dealing with the issues raised in Petitioner's PCR application.

See ~~id~~ in appendix page 284 lines 13 through page 285 line 15. Dealing with Character Evidence. How PCR counsel fail to ~~per~~ articulate my claim of ineffective Assistance of Counsel in failing to Motion the trial court to strike the character evidence and Move for a Motion for a Mistrial, that is clearly in the Record, ~~Id~~ in Appendix Page 165 line 15 - page 166 line 13. The trial Judge's instruction to the prosecutor, did not cure the prejudice effect of the jury hearing this inadmissible evidence, in which the jury was considered in finding Petitioner guilty. Had trial Counsel ~~alotve~~ ^{alotve} to strike that evidence and move for a Mistrial, There is a strong Probability, the outcome of The trial would have been different.

This issue is Briefed out in Petitioner's PCR Application, ~~but is not~~ and included in the Appendix filed with Appellate defense Counsel Johnson Petition for a Writ of Certiorari. Id at Appendix page 231

Issue # 8

The next issue PCR Counsel savaged, was Petitioner issue concerning the chain of custody. Where as petitioner included with his PCR Application, a copy of The Property Report of the claim of custody. see Id. as Exhibit # (4) attached. which is also a Brady violation, in which Petitioner's trial Counsel was aware of. see Id at Appendix page 285 line 16 through Page 287 line 8. This questioning and testimony is based on the Property and Evidence Report Petitioner received after his trial and conviction and Appeal, in which he argued as a Brady violation in his PCR application, Briefed out. It is no doubt on my Petitioner's mind that because this issue of Brady violation was Briefed out and attached to his PCR Application, the County of Pickens dissented his PCR application concerning issues that no evidentiary hearing was need, because it was Briefed out on PCR application and is why the appellate defense counsel did not include the entire PCR Application. Based on exhibit # (4) the Property Report, clearly shows Based on the prosecutors case in brief at trial, no complete chain of custody was established by ~~for~~ to establish the admissibility of state exhibit # (4) Pill Bottle containing 10.80 grams of cocaine introduced into evidence

Exhibit # (4) is Id at Appendix page 242

3/10/15

Respectfully Submitted by
Jackie Lee Boyd #298278.

M^cCormick Correctional Institution
386 Redemption Way
M^cCormick SC 29899

Jackie Boyd

Sworn to before me

on this 1st day Oct month 2013 year

SC Notary Public: C. Pringle

Exp. Date: 12-16-2019

Continuation of issue

Petitioner Jackie Lee Boyd ask The state of South Carolina Supreme Court in response to His Appellate Counsel's Johnson Petition, in which this court has granted him the privilege and opportunity to raise and argue any issue Petitioner believe The Court should consider.

Upon the Mercy of this Court, petitioner raises and argues the following issue it believe this Court should consider, in order to protect Petitioner from being convicted in violation of his Constitutional Rights, both state and Federal as follows:

First a brief discussion + why these issues which were not properly proved at PCR Evidentiary hearing. Evidentiary hearing is not always needed. During the filing of a PCR Application, raising issues that Petitioner is being held unconstitutionally, when it is clear in the record that a constitutional violation has occurred that prejudiced Petitioner of his Due Process Right to a fair trial. Further even if a evidentiary hearing is held at the request of the attorney General's Office, on the claim that the constitutional violations of ineffective assistance of Counsel claims are raised, if the claim is Based on facts and proof in the Record, and Petitioner has

Briefed out each issue based on the Record. no
Evidentiary hearing is necessary. Further under
Strickland v Washington 466 U.S. 668. 687-88 (1984),
under the First prong test, all Petitioner needs to show from
the Record, that Trial Counsel did not do what he claims
Trial Counsel should have done; that is based on professional
normals: although Counsel can employ a reason for not
doing a particular claim of Petitioner, if Petitioner can show
that his claim is supported by the Record, the 2nd Prong test
under Strickland v Washington supra doesn't require him
to show prejudice, but to state that, had Counsel performed
the claim, the outcome of the proceeding would have been
different. Here Petitioner claims that he had valued
issues in which he presented in his PCR Application
and briefed them out; PCR Counsel was aware of
Petitioner's PCR Application, and the exhibits that were not
attached to his PCR Application when he filed it; But
stated them in PCR Application with each issued Briefed
out. The state of South Carolina lawyers do not like to
point the finger at each other as in Petitioner's case; this
Court will see that Petitioner's PCR Counsel under
the Protection of the laws of this state and the United
States Constitution, that provides that, there is no constitutional
Right to appointment of Counsel or ineffective assistance

of Counsel During Post Conviction Relief Proceedings. Therefore
subjecting Petitioners to misrepresentation, the only protection
against PCR Counsel appointed by statute of SCRPC
71.1(d) is The SCRPC 407 Rules of professional conduct
Rule 3.2 In which Based on Petitioners PCR Application
This Court will see that Petitioner Briefed out each
issue. See Petitioners PCR Application and Exhibits
enclosed. PCR Counsel was aware of these
issues, and had a responsibility to ensure that all
grounds for relief were amended to my PCR Application
if necessary SCRPC 71.1(d). Once the attorney General
in its return to Petitioners PCR application, requested
that a hearing be held and counsel appointed to represent
Petitioner. Id in Appendix page 253, There is no
Hybrid representation and therefore under 71.1(d) SCRPC
Court appointed PCR Counsel had a duty if grounds
for relief existed, to present them to the PCR Court.
Petitioner believes that because the same county that convicted
him in violation of his Constitutional Rights, which was
only applicable due to trial Counsel ineffectiveness,
that a conflict of interest exists, when the attorney
General's office request the same county to appoint
Counsel to represent Petitioner, that PCR Counsel
litigates in the interest of that County that appointed

him, as a result, in which the county of Pickens interest is against the interest of Petitioner in proving that he is being held in custody in violation of his Constitutional Rights. in which one issue was to effective assistance of Counsel, and the other to a fair trial.

Petitioner claims, these are the issues that existed in the Record. But PCR Counsel aided Trial Counsel and attorney General office in preventing these issues to be properly presented during the PCR Evidentiary hearing.

Issue #9:

In Questioning Petitioner about the inappropriate statement about, the prosecutor calling Petitioner a drug dealer: see Id at Appendix page 262 line 10 - page 263 line 19. please notice that the COURT Report Typed the wrong name Id at page 262 line 9, it should be direct examination of Petitioner PCR Counsel Chase Harbin: to continue! ... PCR Counsel had to be aware of how Petitioner Briefed out this Issue in his PCR Application: Id at Appendix page 231p-232 see how PCR Counsel did not litigate in Petitioner's interest But kept it from being placed on the Record for review by S.C. Supreme Court.

PCR Counsel knew where this violation occurred.
See Appendix page 165 lines 25 - page 166 lines 13
Asia lawyer PCR Counsel should have known that
The curative instruction given to the prosecutor, did not
cure the prejudice effect of the inadmissible character
evidence, in which there was no bases based on the evidence
introduce to refer to Petitioner as a drug dealer, and
that trial Counsel should have ask for curative instruction
to be given to the jury, and motion to strike that evidence,
and then Motion to move for a mistrial. This issue
was briefed out in Petitioner's PCR Application. Id
in Appendix page 231 - 232.

Issue #10

The next issue sabotaged by PCR Counsel, which
was briefed out by Petitioner in his PCR Application
Based on the Record of the trial transcript. In which
Petitioner claimed that his trial Counsel's performance
fell below an objective standard of Reasonableness
: cross-examining state witness Jessica Kennedy
about state's Exhibit #4 containing 4.37 grams of
crack Cocaine and 10.90 grams of Cocaine, when
the prosecution did not on direct Examination Question
Jessica Kennedy about state's Exhibit #4. see
Appendix page 224 - 229. during PCR Evidentiary

~~37~~ 37 at 45

hearing PER Counsel Id at Appendix page 264 line 10-25
page 266 line 17. clearly shows that PER Counsel
is not trying to properly aid and assistance me in
placing what's litigated in my PER application on the
Record before the Court.

Issue # 11

The next issue dealt with the chain of custody issue.
Id at Appendix Page 266 lines 22 through page 268
6. Petitioner Briefed this issue out as well.
In his PER Application see Id in Appendix page 232
- page 236 Petitioner is arguing a Brady violation
in the prosecution's failure to provide the Easley
Police Department Property Report for 1 medicine
Bottle with white rock substance, See Attached
inside of Petitioner's PER Application and Exhibits.
Id in PER Application as Applicant's Exhibit # 4.

This Police Department Property Report for 1 medicine
Bottle with white rocks substance is a crucial piece
of evidence that was material to Petitioner's Defense
in suppression of the states Exhibit # 4 Pill Bottle
Containing 4.37 grams of crack Cocaine and 10.90
grams of Cocaine in which Petitioner was convicted for.

That was not disclosed to the Petitioner in the disclosure of the prosecution's discovery pursuant to SCRCrimP Rule 5 or pursuant to Petitioner's request for exculpatory evidence pursuant to Brady v. Maryland, 373 U.S. 83. Id. in enclosed Petitioner's Pet. Application Exhibit # 6, # 7. The prosecutor did not disclose Applicant Exhibit # 49 Id. in Pet. Application attached/enclosed.

which shows that on 12-03-07 Officer Jeremy Benjamin claims he found on Jackie Boyd 1 Medicine Bottle w/ off white rock substance at 4:38 at 123 Rd. Liberty SC. The gift to Officer R.B. Cowan on 12-3-07 at 0:900, R.B. Cowan received it from officer Jeremy Benjamin in person on 12-3-07- at 0:900 But did not place it into property in evidence in Greenville County until 12-5-07- at 09:44.

During trial as state witness Jeremy Benjamin testified as follows. Id. in Appendix page 74 lines 13- page 76 line 2 shows that he did not obtain state exhibit # 41 Pill Bottle from Petitioner Jackie Boyd; but found it on the ground outside of the vehicle.

Appendix page 78 line 17 through page 79 line 13 shows Jeremy Benjamin testimony under oath is contrary / contradictory to what is included in his Property and Evidence

Report Id in Applicants PCR Application as Exhibit # 4.
He testifies that he put the pill bottle into the evidence locker, when the Eastley Police Department Property an Evidence Report shows he gave it to RB Cowan in person. on 12-3-07 but doesn't show where
The pill bottle containing 4.37 grams of Crack Cocaine and 10.90 grams of Cocaine was kept at between 12-3-07 0900 and 12-5-07 0944 when RB Cowan received it to take to Greenville County.

Id in Petitioner PCR Application which includes Applicants Exhibit # 11 Jeremy Benjamin states in his Supplemental Incident Report Eastley Police Department page 5 of 11. Located outside of the Drivers Door was a orange medicine Bottle without a label, Inside of the Bottle was 2 small plastic Baggies, one plastic Baggie (page 5-12) had small off-white rock like substances. The other plastic Baggie had white irregular-shaped rock like substance. Based on his training and experience, it is believed that the substance inside the Bag is crack Cocaine. The substances were weighed on the scene at 15.7 grams.

See Appendix Page 114 lines 23 through page 115 line 15. RB Cowan as a state witness is testifying contrary to what the Property Report says.

This is also evidence of Prosecution Misconduct.
Violation of SCACR 407 Rules of Professional Conduct
Rule 3.3(a)(1), 3.4(a)(1), Rule 8.4 (a)(5)(e)(d)(e)
The prosecutor knowingly introduced false testimony
concerning States Exhibit # 4. The pill Bottle containing
4.37 grams of crack Cocaine and 90.90 grams of
Cocaine to convict petitioner, through introduction of
inadmissible evidence. Had trial Counsel received
this exculpatory impeachment evidence prior to
trial, he could have impeached the credibility
and admissibility of the Pill Bottle. States Exhibit # 4.

See testimony of state witnesses Jeremy
Benjamin and RB Cowan for the prosecution, about
States Exhibit # 4. The Pill Bottle. Id at Appendix
page 78 lines 17 through page 79 line 15. and
page 114 line 23 through page 118 line 3. The
Property Report is material and impeachment evidence
because it contradicts both state witnesses
Jeremy Benjamin and RB Cowan testimony under oath.
and is inconsistent with their testimony, which was
withheld by the prosecution. violation of Petitioner
Due Process of Rights under the 5th 14th USCA
citing Brady v Maryland 373 U.S. 83, State v Kennedy
503 S.E.2d 214.

The Property Report shows that on 12-3-07 at 4:38
Jeremy Benjamin recovered the pill Bottle with 116 white
rock substance from Justice Boyd (Pethunier).

RB Cowan received it on 12-3-07 at 0:900 in person
from Jeremy Benjamin. Then on 12-05-07-09:44

RB Cowan received the pill Bottle to take to Greenville
Property and Evidence. The property Report does not
show where the Pill Bottle was kept between

12-3-07 and 12-5-07. It doesn't show that
J. Benjamin did what he testified that he did under
oath at trial Fed in Appendix page 78 lines 17

through page 29 line 15 nor what RB testified to Fed
at page 114 line 23 through page 115 line 4

~~the~~ tampering with evidence Page 11 line thru Page 12 line 1
15

see Fed in Per Application: Applicant's Exhibit # 11

Supplemental Incident Report Euseby Police Department

page 5 of 11; 6 of 11. Both substances combined

weighed 15.7 grams on 12-3-07 when weighed on

the scene by the time it gets to Greenville County

on 12-5-07 and tested by James W Armstrong, Separately.

The crack Cocaine weighed 4.37 grams, and

the Cocaine weighed 10.90 grams. which total

weight is 15.27; .43 grams were missing.

See also Id in PCR Application Applicants Exhibits # 6, # 7, The prosecution never disclosed the property reports pertaining to the drugs and paraphernalia confiscated from the possessions of Petitioner's co-defendant Jessica Kennedy who turned state

Witness: See Id in Appendix page 73 lines 9-18,

Trial Counsel should have objected to state exhibit # 5 being introduced into evidence, without first establishing a complete chain of custody (ineffective.) Id Appendix page 73 line 19-24.

What Petitioner wants this Court to see is that Trial Counsel when questioned during PCR Evidentiary hearing by PCR Counsel concerning this issue of chain of custody, Petitioner's PCR Counsel were basically in his cross-examination coaching or leading Trial Counsel in what to say to prevent Petitioner from proving his issue concerning the chain of custody and Brady violation briefed out in his PCR application: see Id in Appendix page 285 line 16 through page 287 line 8. But see how PCR Counsel failed to properly present the issue: He knew that Petitioner in order to prove this issue needed to submit the exhibits mentioned in his PCR Application Id in Appendix page 242. although

Ignorance of the law is not excuse, a lawyer should not use one's ignorance of the law to prejudice an Defendant, seeking relief from his conviction through Post Conviction Procedure Act. Petitioner as an minority, and indigent Applicant was totally dependent on PCR Counsel's competence as a civil lawyer to provide him competent Representation, and in complying with SLECP 711 (d) and SLECP 407 Rules of Professional Conduct, and not to conspire to use to PCR Evidentiary hearing and his appointment as a formally to prevent any issue briefed out in his PCR application from being properly raise and preserved on the Record, for this Court to review.

✓ Lack of subject Matter Jurisdiction

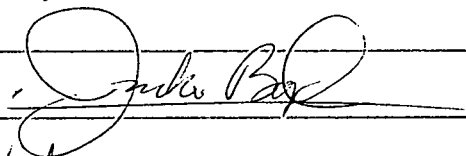
Trial Court lacked subject Matter jurisdiction once it constructively in its jury instructions omitted elementary fact from the Indictment, once the Grand jury returned a true bill of Indictment as Petitioner was indicted. Id in Exhibit # 2 in PCR Application. He has a constitutional Right to be convicted on all the elementary fact include in the Indictment as returned by the grand jury. See also the month was changed, amended, indictment should have been taken back before the grand jury.

§ 44 et 45

See Ed in Appendix page 17 line 14 through page 18
line 1. Trial Counsel should have objected. PCR
Counsel should have raised this issue in PCR Application
pursuant to SCRCP 71.1(d).

also see Issue concerning ineffective
assistance of counsel Counsel briefed out in PCR Application.
This issue was properly briefed out, But not properly
presented by PCR Counsel.

Based on the aforementioned issues
Petitioner prays that this Court find error and
grant him a new trial, or
vacate his conviction or reverse it.
Upon the Grace and mercy of this Court.



Sworn to before me

on this 1 day Oct month 2013 year

SC Notary J. Pralle Exp. Date 12-16-2019

45-145
~~45~~

STATE OF SOUTH CAROLINA)

County of Pickens)

Jackie Lee Boyd)

Full name and prison number (if any) of Applicant)
298278)

v.)

State of South Carolina Attorney)
General office)

CLERK DEPT. OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 SEP 9 1:17 PM
MB

APPLICATION FOR

POST-CONVICTION RELIEF

2011 CP 39 1320

INSTRUCTIONS - READ CAREFULLY

35 pages

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 McCormick Correctional Institution
386 Redemption Way, McCormick S.C 29899
2. Name and location of Court which imposed sentence Pickens Court
General sessions
3. Name(s) of co-defendant(s) (if any) Yes
Jessica Jan Kenedy AKA Alice Denise Audlin
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-39-1338
 - (b) 2008-GS-39-1339

1 of 35

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) (3) YEARS CONCURRENT (25) YRS
 - (b) _____
 - (c) _____

- 6. Check whether a finding of guilty was made:
 - (a) ~~after a plea of guilty~~
 - (b) after a plea of not guilty Yes
 - (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. SOUTH CAROLINA COURT OF APPEALS
 - ii. _____
 - iii. _____

- (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. _____
 - iii. _____

- (c) the date of each such result:
 - i. Feb 1, 2011 submitted
 - ii. Feb 23, 2011 filed
 - iii. _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. unknown STATE V. JACKIE BOYD, (Ct Appeals)
 - ii. " " " "
 - iii. _____

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

(b) ~~INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL~~
 thru Abandonment of DIRECT Appeal Remedies,
 (ex. Rehearing, Petition for writ of certiorari)
 OF MERITORIOUS WINNABLE ISSUE per. to
JACKSON v. VIRGINIA, (US Supreme Ct)

(2835)

2011 SEP -9 P 1:18
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: INEFFECTIVE ASSISTANCE OF APPELLATE AND
- (a) 5th Amendment TRIAL COUNSEL AND DUE PROCESS
- (b) 6th Amendment PROCESS VIOLATIONS (ETC)
- (c) 14th Amendment, SC CONST. ART 3 § 14,

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

- (a) see Attachment Support Memorandum
- (b) Support Post-Conviction Relief
- (c) 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? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____

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. NA
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NA
- ii. _____
- iii. _____
- iv. _____

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

SEP - 9 11 18

(c) the disposition thereof:

- i. _____
- ii. NA
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. NA
- iii. _____
- iv. _____

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

- i. NA
- ii. _____
- iii. _____
- iv. _____

2011 SEP -9 P 1:08
 CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

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?

NA

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

(a) which grounds have been presented:

- i. NA
- ii. _____
- iii. _____

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

- i. NA
- ii. _____
- iii. _____

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) NA
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? _____
- (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? NA

2011 SEP - 9 P 1:18

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

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 Newton (TRIAL)
Elizabeth A. Franklin - Best (APPEAL)
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Trial Counsel ✓
 - Appellate Counsel ✓
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction and sentence

20. Are you now under sentence from any other court that you have not challenged?

NA

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

2011 SEP - 9 P 1:18

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

I, Jackie Lee Boyd #298278, 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.

Jackie Boyd

SWORN to and subscribed before me this 31 day of August, 2011.

Permy G. Morton (L.S.)
Notary Public

My Commission Expires: Feb 28, 2018

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

I, JACKIE LEE BOYD #298278, 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.

Jackie Boyd
Applicant

SWORN or affirmed to and subscribed before me this
31 day of August, 2011.

Henry G. Morton
Notary Public

My Commission Expires: Feb 28, 2018

2011 SEP -9 P 1:18
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

WITNESSES

Jeremy Benjamin

Easley Police Department

12/3/2007

DOCKET NO. 2008-GS-39-1424

PT

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

TERM 2008

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 12-11-63

SS#: 249-33-7557

JACKIE LEE BOYD

THE STATE

VS.

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

3015

POSSESSION OF COCAINE BASE W/INTENT
TO DISTRIBUTE

VIOLATION § 44-53-0375 (B)(2)

Foreperson of Petit Jury

Date:

Exhibit # 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
POSSESSION OF COCAINE BASE W/INTENT TO DISTRIBUTE

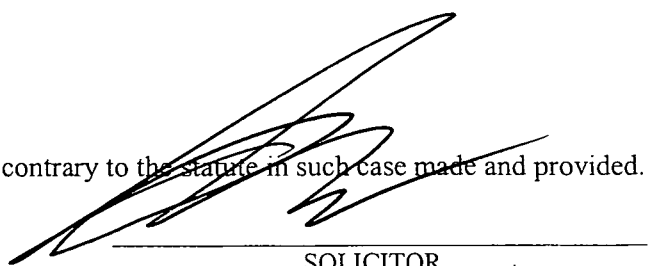
At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That JACKIE LEE BOYD did in Pickens County, on or about the 3rd day of September, 2007, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine Base (Crack Cocaine), a controlled substance, such possession not having been authorized by law. This is in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

2 # 11/19/07

STATE OF SOUTH CAROLINA

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
THE COURT OF COMMON PLEAS

COUNTY OF DICKENS

2011 SEP -9 P 1:21

2011 CP 39 1320

JACKIE LEE BOYD #298278

Applicant

, c/a

v.

Memorandum of Law Support
Post Conviction Relief
Application

STATE OF SOUTH CAROLINA

Respondent

1.) Applicant JACKIE LEE BOYD CLAIM THAT HE IS BEING HELD IN CUSTODY (12)
 UNLAWFULLY IN VIOLATION OF HIS DUE PROCESS RIGHTS AND EQUAL PROTECTION
 RIGHTS OF THE SOUTH CAROLINA CONSTITUTION ARTICLE (1) & (3) AND SOUTH
 CAROLINA CONSTITUTION ARTICLE (1) (14) AND U.S.C.A. 5th, 6th, AND 14th TO
 EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL.
 Applicant FURTHER CLAIM THAT PURSUANT TO THE FIRST PRONG TEST IN
 (STRICKLAND V WASHINGTON) 466 U.S. 668 (1984) THAT TRIAL COUNSEL ROBERT
 NEWTON PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS.
 IN CROSS EXAMING STATE WITNESS JESSICA KENNEDY ABOUT STATE EXHIBIT #4
 THE PILL BOTTLE CONTAINING 10 OR MORE GRAMS OF COCAINE. WHEN THE STATE
 DURING DIRECT EXAMINATION OF ITS OWN WITNESS JESSICA KENNEDY NEVER
 QUESTIONED HER ABOUT STATE EXHIBIT #4
 TR. TR. pg. 120 THROUGH pg. 122 L-2
 THE STATE NEVER QUESTIONED STATE WITNESS JESSICA KENNEDY ABOUT STATE
 EXHIBIT #4 THERE WAS NO NEED FOR TRIAL COUNSEL ROBERT NEWTON TO ON CROSS
 EXAMINATION, QUESTION HER ABOUT THIS PILL BOTTLE.
 STATE EXHIBITS #4

STATE OF SOUTH CAROLINA , IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

JACKIE LEE Boyd 298278

Applicant

/s/

v

MEMORANDUM IN SUPPORT OF

STATE OF SOUTH CAROLINA , POST-CONVICTION RELIEF APPLICATION

RESPONDENT

THIS MATTER DOES COMES BEFORE THE COURT OF COMMON PLEAS
By way MEMORANDUM IN SUPPORT OF POST CONVICTION RELIEF
APPLICATION:

Applicant WAS INDICTED BY PICKENS COUNTY GRAND JURY FOR FAILURE
TO STOP FOR BLUE LIGHTS AND TRAFFICKING IN COCAINE THIRD OFFENSE.
Applicant has CO-DEFENDANT WHICH HAS NOT BEEN INDICTED BY
THE PICKENS COUNTY GRAND JURY. THE Applicant WAS SENTENCED TO
TWENTY-FIVE YEARS FOR THE TRAFFICKING OFFENSE AND THREE YEARS
FOR THE BLUE LIGHT OFFENSE; THE Applicant IS PRESENTLY CONFINED
WITHIN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS.

{ ARGUMENT }

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO INFORM CLIENT
THAT CO-DEFENDANT STATE WITNESS RECEIVED IMMUNITY.

DURING THE Applicant TRIAL STATE WITNESS DURING DIRECT
EXAMINATION BY TRIAL COUNSEL MR. NEWTON IN REGARDS OF THE

CRIME THAT WAS COMMITTED BY BOTH DEFENDANT AND STATE WITNESS

AT TRIAL TRANSCRIPT PG. 129 1-7 Q: YOU WERE CHARGED WITH
TRAFFICKING IN COCAINE? PG. 129 L-8 A: YES

AS THE TRIAL TRANSCRIPT RECORD SHOWS MOST FAVOR IN A LIGHTER
SENTENCE TO THE STATE WITNESS ON PG. 129 LINE-22 Q: DO YOU
THINK IT MIGHT GIVE YOU A LIGHTER SENTENCE.

IN SUCH DEFENSE AS THE STATE HAS COMMITTED FRAUD UPON THE
COURT AND PERJURY TO OFFER A SENTENCE FOR IMMUNITY.

SEE PG. 129 1-23 TR. TR.

THE SOLICITOR FOR PICKENS COUNTY WAS AWARE OF THE DEAL
THAT WAS GOING TO BE TAKEN FOR IMMUNITY FOR THE CO-DEFENDANT
STATE WITNESS AT THE HANDS OF THE COURT BEWARE OF GIFT
SUCH AS IMMUNITY. TR. TR. PG. 136 L-9-12

AS THE LAW OF SOUTH CAROLINA STATES: "THE HAND OF ONE IS THE
HAND OF ALL" AND THE STATE MUST COMPLY WITH/TO THESE LAWS.

IN THIS CASE THE SOLICITOR KNEW IF THEY PRESENT AN INDICTMENT
TO THE GRAND JURY WITH THEIR MOST FAVORABLE WITNESS NAME IN IT
THEY COULD NOT BUILD A CASE WITHOUT EVIDENCE TO CONVICT THE
DEFENDANT OF THE CHARGE OF TRAFFICKING IN COCAINE

SEE TR. TR. PG. 136 L-11 Q: THOUGHT YOU WOULD GET A LIGHTER

SENTENCE FOR TR. TR. PG. 136 L-12 Q: FOR TESTIFYING FOR THE
PROSECUTION TODAY RIGHT? SEE ALSO TR. TR. PG. 136 L-13 A: YES SIR

AS THE RECORD SHOWS THERE WAS A DEAL MADE IN FAVOR OF
IMMUNITY TO THE STATE WITNESS AND ALL EVIDENCE FROM THE
TRIAL TRANSCRIPT ON PG. 140 LINE 17 A: I AM HOPING FOR A DEAL

APPLICANT DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO
THOROUGHLY INVESTIGATE AS WELL AS NOTIFY CLIENT THAT MATERIAL
EVIDENCE EXISTED THAT WOULD HAVE ASSISTED CLIENT AT TRIAL

IF COUNSEL HAD ADVISED CLIENT THAT CO-DEFENDANT WILL BE RECEIVING IMMUNITY AS PART OF HER PLEA AGREEMENT IN WHICH SOLICITOR WAS AWARE THAT IMMUNITY WOULD BE OFFERED FOR TESTIMONY AND THE SOLICITOR WITHHELD THIS BRADY MATERIAL FROM COUNSEL AND CLIENT CONCERNING IMMUNITY; OUR LAWS OF SOUTH CAROLINA WOULD HAVE EXCLUDED THE TESTIMONY SAME FOR TRIAL AND GUILTY PLEAS; AND SOLICITOR "MUST" AND "SHALL" NOT AWARE STATE WITNESS TESTIMONY IMMUNITY FOR THIS TESTIMONY TO DROP CHARGES SUCH AS CO-DEFENDANT HAD PENDING WAIT TO PLEAD GUILTY TO FOR IMMUNITY.

STATE V BESOME 230 S.E.2d 324 (1977) AT U.S. V. LORD 711 F.2d 887
(STRICKLAND V WASHINGTON 466 U.S. 668 (1984))

{ ARGUMENT }

APPLICANT 5th AMENDMENT AND 14th AMENDMENT HAS BEEN VIOLATED; TESTIMONY GIVEN BY STATE WITNESS AS EVIDENCE MOST FAVORABLE TO PROSECUTION; FALSE EVIDENCE;

IN THE APPLICANT CASE THE SOLICITOR WAS AWARE THAT CO-DEFENDANT TESTIMONY WAS FALSE EVIDENCE THAT THE SOLICITOR USED TO GET A CONVICTION, AND THE STATE WITNESS WAS THREATENED BY THE SOLICITOR MR. NEWTON AND THERE WAS A DEAL MADE BY PROSECUTION JUST TO GET EVIDENCE "SUM" UP A CASE TO CONVICT MR. JACKIE BOYD OF SUCH CRIME.

ACCORDING TO MILLER V DATE 87 S.C. 785 THE 14th AMENDMENT CANNOT TOLERATE A STATE CRIMINAL CONVICTION OBTAINED BY KNOWING USE OF FALSE EVIDENCE. { MORE THAN (30) YEARS AGO THIS COURT HELD THAT THE FOURTEENTH AMENDMENT CANNOT TOLERATE A STATE CRIMINAL CONVICTION OBTAINED BY THE KNOWING USE

OF FALSE EVIDENCE. MOONLEY V HOLOHAN 55 S. CT. 340 THERE HAS BEEN NO DEVIATION FROM THAT ESTABLISHED PRINCIPLE. NAJUE V PEOPLE OF THE STATE OF ILLINOIS 79 S. CT. 1173, PHE V STATE OF KANSAS 63 S. CT. 177 ALCORTA V STATE OF TEXAS 78 S. CT. 103 THERE CAN BE NO RETREAT FROM THAT PRINCIPLE HERE.

IN THE CASE AT BAR DUE PROCESS BARS PROSECUTION FROM USE STATE WITNESS JESSICA KENNEDY MAKING KNOWING USE OF FALSE TESTIMONY AND EVIDENCE. U.S.C.A. CONST. AMEND. 5th AND 14th

ALSO A CONVICTION WHICH IS OBTAINED THROUGH THE USE OF FALSE EVIDENCE OF TESTIMONY KNOWN TO BE SUCH BY THE PROSECUTION IS A DENIAL OF DUE PROCESS AND IN VIOLATION

OF THE 14th AMENDMENT GRAHAM V WILSON 838 F.2d 656

KNOWING USE OF MATERIAL FALSE EVIDENCE BY THE STATE IN CRIMINAL PROSECUTION DOES VIOLATE DUE PROCESS WHERE STATES ALLOW IT TO GO UNCORRECTED AFTER LEARNING OF ITS FALSITY.

WILLIAM V GRISWOLD 743 F.2d 1533 BANKS V PRITKE 125 S. CT. 1250

2004

{ CONCLUSION }

IT IS SO ORDERED THAT APPLICANT SHOULD BE GRANTED A NEW TRIAL AND HIS CONVICTION AND SENTENCE BE VACATED.

DATED _____ 2011

S _____

JACKIE BOYD

APPLICANTS EXHIBITS IN SUPPORT OF THE PCR APPLICATION
THAT ARE ATTACHED TO HIS PCR APPLICATION

APPLICANTS EXHIBITS #1 - TRIAL TRANSCRIPT

APPLICANTS EXHIBITS #2 - 08-GS-29-1389 TRAFFICKING IN COCAINE

APPLICANTS EXHIBITS #3 - S.C. COURT OF APPEALS 2011-CIP-070

APPLICANT EXHIBITS #4 - EASLEY POLICE DEPARTMENT PROPERTY REPORT

APPLICANTS EXHIBITS #5 - RULE 5 DISCOVERY BRADY V MARYLAND

APPLICANTS EXHIBITS #6 - APRIL 8, 2008 DISCLOSURE

APPLICANTS EXHIBITS #7 - STATES NOVEMBER 8, 2008 DISCLOSURE

APPLICANTS EXHIBITS #8 - DRUG ANALYSIS

APPLICANTS EXHIBITS #9 - PROSPECTIVE WITNESS LIST

APPLICANTS EXHIBITS #10 - FINAL BRIEF OF RESPONDENT

APPLICANTS EXHIBITS #11 COPY OF PROSECUTION DISCLOSURE

APPLICANT EXHIBITS #12 A COPY OF EASLEY POLICE DEPT. REPORT

{ PRESENTATION OF THE ISSUES }

1) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

THE APPLICANT WAS DENIED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AS OF RIGHT ON THE FIRST APPEAL IN VIOLATION OF SOUTH CAROLINA CONSTITUTION ARTICLE (1) SUBSECTION (3) AND SOUTH CAROLINA CONSTITUTION ARTICLE (1) SUBSECTION (14) AND UNITED STATES CONSTITUTIONAL AMENDMENT 5th 6th, AND 14th IN FAILING TO FILE A PETITION FOR A REHEARING OR REINSTATEMENT PURSUANT TO SOUTH CAROLINA APPELLATE COURT RULE 221 ASKING THE SOUTH CAROLINA COURT OF APPEALS TO REVIEW ANY ADVERSIAL FACT OR PRINCIPLE OF LAW THAT HAS BEEN EITHER OVERLOOKED OR DISREGARDED.

UNDER EVITT'S V. LUCEY

I AM ENTITLED TO EFFECTIVE ASSISTANCE OF COUNSEL ON MY FIRST APPEAL AS OF RIGHT. THE SOUTH CAROLINA OFFICE OF INDIGENT DEFENSE DIVISION APPELLATE COUNSEL ELIZABETH FRANKLIN BEST PERFORMANCE FELL BELOW AN OBJECTIONABLE STANDARD OF REASONABLENESS UNDER THE FIRST PRONG OF STRICKLAND V. WASHINGTON 466 US 668 (1984) INEFFECTIVE ASSISTANCE OF COUNSEL IN FAILING TO FILE A PETITION FOR A REHEARING WITH THE SOUTH CAROLINA COURT OF APPEALS UPON THE REQUEST OF THE APPLICANT PURSUANT TO SOUTH CAROLINA APPELLATE COURT RULE 221 VIOLATION APPLICANT CONSTITUTIONAL RIGHT ARTICLE (1) SUBSECTION (3) AND VIOLATING APPLICANT CONSTITUTIONAL RIGHT UNDER THE 5th AND 14th CONSTITUTIONAL AMENDMENT RIGHT AND IN VIOLATION OF APPLICANT DUE PROCESS RIGHT AND EQUAL PROTECTION RIGHT OF THE SOUTH CAROLINA CONSTITUTION ARTICLE (1) SUBSECTION (14th) AND THE UNITED STATES CONSTITUTIONAL AMENDMENT UNDER THE 6th AND 14th AMENDMENT EFFECTIVE ASSISTANCE OF COUNSEL

APPLICANT WAS PREJUDICED BY APPELLATE COUNSEL ELIZABETH FRANKLIN BEST
INEFFICIENT PERFORMANCE IN FAILING TO FILE A PETITION FOR A REHEARING
PURSUANT TO SOUTH CAROLINA APPELLATE COURT RULE 231 BECAUSE IT
DENIED APPLICANT OF A FINAL DECISION, AND IT FURTHER PREJUDICED
APPLICANT OF BEING ABLE TO EXHAUST STATE COURT REMEDY UNDER
SOUTH CAROLINA APPELLATE COURT RULE 236 PETITION FOR WRIT OF
CERTIORARI AS STATED IN AN ORDER ISSUED BY THE STATE OF SOUTH
CAROLINA SUPREME COURT ORDER IN STATE V MCGRIFF OP. No. 2010-UP-538
(S.C. Ct App. Filed DECEMBER 16th, 2010)

WHEN NO PETITION FOR REHEARING WAS RECEIVED BY THE S.C. COURT OF
APPEALS, THE S.C. COURT OF APPEALS SENT THE REMITTUR. PETITIONER HAS
NOW FILED A PETITION FOR WRIT OF CERTIORARI DATED MARCH 1, 2011
SEEKING REVIEW OF THE DECISION OF THE SOUTH CAROLINA COURT OF APPEALS
IN THIS MATTER. UNDER RULE 242 (A) FORMERLY RULE 236 S.C. APPELLATE
COURT RULE THIS COURT WILL ONLY REVIEW A FINAL DECISION OF THE COURT
OF APPEALS AND A DECISION IS NOT FINAL FOR THE PURPOSE OF REVIEW
UNTIL A PETITION FOR REHEARING OR REINSTATEMENT HAS BEEN ACTED
ON BY THE COURT OF APPEALS. RULE 242 (C) S.C. APPELLATE COURT RULE.

SO NO PETITION FOR REHEARING HAS BEEN RULED ON BY THE COURT OF
APPEALS IN THIS MATTER, THERE IS NO FINAL DECISION FOR THIS COURT
TO REVIEW. FURTHER WHEN NO PETITION FOR REHEARING WAS RECEIVED
BY THE COURT OF APPEALS, THE COURT OF APPEALS PROPERLY SENT THE
REMITTUR RULE 231 S.C. APPELLATE COURT RULE. THE SENDING OF THE
REMITTUR ENDED APPELLATE JURISDICTION OVER THIS CASE.

WISE V SOUTH CAROLINA DEPT OF CORRECTIONS 372 S.C. 173, 642 S.E. 2d
561 (2007)

2) THE APPLICANT MOTION FOR A DIRECTED VERDICT SHOULD HAVE BEEN GRANTED
THE TRIAL COURT JUDGE LARRY R. PATTERSON ABUSED HIS DISCRETION IN

QUESTIONING STATE WITNESS JESSICA KENNEDY ABOUT STATE EXHIBIT #4 ABOUT EVIDENCE NOT MENTIONED DURING DIRECT EXAMINATION. APPLICANT SUBMITS THAT UNDER THE FIRST PRONG TEST OF (STRICKLAND V WASHINGTON) SUPRA PERFORMANCE FELL BELOW OBJECTIVE STANDARD OF REASONABLENESS.

TR. TR. PG. 134 L-12-25 - PG. 135 L-7

2.) INEFFECTIVE ASSISTANCE OF COUNSEL

APPLICANT CLAIM UNDER THE SECOND PRONG TEST OF (STRICKLAND V WASHINGTON) 466 U.S. 668 (1984) THAT HE WAS PREJUDICED BY TRIAL COUNSEL DEFICIENT PERFORMANCE IN QUESTIONING STATE WITNESS JESSICA KENNEDY ON CROSS-EXAMINATION ABOUT EVIDENCE SHE WASN'T QUESTIONED ABOUT DURING DIRECT EXAMINATION. WHEN IN QUESTIONING JESSICA KENNEDY ABOUT THIS PILL BOTTLE IN STATE EXHIBITS #4 WHICH CONTAINED TWO PLASTIC BAGS IN WHICH ONE CONTAINED 10.90 GRAMS OF COCAINE AND THE OTHER BAG CONTAINED 4.37 GRAMS OF COCAINE BASE (CRACK) TRIAL COUNSEL ELICITED INCRIMINATING EVIDENCE INTO EVIDENCE IN WHICH PLACED THIS PILL BOTTLE CONTAINING 10 GRAMS OR MORE OF COCAINE THAT WAS FOUND BY OFFICER JEREMY BENJAMIN ON THE GROUND OUTSIDE THE DRIVERS SIDE DOOR.

TR. TR. PG. 74 L-13-25 - 75 - L-1-15

TR. TR. PG. 134 L-12-25 - 135 L-1-7

TR. TR. PG. 144 L-24 - PG. 147 L-6

INCRIMINATING EVIDENCE ELICITED AGAINST APPLICANT INTO EVIDENCE BY TRIAL COUNSEL ROBERT NEWTON

Q: WHERE DID YOU SEE IT AT?

A: I WAS IN THE CAR AT ONE POINT IN TIME, BUT CAN'T REMEMBER WHERE SHE SEEN IT AT.

TR. TR. PG. 135 L-4-5

AS A RESULT OF TRIAL COUNSEL ELICITING THIS INCRIMINATING EVIDENCE INTO EVIDENCE, BASED ON THIS EVIDENCE IS WHAT LEAD TO THE TRIAL JUDGE

NOT GRANTING APPLICANT MOTION FOR A DIRECTED VERDICT OF ACQUITTAL.
THE EVIDENCE WAS INSUFFICIENT TO PROVE BEYOND A REASONABLE DOUBT
THAT THE APPLICANT WAS KNOWINGLY IN ACTUAL OR CONSTRUCTIVE
POSSESSION OF (10) OR MORE GRAMS OF COCAINE WHERE THE TRIAL COURT
JUDGE BASED HIS GROUNDS UPON INSUFFICIENT FACTS, WHICH THE COURT
CONSIDERED THE EXISTENCE OF ANY DIRECT EVIDENCE, SUBSTANTIAL OR
CIRCUMSTANTIAL EVIDENCE ON TESTIMONY OF THE STATE WITNESS JESSICA
KENNEDY WHO TESTIFIED SHE KNEW THE BOTTLE WAS IN THE CAR SHE
HAD SEEN IT BUT DIDN'T KNOW HOW IT GOT THERE

Id AT TR. TR. pg. 149 1-17-24

EXHIBIT #13

THIS EVIDENCE ONLY SHOWS THE STATE WITNESS JESSICA KENNEDY HAD
KNOWLEDGE OF THIS BOTTLE, BUT BECAUSE INFERENCE CAN BE DRAWN THAT
SHE HAD IT IN HER PURSE, BUT WOULDN'T SAY WHERE SHE SAW IT AT IS
INSUFFICIENT EVIDENCE TO PROVE THE ELEMENT THAT I HAD ACTUAL OR
CONSTRUCTIVE POSSESSION OF THIS PILL BOTTLE, UNDER SOUTH CAROLINA
RULES OF CRIMINAL PROCEDURE RULE (19) THE COURT ON ITS OWN MOTION
SHOULD HAVE DIRECTED A VERDICT OF ACQUITTAL IN FAVOR OF APPLICANT
AS WELL AS CONSIDERING APPLICANT OWN MOTION FOR A DIRECTED
VERDICT. WHAT THE TRIAL JUDGE DENIED APPLICANT DIRECTED VERDICT
MOTION UPON IS INSUFFICIENT EVIDENCE IN WHICH THE STATE FAILED
TO PROVE THE ELEMENT OF KNOWINGLY BEING IN ACTUAL OR CONSTRUCTIVE
POSSESSION BEYOND A REASONABLE DOUBT, AS REQUIRE IN
RE MAINSHIP 397 US 358 (1976) AS AN INDIGENT DEFENDANT I AM
DEPENDANT ON THE GOVERNMENT, NOT TO VIOLATE MY CONSTITUTIONAL
RIGHTS TO A FAIR TRIAL, AND FOR THE GOVERNMENT COUNSEL TO PROTECT
MY DUE PROCESS RIGHTS UNDER SOUTH CAROLINA CONSTITUTION ARTICLE
1) SUBSECTION (3) AND THE UNITED STATES CONSTITUTIONAL RIGHT TO A

DENYING TRIAL COUNSEL MOTION FOR A DIRECTED VERDICT OF ACQUITTAL.

TR. TR. pg. 148 L-1-25. pg. 149 L-1-24

TR. pg. 149 L-17-24 THE TRIAL COURT JUDGE STATED:

ALL RIGHT AT THIS PARTICULAR POINT, I CAN'T WEIGH THE EVIDENCE, I JUST HAVE TO CONSIDER THE EXISTENCE OF ANY DIRECT OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE AND THE TESTIMONY WAS SHE KNEW THE BOTTLE WAS IN THE CAR SHE HAD SEEN IT BUT SHE DIDN'T KNOW HOW IT GOT THERE. I WILL HAVE TO DENY THE MOTION AT THIS TIME.

APPLICANT SUBMITS THAT HAD IT NOT BEEN FOR TRIAL COUNSEL DEFICIENT PERFORMANCE IN ELICTING THIS INCRIMINATING DIRECT EVIDENCE OR SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE INTO EVIDENCE DURING CROSS EXAMINATION OF STATE WITNESS JESSICA KENNEDY. IN WHICH THE TRIAL JUDGE CONSIDERED HIS REASONS IN DENYING COUNSEL'S MOTION FOR A DIRECTED VERDICT. APPLICANT SUBMITS THAT THERE IS A REASONABLE PROBABILITY EXISTS, THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERRORS THAT THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT.

ABSENT THE EVIDENCE UNPROFESSIONALLY ELICTED INTO EVIDENCE BY TRIAL COUNSEL, THERE IS NO EVIDENCE IN THE RECORD IN WHICH CONSTRUCTIVE POSSESSION COULD HAVE BEEN PROVEN BEYOND A REASONABLE DOUBT, AND THEREFORE APPLICANT UNDER THE QUIE PROCESS CLAUSE OF THE 14TH U.S.C.A WOULD BE ENTITLED TO A DIRECTED VERDICT OF ACQUITTAL.

IN RE WAINSHIP 397 U.S. 358 (1970)

THE INCRIMINATING EVIDENCE ELICTED AGAINST TRIAL COUNSEL OWN CLIENT ESTABLISH APPLICANT DOMINATED CONTROL OVER THE PILL BOTTLE CONTAINING 10 OR MORE GRAMS OF COCAINE OR HAD THE RIGHT TO EXERCISE DOMINION AND CONTROL OVER THE PILL BOTTLE.

TRIAL FAIR, FROM BEING VIOLATED BY THE GOVERNMENT, BUT WHEN THE SAME GOVERNMENT IS PROSECUTING APPLICANT, THE SAME GOVERNMENT THAT DUE TO MY INDIGENCY APPOINTS ME COUNSEL, A CONFLICT OF INTEREST EXISTS UNDER THE THIRD PARTY INTEREST OF THE GOVERNMENT IN WHICH THE GOVERNMENT COUNSEL SEEMS TO BE MORE OF A FRIEND TO THE COURT, THEN TO PROTECT MY CONSTITUTIONAL RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE 14th AMENDMENT UNITED STATES CONSTITUTION TO A FAIR TRIAL. AS PERTAINING TO MY TRIAL COUNSEL NOT PRESENTING THE PROPER FACTS AND UNDER RE WAINSHIP 397 US 358 (1970) REQUESTING A DIRECTED VERDICT OF ACQUITTAL. YET WHEN THE TRIAL COURT RECORD ITSELF PLAINLY SHOWS THAT DUE TO THE INSUFFICIENT EVIDENCE THE STATE FAILED TO PROVE THE ELEMENT OF KNOWINGLY UNDER SOUTH CAROLINA RULE OF CRIMINAL PROCEDURE RULE 19(A) THE TRIAL COURT ON ITS OWN MOTION SHOULD HAVE ENTERED A DIRECTED VERDICT OF ACQUITTAL AND BECAUSE IT DIDN'T THE COURT ABUSED ITS DISCRETION. THE GOVERNMENT DUE TO MY INDIGENCY THEY APPOINTED ME APPELLATE DEFENSE COUNSEL TO PERFECT MY APPEAL AGAIN THE ISSUE WAS PROPERLY RAISED THAT EXISTED IN THE RECORD BECAUSE UNDER A CONFLICT OF INTEREST THE SOUTH CAROLINA APPELLATE DEFENSE COUNSEL ACTED AS A FRIEND OF THE COURT AND STATE AND MISREPRESENTED APPLICANT AND TO PREVENT THE CONSTITUTIONAL ERROR FROM BEING REVIEWED BY THE STATE SUPREME COURT, THE SOUTH CAROLINA OFFICE OF APPELLATE DEFENSE COUNSEL WOULD NOT FILE A PETITION FOR REHEARING TO PREVENT A FINAL DECISION AND APPLICANT FROM RECEIVING REITEE IN MY FAVOR SUCH AN ANNULLMENT OF ACQUITTAL THIS CONCLUDES THE FIRST ISSUE AGAINST APPLICANT APPELLATE DEFENSE COUNSEL

ABSENT THIS INCRIMINATING EVIDENCE, IN WHICH THE JURY CAN INFER CONSTRUCTIVE POSSESSION AN ESSENTIAL ELEMENT THAT MUST BE PROVEN BEYOND A REASONABLE DOUBT. THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT. UNDER IN RE WAINSHIP 397 U.S. 358 APPLICANT WOULD BE ENTITLED TO A VERDICT OF ACQUITTAL. THIS FURTHER SHOWS APPLICANT WAS PREJUDICED WHEN TRIAL COUNSEL ELICITED THAT EVIDENCE, IN THAT THE TRIAL COURT RULED AGAINST APPLICANT MOTION FOR A DIRECTED VERDICT.

TR. TR. pg. 149 L-17-24

TRIAL COUNSEL ROBERT NEWTON IN HIS OPENING AND CLOSING ARGUMENT TOLD THE JURY THAT HIS CLIENT WAS GUILTY FOR FAILURE TO STOP FOR A BLUE LIGHT.

TR. TR. pg. 53 L-24-25 - TR. TR. pg. 54 L-1-25 - TR. TR. pg. 55 L-1-4

COMBINE THAT WITH TRIAL COUNSEL ELICITING EVIDENCE FROM JESSICA KENNEDY ON CROSS EXAMINATION, THAT SHE SAW THE PILL BOTTLE IN THE CAR AT ONE POINT IN TIME.

TR. TR. pg. 124 L-12-25 - TR. TR. pg. 135 L-1-5

TR. TR. pg. 173 L-12-25 - TR. TR. 175 L-1

NOW SEE HOW THE STATE USES THIS EVIDENCE THAT WAS INTRODUCED INTO EVIDENCE BY APPLICANT'S OWN TRIAL COUNSEL.

THE FINAL BRIEF OF RESPONDENT pg. 7 THROUGH 12

S.C. COURT OF APPEALS UNPUBLISHED OPINION 2011-UP-070

SUBMITTED FEBRUARY 1, 2011

SEE HOW THE PROSECUTION DURING CLOSING ARGUMENT AT TRIAL USES THIS EVIDENCE INTRODUCED BY APPLICANT TRIAL COUNSEL AGAINST APPLICANT

TR. TR. pg. 163 L-21 - pg. 164 L-1-4

Applicant claim that the combination of these two unprofessional acts during his trial prejudiced him of a directed verdict of acquittal because basically his trial counsel lessen the states burden of having to prove the essential element of trafficking in 10 or more grams of cocaine in which the state had the burden of proving beyond a reasonable doubt, that Jack Lee Boyd Applicant did or

1) December 3, 2007 was knowingly in actual or constructive possession of 10 or more grams of cocaine. when trial counsel:
1) in opening and closing argument told the jury his client was guilty of failure to stop for blue light
Element of knowingly infer from flight

2) and eliciting evidence from state witness Jessica Kennedy placing pill bottle containing 10.90 grams of cocaine in car pill bottle in car establish evidence of dominion and control or the right to exercise dominion and control over pill bottle containing 10.90 grams of cocaine or over the property vehicle where Jessica Kennedy seen it at one point in time establishes evidence to infer constructive possession
therefore under the first prong test of (Strickland v Washington)

46 U.S. 668 (1984)

Applicant Jack Lee Boyd claim that his trial counsel Robert Newton performance fell below an objective standard of reasonableness in:
telling the jury in his opening and closing argument that Applicant was guilty of failure to stop for a blue light, when Applicant plead not guilty to the charge and the trial judge told the jury that Applicant plead not guilty to this charge.

TR. TR. pg. 7 L-3-18 TR. TR. pg. 53 L-24-25 - pg. 54 L-1-25

TR. TR. pg. 155 L-1-4

AND IN CROSS EXAMINATION OF STATE WITNESS JESSICA KENNEDY QUESTIONING HER ABOUT STATE EXHIBIT #4 PILL BOTTLE CONTAINING COCAINE ASKING HER WHERE SHE HAD SEEN IT BEFORE AND HICITING INCRIMINATING EVIDENCE INTO EVIDENCE AGAINST APPLICANT WHEN SHE TESTIFIED SHE SAW IT IN THE CAR AT SOME POINT IN TIME.

TR. TR. pg. 134- L-12-25 - pg. 135 L-1-5

APPLICANT CLAIM UNDER THE 2ND PRONG TEST OF (STRICKLAND V WASHINGTON) 466 U.S. 668 (1984) THAT BASED ON THE PREPONDERANCE OF THE EVIDENCE AFOREMENTIONED IN THIS ISSUE (A) 10 (B) 11 (B) IF PCR APPLICATION AND BASED UPON RECORDED DOCUMENTS OF PROOF ATTACHED SHOWS THAT HE WAS PREJUDICED OF A FIRST VERDICT OF ACQUITTAL, AND HAD IT NOT BEEN FOR TRIAL COUNSEL DEFICIENT PERFORMANCE THE OUTCOME OF THE PROCEEDINGS (TRIAL) OR (APPEAL) WOULD HAVE BEEN DIFFERENT.

3) 10 (C) 11 (C)

APPLICANT CLAIM THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY IN VIOLATION OF S.C. CONST. ARTICLE (1) (3) AND (1) (14) U.S.C.A. 5th, 6th, 14th RIGHT UNDER THE DUE PROCESS CLAUSE AND EQUAL PROTECTION CLAUSE OF EFFECTIVE ASSISTANCE OF COUNSEL AND A FAIR TRIAL.

PURSUANT TO (STRICKLAND V WASHINGTON) 466 U.S. 668 (1984)

APPLICANT CLAIM TRIAL COUNSEL ROBERT NEWTON'S PERFORMANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, IN ADVISING APPLICANT NOT TO TESTIFY IN HIS OWN BEHALF AND EXPLAIN TO THE JURY WHY HE DID NOT STOP FOR THE BLUE LIGHT.

APPLICANT CLAIMS TRIAL COUNSEL'S DEFICIENT PERFORMANCE UNDER THE SECOND PRONG TEST OF (STRICKLAND V WASHINGTON) 466 U.S. 668 (1984) PREJUDICED HIM OF A FAIR TRIAL BECAUSE TRIAL COUNSEL COULD NOT (did)

ADVISE APPLICANT NOT TO TESTIFY, HE WOULD HAVE TESTIFIED ON HIS OWN BEHALF AND INTRODUCE EVIDENCE AS TO WHY HE DID NOT STOP FOR THE BLUE LIGHT WHICH WAS BECAUSE:

TR. TR. PG. 132 L-1-18

THE CAR WAS STOLEN TR. TR. PAGE 132 L-1-18

APPLICANT LICENSE WAS SUSPENDED

APPLICANT DIDN'T WANT TO GO TO JAIL

*
[ALTERNATIVE REASON FOR FLIGHT]

HAD APPLICANT TESTIFIED AND COUNSEL AS STATED IN ISSUE NUMBER 10(B) 11(B) COUNSEL TOLD THE JURY APPLICANT WAS GUILTY FOR FAILURE TO STOP FOR A BLUE LIGHT IN HIS OPENING AND CLOSING ARGUMENT, THE EVIDENCE OF WHAT WOULD NOT BE ADMISSIBLE AGAINST HIM AS EVIDENCE OF GUILT.

(AS THE ATTORNEY GENERAL STATED IN ITS ARGUMENT IN THE STATE FINAL BRIEF OF RESPONDENT) IN WHICH THE ELEMENT OF KNOWINGLY OR KNOWLEDGE WAS INFERED, APPLICANT CLAIM HAD IT NOT BEEN FOR COUNSEL'S DEFICIENT PERFORMANCE THERE EXISTS A REASONABLE PROBABILITY THAT THE OUTCOME OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT, HAD APPLICANT TESTIFIED AND INTRODUCE EVIDENCE TO REBUT THE STATES CASE.

APPLICANT CONTENDS THAT HE DID NOT KNOWINGLY AND VOLUNTARILY WAIVED HIS CONSTITUTIONAL RIGHT TO TESTIFY THAT IN VIOLATION OF SOUTH CAROLINA CONSTITUTION ART (5) & (2) THE TRIAL COURT IN STATING ITS OPINION COERCED APPLICANT TO WAIVE HIS CONSTITUTIONAL RIGHT TO TESTIFY IN HIS OWN BEHALF AND INTRODUCE REBUTTABLE EVIDENCE AGAINST THE STATES CASE, THE TRIAL COURT INSTRUCTED ME TO LISTEN TO COUNSEL'S ADVICE

TR. TR. PG. 150 L-11-14

HAD THE COURT NOT ADVISED ME TO LISTEN TO TRIAL COUNSEL ADVICE I WOULD NOT HAVE WAIVED MY CONSTITUTIONAL RIGHT TO TESTIFY AND INTRODUCE EVIDENCE ON MY BEHALF.

10 11 11

Applicant claim that he is being held in custody unlawfully in violation of his due process rights and equal protection rights of the South Carolina Constitution Article (1) and (3) Article (14) (14)

U.S.C.A. 5th, 6th, 14th to effective assistance of counsel and a fair

trial Applicant further states that pursuant to the first prong test in (Strickland v Washington) 466 US 668 (1984)

that his trial counsel Robert Newton performance fell below an objective standard of reasonableness in failing to request curative instructions to the jury and in moving for a motion for a mistrial. When the prosecution in closing argument intentionally refer to or argue on the basis of facts outside the record in which the prosecutor may only argue all reasonable inferences from evidence in the record

TR. TR. pg. 165 2-15-25 - TR. TR. pg. 166 2-1-13

Applicant claim pursuant to the second prong of (Strickland v Washington) 466 US 668 (1984) that its a violation of the Model Rules of Professional Conduct 3-5.8, 3.5.9 Model Code of Professional Conduct/Responsibility DR-7-106 (1) (1980) and Rule 3.3(A)(1) for the prosecutor in his or her closing argument not to confine his or her closing argument to evidence on the record and to permissible inferences therefrom. The prosecutor called Applicant a drug dealer then a drug trafficker in which trial counsel objected to twice on grounds there was no basis, no testimony that Applicant was any type of drug dealer or anything like that, there is no basis in the record to support that argument. The trial court sustain the objection, but counsel failed to request curative

INSTRUCTIONS.

TR. TR. pg. 165- 1-15-25

THE PROSECUTOR AGAIN IN HIS CLOSING ARGUMENT REFERRED TO APPLICANT AS A DRUG DEALER/TRAFFICKER, AND TRIAL COUNSEL OBJECTED ON THE SAME GROUNDS, THE TRIAL COURT SUSTAIN THE OBJECTION AND AGAIN COUNSEL DID NOT REQUEST CURATIVE INSTRUCTIONS TO BE GIVEN TO THE JURY

TR. TR. pg. 166 L-2-13

APPLICANT WAS PREJUDICED WHEN TRIAL COUNSEL FAILED TO REQUEST THAT THE TRIAL JUDGE TO GIVE CURATIVE INSTRUCTIONS TO THE JURY AND BECAUSE THE JURY HEARD EVIDENCE OUTSIDE THE RECORD THE JURY MOST LIKELY FOUND APPLICANT GUILTY ON THIS EVIDENCE AND THEREFORE TRIAL COUNSEL SHOULD HAVE MOTIONED THE TRIAL COURT FOR A MISTRIAL, BUT SINCE HE DIDN'T APPLICANT CLAIM THAT DUE TO TRIAL COUNSEL DEFICIENT PERFORMANCE TO REQUEST CURATIVE JURY INSTRUCTIONS TO BE GIVEN TO THE JURY OR AND MOVE FOR A MISTRIAL HAD IT NOT BEEN FOR COUNSEL'S DEFICIENT PERFORMANCE IN DOING SO THAT THERE EXISTS A REASONABLE PROBABILITY EXISTS THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERROR, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT.

10(E) 11(E)

APPLICANT CLAIM HE IS BEING HELD IN CUSTODY UNLAWFULLY IN VIOLATION OF HIS DUE PROCESS RIGHTS AND EQUAL PROTECTION RIGHTS UNDER THE DUE PROCESS CLAUSE OF THE SOUTH CAROLINA CONSTITUTION ARTICLE 1(3) AND U.S. C. A. 5th, 6th, 14th AMENDMENT TO A FAIR TRIAL. IN VIOLATION OF BRADY V MARYLAND 378 U.S. 83

ON 12/3/2007 APPLICANT WAS CHARGED ON WARRANT K-172996 WITH TRAFFICKING IN COCAINE. IN APPLICANT EXHIBITS #13 AND WARRANT 61489 FAILURE TO STOP FOR A BLUE LIGHT 1ST OFFENSE AND ARREST WARRANT 61494 DUI 2ND OFFENSE, IN WHICH ON FEBRUARY 19, 2008 TRIAL COUNSEL FOR APPLICANT REQUESTED THE SOLICITOR TO PROVIDE ALL EVIDENCE FAVORABLE TO THE APPLICANT SUBJECT TO DISCLOSURE PURSUANT TO BRADY V MARYLAND 373 US 83 (1963) THIS REQUEST IS A CONTINUING REQUEST FOR ALL SUCH DISCOVERABLE INFORMATION AS IT BECOMES KNOWN TO THE SOLICITOR OR ANY PROSECUTING AGENCY.

STATE V KENNEDY 568 S.E.2D 214

FURTHERMORE PURSUANT TO RULE 6 SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE APPLICANT OBJECTS TO THE INTRODUCTION OF A CHEMIST OR ANALYSIS REPORT WITHOUT SUCH PERSON BEING PERSONALLY PRESENT AT TRIAL. APPLICANT ALSO REQUESTS THE APPEARANCE OF PERSONS IN COURT WITHIN THE CHAIN OF CUSTODY OF ALL PHYSICAL EVIDENCE.

THE SOLICITOR OFFICE HAD IN ITS POSSESSION THE EASLEY POLICE DEPARTMENT PROPERTY REPORT OF THE CHAIN OF CUSTODY OF ALL THE PERSONS THAT HANDLED THE PHYSICAL EVIDENCE IT INTENDED TO INTRODUCE IN CHIEF AT TRIAL AGAINST APPLICANT WHICH SHOWS THAT ON 12-3-2007 AN OFFICER JEREMY BENJAMIN RECOVERED (1) MEDICINE BOTTLE WITH OFF WHITE ROCK SUBSTANCE FROM GROUND AND FROM STATE WITNESS JESSICA KENNEDY PURSE AND BRA 123 CARTEE Rd. LIBERTY S.C. AT 4:38 A.M. AND IT WAS RECEIVED BY OFFICER ROBERT BRAIN COWEN IN PERSON ON 12-3-07 AT 9:00 A.M. ON 12/5/07 AT 9:45 A.M. A TABITHA FRICKS RECEIVED THE EVIDENCE FOR P.E. STORAGE AND SEALED IT WHO IS EMPLOYED WITH THE GREENVILLE COUNTY DEPARTMENT OF PUBLIC SAFETY. ON 12/5/07 AT 1310 A JAMES ARMSTRONG RECEIVED IT FOR LAB. THEN A ISRAEL FLOUNDER RECEIVED IT ON 12/7/07 THEN ROBERT B. COWAN RECEIVED IT TO RETURN TO

EASLEY POLICE DEPARTMENT ON 12/18/07 AT 0948.

ALSO PROOF THAT THE SOLICITOR OFFICE HAD THIS EASLEY POLICE DEPARTMENT PROPERTY REPORT IS

Id IN APPLICANTS EXHIBITS #9

THE STATE PROSPECTIVE WITNESS LIST WHICH CONTAINS ALL THE PERSONS NAME LISTED IN THE EASLEY POLICE DEPARTMENT PROPERTY REQUEST THAT HANDLED THE EVIDENCE, MEDICINE BOTTLE WHICH CONTAINED AN OFF WHITE ROCK SUBSTANCE DEALING WITH THE CHAIN OF CUSTODY OF THIS EVIDENCE BEING JEREMY BENJAMIN BRIAN COVLEN, JAMES ARMSTRONG, TABITHA FRICKS, ISYEA FLOUNDERS.

SEE Id AT APPLICANTS EXHIBITS #9

BUT WHEN THE SOLICITORS OFFICE PURSUANT TO SCRCP RULE (5) AND RULE 5(E) AND BRADY V MARYLAND SUPRA DISCLOSED ITS DISCOVERY MATERIAL ON APRIL 8, 2008 IT DID NOT DISCLOSE THIS EASLEY POLICE DEPARTMENT PROPERTY REPORT SEE Id IN APPLICANTS EXHIBITS #6 NOR IN NOVEMBER 5, 2008 PURSUANT TO SCRCP RULE (5) DID NOT DISCLOSE THIS PROPERTY REPORT.

SEE Id IN APPLICANT EXHIBITS #7

THIS DOCUMENT/ INFORMATION ISN'T IN APPLICANT EXHIBIT #4

EASLEY POLICE DEPARTMENT PROPERTY REPORT IS MATERIAL EXCULPATORY AND IMPEACHING EVIDENCE AS WELL AS HAVE EXCULPATORY VALUE CONCERNING THE ADMISSIBILITY OF EVIDENCE.

WHERE AS DURING THE TRIAL THE SOLICITOR INTRODUCED THIS MEDICINE BOTTLE WHICH ACCORDING TO TESTIMONY OF STATE WITNESS JESSICA KENNEDY/ JAMES ARMSTRONG TESTIFIED THAT THE PILL BOTTLE CONTAINED 10.90 GRAMS OF COCAINE AND 4.37 GRAMS OF COCAINE BASE.

EXHIBIT #1 TR. TR. PG. 143 1-22- PG. 147- 2-6

EXHIBIT #8

THE SOLICITOR IN ESTABLISHING THE CHAIN OF CUSTODY IN REFERENCE TO THIS PILL BOTTLE STATE EXHIBITS #4 IN TRIAL TRANSCRIPT ON DIRECT EXAMINATION INTRODUCED THE TESTIMONY OF OFFICER JEREMY BENJAMIN WHO TESTIFIED UNDER OATH THAT HE LOCATED THIS PILL BOTTLE ON THE OUTSIDE OF THE DRIVER SIDE DOOR ON THE GROUND, HE PICKED IT UP TOOK IT WITH HIM AFTER HE CLEARED THE SCENE, WENT TO EASLEY POLICE DEPARTMENT AND FILLED OUT GREENVILLE COUNTY DRUG ANALYSIS FORM, FILLED OUT EASLEY POLICE DEPARTMENT FORM, FILLED OUT ALL THE PAPERWORK SEALED THE EVIDENCE IN A BAG PUT TAPE AROUND IT AND SIGNED ON THE TAPE AND PUT EVIDENCE IN EVIDENCE LOCKER THEN EXPLAINED WHAT THE EVIDENCE LOCKER IS AND HOW IT WORKS.

EXHIBITS #1 TR. TR. PG. 74 L-10-12

TR. TR. PG 78 L-12 - PG. 79 L-13

THEN THE SOLICITOR INTRODUCED THE TESTIMONY OF ROBERT B. COWAN WHO TESTIFIED ON DIRECT EXAMINATION THAT HE RETRIEVED THE PILL BOTTLE ON DECEMBER 3, 2007 FROM HIS EVIDENCE LOCKER AND EXPLAINED WHAT HE DID WITH THE PILL BOTTLE

EXHIBITS #1 TR. TR. PG. 114 - L-23 - PG. 119 L-19

ACCORDING TO THE EASLEY POLICE DEPARTMENT PROPERTY REPORT THE SOLICITOR KNOWINGLY INTRODUCED PERJURY TESTIMONY AS WELL AS VIOLATED THE BRADY RULE BECAUSE THE E. P. D. PROPERTY REPORT SHOWS THE PILL BOTTLE WAS NEVER PLACED IN AN EVIDENCE LOCKER AT THE EASLEY POLICE DEPARTMENT BUT IT DOES SHOW THAT OFFICER ROBERT B. COWAN RECEIVED THE PILL BOTTLE IN PERSON FROM JEREMY BENJAMIN WHO RECEIVED IT FROM JEREMY BENJAMIN ON 12/3/07 AT 0900 AND KEPT IT FOR TWO DAYS BEFORE HE PLACED IT IN PROPERTY IN EVIDENCE TO TAKE TO GREENVILLE FOR TESTING, ACCORDING TO EASLEY PROPERTY REPORT IT DOESN'T SHOW WHERE THIS PILL BOTTLE WAS BETWEEN 12-3-07 0900 AND 12/5/07 0944 NOR IS IT

ANY TESTIMONY IN EVIDENCE THAT THIS PILL BOTTLE WAS RECOVERED FROM JACKIE BOYD AT 123 CORLEE ROAD IN LIBERTY S.C., NOR DID ANY OF THE PERSONS WHO RECEIVED OR HANDLED THE PILL BOTTLE SUCH AS TAMBHA FRICKS OR ISREAL FLOUNDERS TESTIFIED NOR A SWORN AFFIDAVIT PRESENTED INTRODUCING EVIDENCE, THAT THE EVIDENCE RECEIVED BY THEM IS THE SAME EVIDENCE THE SOLICITOR INTRODUCED THE EVIDENCE AT TRIAL, AND THAT IT IS IN THE SAME CONDITION THAT THEY RECEIVED IT, HAD THEY TESTIFIED THEY MIGHT HAVE INTRODUCED EVIDENCE SHOWING THAT THE EVIDENCE IN STATE EXHIBITS #4 WAS TAMPERED WITH, THIS, ESP PROPERLY REPORT. APPLICANT EXHIBIT #4 IN IMPEACHMENT EVIDENCE, WHICH THE SOLICITOR'S OFFICE VIOLATION OF SCACR 407 RULES OF PROFESSIONAL CONDUCT CONCEALED/WITHHELD KNOWINGLY. THIS IMPEACHMENT EVIDENCE ALONG WITH THE ABSENCE OF ANY FORENSIC PHOTOGRAPHS TAKEN AT THE CRIME SCENE SHOWING THE NON EXISTING OF A PILL BOTTLE BEING LOCATED WHERE OFFICER JEREMY BENJAMIN TESTIFIED TO WHERE HE SUPPOSEDLY LOCATED THIS PILL BOTTLE AT AND WHAT HE DID WITH IT, HAD THE SOLICITOR PRODUCED THIS EVIDENCE OF IMPEACHMENT, THERE IS A STRONG PROBABILITY THE JURY WOULD HAVE BELIEVE HIM OR OFFICER BRIAN COWEN AND THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT.

BASED ON THIS IMPEACHMENT EVIDENCE APPLICANT EXHIBITS #4 WHERE WAS THE PILL BOTTLE RECEIVED FROM? JACKIE BOYD AT 123 CARTER RD / LIBERTY EASLEY S.C. ON THE GROUND OUTSIDE THE DRIVERS SIDE DOOR?

APPLICANT EXHIBIT #1 TR. TR. PG. 74 1-10-12

APPLICANT HAS SHOW A BRADY VIOLATION WHICH IS A VIOLATION OF APPLICANT U.S.C.A. 14# DUE PROCESS OF LAW.

SEE APPLICANT EXHIBIT #11

WHICH IS THE DISCLOSURE OF THE SOLICITOR'S OFFICE DISCOVERY MATERIAL

PURSUANT TO SCRCR RULE (5) APPLICANT EXHIBIT #6 AS EASLEY POLICE DEPARTMENT INCIDENT REPORT CASE 07-5397 (11) PAGES OF THIS MATERIAL EVIDENCE IN WHICH STATES WITNESS OFFICER JEREMY BENJAMIN TESTIFIED IN REFERENCE TO CLOSING THE TRIAL BEFORE A JURY. APPLICANT EXHIBITS #1 TR. TR. PG. 55 1-7 THROUGH PG. 101 1-5

WAS ALTERED BY THE SOLICITOR IN VIOLATION OF SCACR 407 RULES OF PROFESSIONAL CONDUCT RULE 3.4 AND 8.4(A) IN WHICH THE ORIGINAL EASLEY POLICE DEPARTMENT INCIDENT REPORT CASE 07-5397 CONSISTED OF 15 PAGES. 4 PAGES WERE REMOVED AND THE PAGES NUMBER ALTERED APPLICANTS EXHIBITS #12 EASLEY POLICE DEPARTMENT INCIDENT REPORT CASE 07-5397

THE FOLLOWING 4 PAGES OF APPLICANTS EXHIBIT #12 EPD INCIDENT REPORT OF CASE 07-5397 WAS TAKEN OUT OF THE REPORT AND CONCEALED IN VIOLATION OF BRADY V MARYLAND 373 US 83 (1963) SCRCR RULE (5) AND VIOLATING APPLICANTS 14TH U.S.C.A. RIGHTS TO A FAIR TRIAL PAGES 9 OF 15

PAGES 12 OF 15

PAGES 13 OF 15

PAGES 14 OF 15

THESE PAGES WERE EXCLUDED FROM THE SOLICITOR'S DISCLOSURE OF DISCOVERY MATERIAL IN REFERENCE TO EASLEY POLICE DEPARTMENT INCIDENT REPORT CASE 07-5397 IN APRIL 2007

IT APPEARS THAT BASED UPON PAGE 9 OF 15 ID IN APPLICANT EXHIBITS #12 THAT THIS INCIDENT REPORT / SUPPLEMENTAL REPORT IS COMBINED WITH INFORMATION FROM BOTH OFFICER JEREMY BENJAMIN AND OFFICER CONNER SHRYVERS FOR PAGE 9 OF 15 IS WRITTEN BY OFFICER CONNER SHRYVERS BUT SIGNED BY OFFICER BENJAMIN JEREMY AT THE BOTTOM AS IF ITS HIS REPORT APPARENTLY OFFICER JEREMY BENJAMIN WAS NOT THE REPORTING OFFICER WHO

WROTE THIS PAGE OF THE REPORT SO IT WAS EXCLUDED BECAUSE OFFICER
CONNER SHRIVERS WROTE IT APPARENTLY OFFICE BENJAMIN REPORT ENDS AT
PAGE 8 OF 15

SEE TD IN APPLICANTS EXHIBITS #12 PAGES 1-15

AT PAGE 9-15 IS OFFICER CONNER SHRIVERS REPORT

ACCORDING TO PAGES 12 OF 15 OF APPLICANT EXHIBITS #12 ON 1-7-2008

EVIDENCE IN THIS CASE WAS TAKEN TO SIED WHERE IT WAS GIVEN LAB

NUMBER- 08-00974 THIS IS IMPEACHMENT EVIDENCE MATERIAL TO

APPLICANTS CASE BECAUSE TESTIMONY OF BOTH OFFICER BENJAMIN AND

SHRIVERS TESTIFIED UNDER OATH THE EVIDENCE WAS TAKEN TO GREENVILLE

COUNTY FOR TESTING. IN WHICH JAMES ARMSTRONG ONLY TESTED THE CONTENT

INSIDE THE DRUG BOTTLE. THERE IS NO MENTION ON WHERE THE DRUG

PARAPHENALIA FOUND ON CO-DEFENDANT JESSICA KENNEDY PURSE OR

INSIDE THE VEHICLE UNDER THE DRIVER SEAT ON THE FLOOR BOARD TO WHERE

IT WAS KEPT FROM THE INITIAL SPOT IT WAS LOCATED AND SEIZED

THERE WAS NO TESTIMONY OR EVIDENCE OR PAPERWORK TO SHOW WHAT

WAS DONE WITH THIS EVIDENCE. STATE EXHIBITS #5

APPLICANT EXHIBITS #1 TR. TR. PG. 72 1-14 THROUGH PG 73 1-24

IN WHICH WAS INTRODUCED INTO EVIDENCE AGAINST APPLICANT AT TRIAL

BEFORE THE JURY. YET PAGE 12 OF 15 TD IN APPLICANT EXHIBITS #12

CONTAINS MATERIAL EVIDENCE, EXCULPATORY EVIDENCE THAT

THESE REPORTS WERE NOT JUST BASED ON EVIDENCE FROM THE

INVESTIGATION OF THE CASE. ON 12-3-07 BUT INFORMATION WAS

INCLUDED IN THESE REPORT AS FAR AS UP TO 8-11-2008 EXCULPATORY

INFORMATION THAT JESSICA KENNEDY APPLICANT CO-DEFENDANT

HAD PLEAD GUILTY TO POSSESSION OF DRUG PARAPHENALIA WAS NOT

DISCLOSED PURSUANT TO BRADY TD IN APPLICANTS EXHIBIT #12

PAGES 14 OF 15

HAD APPLICANT RECEIVED THIS INFORMATION THAT JESSICA KENNEDY HAD PLEAD GUILTY TO THE DRUG PARAPHERNALIA FOUND IN THE CAR AND HER PURSE, APPLICANT WOULD HAVE PRESENTED THIS EVIDENCE TO THE JURY IN WHICH ALONG WITH HER TESTIFYING TO SHE KNEW WHATS IN THE PILL BOTTLE AND SEEN IT IN THE CAR AT ONE POINT IN TIME.

Id IN APPLICANT EXHIBIT #1

TR. TR. PG. 134 2-12-16 AND PAGE 135 1-4-6

THE JURY COULD INFER THAT THE PILL BOTTLE BELONGED TO JESSICA KENNEDY AS SHE THREW IT OUT OF HER PURSE WHEN THE OFFICERS WERE OCCUPIED IN ARRESTING APPLICANT LEAVING THE DOOR OPEN ON THE DRIVER SIDE OF REMOVING THE APPLICANT FROM THE VEHICLE. THAT SHE HAD TIME TO THROW THE PILL BOTTLE FROM THE CAR. JESSICA KENNEDY TESTIMONY ONLY PROVES THE ELEMENT OF SHE HAD KNOWLEDGE OF THE PILL BOTTLE IN THE CAR AT ONE POINT IN TIME CONFIRMS SHE KNEW WHAT WAS IN IT. SHE PROVED HERSELF GUILTY OF TRAFFICKING IN COCAINE, BUT WAS NOT TRIED FOR TRAFFICKING IN COCAINE. FOR THE COURT TO SAY BASED UPON THE EVIDENCE BEFORE IT INTRODUCED BY STATE WITNESS JESSICA KENNEDY THAT THE JURY CAN INFER GUILT OF APPLICANT JACKIE BOYD IS A VIOLATION OF THE 14TH U.S.C.A. UNDER WAINSHIP 397 US 358 AND WHERE UNDERLINED EXCULPATORY EVIDENCE IS ALTERED OR CONCEALED BY THE SOLICITOR IN VIOLATION OF SCRPC 407 RULE 3.4(A) 8.4(A) THIS IS A VIOLATION OF BRADY V. MARYLAND 373 US 83 (1963) VIOLATING THE 14TH U.S.C.A. TO A FAIR TRIAL IN WHICH APPLICANT PURSUANT TO THE EVIDENCE PRESENTED ASK THIS COURT TO VACATE HIS CONVICTION AND GRANT HIM A NEW TRIAL PURSUANT TO BRADY V. MARYLAND.

PLUS WHEN OFFICER CONNER SHRIEVERS WAS TESTIFYING FOR THE STATE
ON DIRECT EXAMINATION, APPLICANT TRIAL COUNSEL SAW THAT THIS OFFICER
WAS READING FROM THE SAME REPORT THAT THE STATE WITNESS OFFICER
JEREMY BENJAMIN WAS READING FROM.

SEE TR IN APPLICANT EXHIBIT #1

TR. TR. PG. 107 L-15 THROUGH PG. 108 L-1

OFFICER CONNER WAS TESTIFYING FROM PAGE 9 OF 15 OF APPLICANT EXHIBIT #12
INSTEAD OF THE REPORT IN APPLICANT EXHIBITS #11 WHICH PAGE 9 OF 15
OF APPLICANTS EXHIBIT #12 WAS WITHHELD IN VIOLATION OF BRADY V. MARYLAND
373 US 83 (1963) WHICH IS MATERIAL. PAGE 9 OF 15 IN APPLICANT EXHIBITS #12
IS THE SUPPLEMENTAL REPORT OF CONNER SHRIEVERS THAT WAS NEVER
DISCLOSED TO APPLICANT. COMPARE APPLICANT EXHIBIT #11 WITH APPLICANT
EXHIBIT #12 AND SEE APPLICANT EXHIBIT #5 AND 6 WHICH CLEARLY
SHOWS A BRADY VIOLATION ENTITLING APPLICANT TO A NEW TRIAL.

{ CONCLUSION }

BASED ON THE ABOVE INFORMATION PREPONDERANCE OF EVIDENCE
IN SUPPORT OF APPLICANT CLAIM THAT HE IS BEING HELD IN CUSTODY
UNLAWFULLY, APPLICANT ASK THIS COURT TO REVERSE HIS CONVICTION
AND ENTER THE APPROPRIATE JUDGMENT OF ACQUITTAL OR NEW TRIAL.

THIS INFORMATION IN THIS CLAIM IS TRUE AND CORRECT.

S. Jackson Bay
RESPECTFULLY SUBMITTED

SWORN TO OR BEFORE ME

THIS 31 DAY OF August 2011
Penny G. Moton

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES Feb 28, 2018

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 SEP -9 P 1:21

State of South Carolina
County of Pickens

In The Court of Common
Pleas

Jackie Lee Boyd #298278 CASE 2011 CL 39 1320

Applicant

vs

Proof of Service

State of South Carolina
Respondent

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 SEP -9 P 1:21

To Respondent:

I certify that Jackie Lee Boyd, hereby
has served a true and original copy of
Post-Conviction Relief Application; and
Summons upon Mr. Harold P. Welborn, Jr
Pickens, county clerk of court At P.O Box
215 Pickens, S.C. 29671 By Place a copy
in the united states mail.

Sworn before me this day
31 of August, 2011

Jackie Lee Boyd
Jackie Lee Boyd
386 Redemption Way
McCormick, S.C. 29899

Notary Lenny G. Morton

Expires Feb 28, 2018