STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Charleston County

Honorable Bentley Price, Circuit Court Judge

JOSEPH TODD ROWLAND,

RESPONDENT

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2021-00089

BRIEF OF RESPONDENT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

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1. Did the PCR Court err by finding that Counsel's efforts to suppress the evidence seized from the residence were ineffective, where ample evidence supported the issuance of the warrant and there is not a reasonable likelihood that the trial court would have granted Rowland's suppression motion?
   a. Did the PCR Court err in finding Counsel deficient for failing to argue law enforcement's alleged failure to comply with §17-13-150 warranted suppression where compliance was not established and suppression is not a recognized remedy?
   b. Did the PCR Court err in finding Counsel was ineffective for failing to renew his objection to the introduction of the evidence attained through the search warrant where sufficient evidence existed to support the trial court's finding, and a different outcome on appeal is not reasonably probable?
2. Did the PCR Court err in finding Counsel was ineffective for failing to call Father or Brother to testify where their testimony would not have warranted suppression?
3. Did the PCR Court err in finding Brother's testimony meets the standard for after-discovered evidence and that it reasonably would have changed the result of trial where Counsel was aware of the potential testimony prior to trial and it would not have changed the result of the trial?

RESPONDENT'S COUNTER ISSUES PRESENTED

I. Did the PCR judge correctly find that trial counsel was ineffective in failing to adequately challenge the search warrant as lacking probable cause in violation of both the Fourth Amendment to the Unites States Constitution and Article I, § 10 of the South Carolina Constitution and resulting in prejudice?

   a. Did the PCR judge correctly find that, when the investigator testified at the pre-trial suppression hearing that he supplemented the search warrant affidavit by telling the magistrate Respondent's brother talked with him about Respondent's alleged drug activity, trial counsel was ineffective in failing to call Respondent's twin brother (John Rowland) to deny that he spoke with the investigator about his brother's alleged drug activity as part of the totality of circumstances showing a lack of probable cause to support the search warrant?

   b. Did the PCR judge correctly find that trial counsel was ineffective for failing to use Officer Ratliff's prior statement that he did not leave a copy of the affidavit in support of the search warrant at the residence, in violation of S.C. Code §17-13-150, as part of the totality of circumstances showing a lack of probable cause to support the search warrant?

II. Did the PCR judge correctly find that trial counsel was ineffective in failing to object when the State introduced evidence seized pursuant to the search warrant lacking in probable cause?

III. Did the PCR judge correctly find that trial counsel was ineffective in failing to call Respondent's father (Leroy Rowland) to testify that the gun Respondent was charged with belonged to the father?

IV. Did the PCR judge correctly treat the testimony of Respondent's twin brother (John Rowland) claiming ownership of the drugs found pursuant to the search warrant as after discovered evidence because, even though trial counsel was aware of the potential testimony prior to trial, trial counsel was not certain the twin brother would admit to ownership of the drugs at the time of trial?

STATEMENT OF THE CASE

On September 12, 2011, the Charleston County Grand Jury indicted Respondent, Joseph Todd Rowland, for trafficking cocaine, possession with intent to distribute marijuana, unlawful possession of a stolen pistol, and possession of a firearm during the commission of a violent crime, indictments #2011-GS-10-5527, 5528, 5529, 5531. On May 12, 2014, Respondent proceeded to jury trial before the Honorable Roger M. Young, Sr[1]. William Runyon represented Respondent at trial. Stephanie Bianco Linder and Randell Stoney prosecuted the case. At the close of the State's case the trial judge directed a verdict of acquittal for unlawful possession of a stolen pistol. (App. p. 526, lines 3-15). The jury returned verdicts of guilty for the other three charges. The trial judge sentenced Respondent to twenty (20) years for trafficking cocaine, five (5) years concurrent for possession with intent to distribute marijuana, and five (5) years concurrent for the other weapon charge. A timely notice of intent to appeal was filed and the direct appeal perfected. (App. pp. 597-659). On May 24, 2017, the South Carolina Court of Appeals affirmed the sentences and convictions. State v. Rowland, Op. No. 2017-UP-225 (S.C. Ct.App. filed May 24, 2017). A timely petition for rehearing was filed on May 30, 2017. (App. pp. 672-674). The petition was denied on September 22, 2017. (App. p. 675). On November 23, 2017, Respondent filed a *pro se* petition for writ of certiorari. (App. p. 676). The petition was dismissed and the remittitur issued on April 17, 2018. (App. p. 1444).

Respondent filed an application for post-conviction relief [PCR] on September 19, 2018. (App. pp. 1475-1481). The State filed a return and partial motion to dismiss on January 31, 2019. Respondent filed a *pro se* amended PCR application on May 17, 2019. (Supp. App. pp. 1-327).

[1] The Honorable Thomas L. Hughston is also listed on the front on the trial transcript. (App. p. 1).

On July 17, 2019, a second amended PCR application was filed by counsel. (Supp. App. pp. 328-330). On September 30, 2019, an evidentiary hearing was held before the Honorable Bentley Price. James K. Falk represented Respondent at the hearing. Benjamin Limbaugh represented the State. In a written order filed June 8, 2020, Judge Price granted relief. (App. pp. 1613-1625). The State filed a motion to alter or amend on June 18, 2020. (App. pp. 1626-1646). The motion was denied on January 8, 2021. (App. p. 1647). The State filed a petition for writ of certiorari on July 8, 2021. Respondent filed a return on November 8, 2021. On November 30, 2021, pursuant to Rule 243(l), the South Carolina Supreme Court transferred the case to the South Carolina Court of Appeals. On February 21, 2025, the South Carolina Court of Appeals granted the petition for writ of certiorari. The State filed the brief of petitioner on June 16, 2025. This brief of respondent follows.

STANDARD OF REVIEW

"Our standard of review in PCR cases depends on the specific issue before us. We defer to a PCR court's findings of fact and will uphold them if there is evidence in the record to support them. Sellner v. State, 416 S.C. 606, 610, 787 S.E.2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E.2d 538, 540 (2013)). We review questions of law de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E.2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E.2d 123, 127 (2014))." Smalls v. State, 422 S.C. 174, 180–81, 810 S.E.2d 836, 839–40 (2018) (n. 2 omitted).

ARGUMENTS

1. **The PCR judge correctly found that trial counsel was ineffective in failing to adequately challenge the search warrant as lacking probable cause in violation of both the Fourth Amendment to the United States Constitution and Article I, § 10 of the South Carolina Constitution and resulting in prejudice.**

The jury found Respondent guilty of trafficking cocaine, possession with intent to distribute marijuana, and possession of a firearm during the commission of a violent crime based on drugs and a gun found, pursuant to a search warrant, in a house where Respondent stayed with his parents. (App. p. 51, lines 18-22). Trial counsel moved pre-trial to suppress the items found pursuant to the search warrant. (App. p. 8, lines 17-25; pp. 45-75). The trial judge denied the motion to suppress. (App. p. 74, line 12 – p. 75, lines 1-6).

The motion to suppress failed to adequately challenge the affidavit in support of the search warrant as lacking probable cause. Trial counsel failed to challenge the complaints of narcotics activity referenced in the affidavit in support of the search warrant because the complaints were anonymous and undated. Trial counsel failed to challenge the affidavit because it characterized a single "hand to hand" transaction observed by the officers as a narcotics transaction when no testimony was offered at the suppression hearing that the officers observed narcotics or an exchange of money. Trial counsel failed to object at the suppression hearing to testimony about an interaction with a man on a bicycle when that information was not presented to the magistrate. Trial counsel failed to challenge the statements of the driver of the blue Honda involved in the "hand to hand" transaction as unreliable. Trial counsel's motion to suppress is less than two transcript pages long and trial counsel provided no case law in support of the motion. (App. pp. 70-71). In fact, trial counsel inexplicably appears to concede the issue stating, "Judge, I hate to have to agree with my colleague, but I had to go to federal court so I didn't get a chance to eat

lunch so I had to get my sugar level up with a small piece of candy." (App. p. 73, lines 5-8). The PCR judge correctly found deficient performance resulting in prejudice.

In the amended PCR application Respondent alleged that trial counsel was ineffective in failing to raise additional issues in support of the motion to suppress. Respondent specifically alleged that trial counsel was ineffective in failing to argue that:

> SIU Officer Ratliff premised the probable cause to search the premises in part upon a statement provided by the driver of a blue Honda Accord who allegedly was seen to have been involved in a hand to hand transaction at the location before being stopped by CPD after leaving the residence; and, upon "numerous complaints" from unidentified individuals over the past six months.
>
> > Other than the statement by the driver, there was no proof offered that there were no drugs in the blue Honda Accord prior to its arrival at the residence. Moreover, the driver had an incentive to fabricate his statement in order to escape criminal liability for being caught in possession of both marijuana and cocaine.
> >
> > The numerous complaints about drug activity amounted to [no] more than anonymous tips and Officer Ratliff offered no proof as to the reliability of the tipsters. Moreover, Officer Ratliff offered no proof to show that the six month old tips were not stale.

(Supp. App. pp. 328-329).

> The affidavit is support of the search warrant provided the following information:
>
> Over the past 6 months, the Charleston Police Department Special Investigations Unit has received numerous complaints of narcotics activity from citizens, in reference to illegal narcotics being sold from 31 Woodleaf Ct. SIU has been conducting a[n] investigation on this residence and [Rowland] for more th[a]n a year for narcotic activity.
>
> In response, within the past 72 hours, the CPD Special Investigations Unit . . . established a fixed surveillance location in which Inv. Ratliffe and Inv. Sumner observed [Rowland], a registered resident at this location, conduct a hand to hand narcotics transaction. At approx 1440hrs. [Rowland] was observed exiting the residence via the front door and walk[ing] up to a vehicle which parked in front of the residence. [Rowland] approached the door of the vehicle and conducted a hand to hand transaction with a person inside the vehicle [with a specified license tag number]. Within 1 minute of making contact with the driver of the vehicle [Rowland] then walked back into the above residence. The vehicle [with the

> specified license tag number] then immediately left the area. Inv. Ratliffe and Inv. Sumner then corroborate this by having a CPD patrol unit conduct a traffic stop on the above vehicle [with the specified license tag number] and locate an amount of illegal narcotics. The driver of the vehicle then wrote a statement confirming the above mentioned transaction of illegal narcotics.
>
> Your affiant, Investigator C. Ratliffe, is a sworn police officer with the Charleston Police Department and has been for over 7 years with 1 year experience conducting narcotics investigation with the CPD Narcotics Unit. He has attended several narcotics investigation schools and seminars over the course of [his] career taught by the Drug Enforcement Administration, the South Carolina Criminal Justice Academy, and the Multi-jurisdictional Counterdrug Task Force Training. He has executed countless search warrants and has been involved in the arrest of over approximately 500 subjects for illegal drug offenses. Furthermore, he has conducted surveillance on suspected drug dealers, testified in court, managed informants, and interviewed numerous suspects and witnesses for drug related crimes.
>
> Based on Inv. Ratliffe 's experience and the current investigation, there is probable cause to believe that illegal narcotics, and/or the proceeds of, are being stored at 101 A Pamlico Terrace, Charleston, SC 29455.

(App. pp. 588-589).

Officers Keith Sumner and Brandon Ratliff testified at the suppression hearing. (App. pp. 45- 69). Officer Sumner testified that the most recent anonymous tip he received about Respondent was from about a week or so before the fixed surveillance. (App. p. 51, lines 4-7). This information, however, was not included in the affidavit for the search warrant. Officer Ratliff testified that he observed what appeared to be a hand-to-hand transaction. (App. p. 57, lines 14-23). The affidavit in support of the search warrant, however, states that the officers "observed [Rowland], a registered resident at the location, conduct a hand to hand narcotics transaction." (App. p. 588). Neither officer testified to seeing drugs or money during the "hand to hand" transaction. Officer Ratliff admitted that the inclusion of the Pamlico Terrace address was a mistake. (App. p. 60, line 3 – p. 61, lines 1-5). After the officers testified trial counsel told the judge, "We would respectfully suggest that the search warrant has at least one error in it." (App.

p. 70, lines 6-7). Trial counsel then discussed testimony from Officer Ratliff about observing a man on a bicycle. (App. p. 70, lines 7-17). As footnote #1 in the order granting relief correctly notes, there is no indication this information was presented to the magistrate in support of probable cause. (App. p. 1618). Trial counsel then argued:

> The real crux of that affidavit is they saw a man in a blue car drive up what appeared to be a hand -to -hand transaction. This is probably the only real substance to their surveillance, and then they later stop this car, and as a result of the investigation, they had someone telling them that that was the source of the drugs. And then, of course, they use a template with oral conditions to the magistrate, and, all in all, Judge, we would ask the Court to do two things at this point: One, suppress the evidence that, first of all, they did the search, we want to suppress that; secondly, we have a serious motion in limine when that jury comes in. All this talk about what John, the brother, said, and somebody else said, rumors in the community and these other things not be addressed by either witness or by the prosecution and just limit it to what they saw and what they believed when they saw the transaction.
>
> So we ask that you to keep out the search warrant but I think I now where that's headed, but, more importantly, I would have a serious motion in limine at this point not to allow all this hearsay testimony by these officers and particularly in opening argument by the State to make reference to what the offices have been investigation and all these other transactions and these offenses and what have you. It's just patently prejudicial to justify finding a verdict in the particular case.

After the State opposed the motion to suppress, arguing that the search warrant was based on probable cause, trial counsel's concern then turned again to potential hearsay rather than the motion to suppress. (App. p. 73, lines 9-19). The judge ruled that the inclusion of an incorrect address was merely a scrivener's error (App. p. 74, lines 12-16). The judge then stated:

> The totality of the circumstances is that they had a reason to be observing Mr. Rowland, the defendant's house. They witnessed – or they—based on tips that he had been drug dealing, et cetera, that's what got them to observe that house. They then witnessed at least one transaction, possibly two, on drugs. One was the bicycle, but, more importantly, the one was the one with the car. They then stopped that person in driving the car who said yes, I bought drugs just a short time before from the defendant. That gets the search warrant and gives them information that is sufficient to rise to the level of probable cause to issue the search warrant, so the search warrant is valid. The motion to suppress is denied.

(App. p. 74, line 17 – p. 75, lines 1-6). The judge improperly referenced the man on the bicycle as trial counsel failed to object to the testimony because the information was not presented to the magistrate. The judge did not address the fact that the tips were anonymous and undated and there was not information about the reliability of the statement of the driver of the blue car, as trial counsel never raised these issues.

In the order granting relief the PCR judge wrote, "The Court finds that trial counsel provided ineffective assistance of counsel by failing to address additional deficiencies in [O]fficer Ratliffe's probable cause application." (App. p. 1618). The PCR judge additionally wrote:

> In the instant case Investigator Ratliffe's affidavit and his supplemental testimony did not provide a neutral and detached magistrate with sufficient information upon which to find probable cause. There is no record that Investigator Raliffe provided any that corroborated the statements from the neighbors or information regarding the neighbors' reliability. See State v. Johnson, 302 S.C. 243, 247, 305 S.E.2d 167, 169 (1990) (remanding for a hearing to determine the exact information supplied to magistrate where affidavit did not set forth information as to the reliability of the informant nor was the information corroborated).

(App. p. 1620). The PCR judge correctly found that trial counsel was ineffective in failing to adequately challenge the search warrant as lacking probable cause in violation of both the Fourth Amendment to the United States Constitution and Article I, § 10 of the South Carolina Constitution. Respondent was prejudiced by the deficient performance. There is a reasonable probability that if trial counsel had adequately argued that the affidavit in support of the search warrant lacked sufficient probable cause, the trial judge would have agreed and suppressed the evidence found pursuant the search warrant.

Both the Fourth Amendment to the United States Constitution and Article I, § 10 of the South Carolina Constitution protect citizens from unreasonable searches and seizures. Both constitutions provide that search warrants may not be issued except upon "probable cause, supported by oath or affirmation," and particularly describing the place to be searched and the

persons or things to be seized. State v. Dunbar, 361 S.C. 240, 246, 603 S.E.2d 615, 618 (Ct. App. 2004); see also State v. Weston, 329 S.C. 287, 290, 494 S.E.2d 801, 802 (1997) ("A search warrant may issue only upon a finding of probable cause.").

In State v. Kinloch, 410 S.C. 612, 616–17, 767 S.E.2d 153, 155 (2014)(fn #4 omitted), this Court wrote:

> The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. A search or seizure does not violate the Fourth Amendment if it is authorized by a warrant that is supported by probable cause. Id.; see State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006), cert. denied, 555 U.S. 1074, 129 S.Ct. 733, 172 L.Ed.2d 735 (2008). A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Baccus, 367 S.C. at 50, 625 S.E.2d at 221 (citing Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)).

"When reviewing a magistrate's decision to issue a search warrant, we must consider the totality of the circumstances. See State v. Missouri, 337 S.C. 548, 524 S.E.2d 394 (1999)(citing Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)). Although great deference must be given to a magistrate's conclusions, a magistrate may only issue a search warrant upon a finding of probable cause. See State v. Bellamy, 336 S.C. 140, 519 S.E.2d 347 (1999)." State v. Jones, 342 S.C. 121, 126, 536 S.E.2d 675, 678 (2000)(fn #1 omitted).

"In reviewing a magistrate's probable cause determination, circuit court judges must determine whether the issuing magistrate had a substantial basis upon which to conclude that probable cause existed. Baccus, 367 S.C. at 50, 625 S.E.2d at 221; see also State v. Bellamy, 336 S.C. 140, 143–45, 519 S.E.2d 347, 348–49 (1999) (applying the fair probability standard and stating the duty of a reviewing court is to ensure the magistrate had a substantial basis for its probable cause determination)." Kinloch, 410 S.C. at 617, 767 S.E.2d at 155.

"An affidavit must contain sufficient underlying facts and information upon which a magistrate may make a determination of probable cause. State v. Viard, 276 S.C. 147, 276 S.E.2d 531 (1981). Mere conclusory statements which give the magistrate no basis to make a judgment regarding probable cause are insufficient. "[H]is action cannot be a mere ratification of the bare conclusions of others." Illinois v. Gates, 462 U.S. 213, 239, 103 S.Ct. 2317, 2333, 76 L.Ed.2d 527, 549 (1983)." State v. Smith, 301 S.C. 371, 373, 392 S.E.2d 182, 183 (1990).

As noted by the Court of Appeals in State v. Gentile, 373 S.C. 506, 514, 646 S.E.2d 171, 174 (Ct. App. 2007), "Although we are cognizant that our decision should be based on the totality of the circumstances, for analytical purposes we find it necessary to separately address each piece of evidence presented to the magistrate." Addressing the evidence presented to the magistrate in the present case, the affidavit provided that the officer "received numerous complaints of narcotics activity from citizens, in reference to illegal narcotics being sold from 31 Woodleaf Ct." (App. p. 588). The affidavit failed to establish the veracity or reliability of the complaints. The affidavit failed to establish a basis of knowledge of the complaints. The affidavit provided a time frame of receiving the anonymous complaints over the past six months. See State v. Winborne, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979) (In order for an affidavit in support of a search warrant to show probable cause, it must state "facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time." 68 Am.Jur.2d 724 Searches and Seizures s 70. An affidavit which fails altogether to state the time of the occurrence of the facts alleged is insufficient. Anno., "Search Warrant: Sufficiency of showing as to time of occurrence of facts relied on," 100 A.L.R.2d 527, s 3 (1965). The reason for this rule is that probable cause, with time, dissipates.).

In Gentile the South Carolina Court of Appeals found that the search warrant was not supported by probable cause writing:

> The narcotics officers' decision to investigate Gentile was precipitated primarily by the receipt of citizen complaints regarding a high volume of traffic at Gentile's residence. Even though the officers verified the pattern of traffic at Gentile's residence, this, without additional investigation into the residence, was not sufficient to establish that narcotics activity was taking place. See State v. Hunt, 150 N.C.App. 101, 562 S.E.2d 597, 601-02 (2002) (reversing trial court's decision denying defendant's motion to suppress drug evidence and stating "[a]ll that the affidavit offers are complaints from citizens suspicious of drug activity in a nearby house. There is no mention of anyone ever seeing drugs on the premises. The citizens only reported heavy vehicular traffic to the house. The officer verified the traffic. His verification, as the trial court found, was not a conclusion."); Bailey v. Superior Court for County of Ventura (People), 11 Cal.App.4th 1107, 15 Cal.Rptr.2d 17, 19-20 (1992) (finding information from an anonymous informer and an unidentified citizen regarding heavy foot traffic at defendant's residence, without investigation, was insufficient to establish probable cause for the issuance of a search warrant; stating " 'heavy foot traffic' does not necessarily engender criminal behavior. True, under certain circumstances, such activity might raise suspicions, or be one indicator of possible narcotics transactions.").

Gentile, 373 S.C. at 514, 646 S.E.2d at 175.

In the present case the officers decided to conduct fixed surveillance on the residence based on the anonymous, undated tips. The officers observed a hand-to-hand transaction involving the blue car but did not observe money or drugs. Other officers stopped the blue car and found drugs. The surveillance officers then obtained a statement from the driver implicating Respondent. The affidavit in support of the search warrant contained no other information about the driver of the blue car, his veracity or his reliability. Importantly, this was not a controlled buy where the officers could verify that drugs were not present prior to the observed transaction with Respondent. The anonymous undated tips and unreliable statement of the driver of the blue car is not sufficient to provide the magistrate with probable cause to believe drugs would be found inside the residence.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

Deficient Performance

Trial counsel was deficient for failing to challenge the complaints of narcotics activity referenced in the affidavit in support of the search warrant because the complaints were anonymous and undated, failing to challenge the affidavit because it characterized a single "hand to hand" transaction observed by the officers as a narcotics transaction when no testimony was offered at the suppression hearing that the officers observed narcotics or an exchange of money, failing to object to testimony about a transaction with a man on a bicycle that was not included in the affidavit, and failing to challenge the statements of the driver of the blue Honda involved in the "hand to hand" transaction as unreliable.

Petitioner argues, "Rowland alleges Counsel was ineffective for failing to address additional deficiencies in Officer Ratliffe's probable cause application. However, Counsel was not deficient in his suppression argument because he argued the State failed to establish a fair probability of drug activity. Additionally, Counsel was not deficient for failing to address the reliability of the statements in the search warrant because the officers corroborated statements from neighbors by investigating Rowland and observing multiple apparent drug transactions." (BOP p. 13). First, trial counsel failed to offer facts to support the motion to suppress based on the lack of probable cause, as discussed above. To the contrary, trial counsel appears to concede the issue. (App. p. 73, lines 5-6). Second, the affidavit in support of the search warrant does not reference officers observing multiple apparent drug transactions. Instead, the affidavit references a single "hand to hand" transaction that is mischaracterized as a narcotics transaction when no testimony was offered at the suppression hearing that the officers observed narcotics or an exchange of money. The PCR judge correctly found deficient performance.

Prejudice

The PCR judge correctly found prejudice because the affidavit lacked sufficient probable cause. There is a reasonable probability that if trial counsel had adequately argued that the affidavit in support of the search warrant lacked sufficient probable cause, the trial judge would have agreed and suppressed the evidence found pursuant the search warrant. The present case is distinguished from Kinloch where the South Carolina Supreme Court found that the search warrant was supported by probable cause writing:

> Although Gentile is factually similar, it is not dispositive. Rather, here, unlike Gentile, the facts set forth in the affidavit establish that law enforcement received numerous complaints over the course of several months regarding drug activity at 609 A. After receiving those complaints, but prior to seeking a search warrant, law enforcement observed activity consistent with drug activity when they observed parties conducting "hand-to-hand" transactions outside 609 A and saw a

> man counting money as he returned to the residence. Based, in part, on this observation, law enforcement followed the man they had seen outside 609 A to a nearby gas station, where they saw this man hand another unknown man, later identified as Burns, a clear plastic wrapping in exchange for money. When law enforcement approached Burns, he dropped the clear plastic baggy, the contents of which tested positive for heroin.

Kinloch, 410 S.C. at 617–18, 767 S.E.2d at 156. In the present case the affidavit references a single, purported hand-to-hand transaction rather than the several transactions observed in Kinloch. Additionally, there is no reference to the exchange of money in the present case as in Kinloch.

The present case is also distinguished from State v. Adams, 291 S.C. 132, 134, 352 S.E.2d 483, 485 (1987), overruled on other grounds by State v. Stewart, 433 S.C. 382, 858 S.E.2d 808 (2021), where " . . . evidence of a contemporaneous drug deal cited in the warrant's supporting affidavit was a sufficient basis for the determination of probable cause under the totality of the circumstances." While the driver of the blue car claimed he purchased the drugs found in his car from Respondent, the officers did not observe drugs or money during the purported "hand to hand" transaction, officers could not rule out the possibility that the drugs were present before the driver met Respondent, and there was no challenge to the reliability of the driver's statement as an attempt to avoid criminal liability for the drugs found in his car. The actions in the present case do not constitute a "contemporaneous drug deal" as in Adams.

The present case is also distinguished from State v. Keith, 356 S.C. 219, 224, 588 S.E.2d 145, 147 (Ct. App. 2003) where the Court found the " . . . investigative surveillance, stop, and seizure of illegal drugs from Keith's car standing alone sets forth sufficient information to support a probable cause finding in this case." The affidavit in the present case was not supported by officers finding drugs in Respondent's car. Trial counsel was ineffective in failing to adequately

challenge the search warrant as lacking probable cause. Respondent was prejudiced by the deficient performance.

a. The PCR judge correctly found that, when the investigator testified at the pre-trial suppression hearing that he supplemented the search warrant affidavit by telling the magistrate Respondent's brother talked with him about Respondent's alleged drug activity, trial counsel was ineffective in failing to call Respondent's twin brother (John Rowland) to deny that he spoke with the investigator about his brother's alleged drug activity as part of the totality of circumstances showing a lack of probable cause to support the search warrant.

In addition to failing to challenge the complaints of narcotics activity referenced in the affidavit in support of the search warrant because the complaints were anonymous and undated, failing to challenge the affidavit because it characterized a single "hand to hand" transaction observed by the officers as a narcotics transaction when no testimony was offered at the suppression hearing that the officers observed narcotics or an exchange of money, failing to object to testimony about a transaction with a man on a bicycle that was not included in the affidavit, and failing to challenge the statements of the driver of the blue Honda involved in the "hand to hand" transaction as unreliable, trial counsel additionally failed to call Respondent's twin brother to deny supplemental information the officer provided the magistrate in support of probable cause. During the suppression hearing the State asked Officer Ratliff if he supplemented the written affidavit with oral testimony. (App. p. 61, lines 14-15). The officer answered, "Yes, ma'am, I did. I basically explained a question answer session with the magistrate, the background I've had with the defendant, the different calls I've gone to involving the defendant at that residence and elsewhere, the numerous complaints that we had received, and the fact that I had spoken with a sibling of his." (App. p. 61, lines 16-22). Earlier in the suppression hearing Officer Ratliff testified, "Yes, actually. I made contact with his brother John, and the mother of his children, and I spoke to them about some of Joseph's different activities, where he was going, who he was

dealing with, and what specifically he did at that house. Didn't specifically say he was selling drugs but alluded to his drugs was consistent with him continuing to do so and that he had prior knowledge of him doing that in the past." (App. p. 56, lines 9-17). The brother, John Rowland, his children and the mother of his children as well as the Rowland brothers' parents, Leroy and Janis Roland, were all present when the search warrant was executed. (App. p. 67, lines 7-13). Respondent was not present when the search warrant was executed. (App. p. 67, lines 4-16).

In the amended PCR application Respondent alleged that, "Trial counsel was ineffective for failing to call John Rowland, Janis Rowland and Leroy Rowland as witnesses at the suppression hearing. On information and belief these three individuals would have testified to material inaccuracies in the testimony offered by officer Ratliff during the suppression hearing." (App. p. 329). During the PCR hearing PCR counsel told the PCR judge, "John Rowland could have, would have had he had the opportunity to would - - had he testified at the suppression hearing he could have testified that he had no conversation with Officer Ratliff regarding his brother's activities. Officer Ratliff said he had talked to the brother and the brother told him that Joseph Rowland [Respondent] was at the house selling drugs. John Ratliff [sic] would have testified that that was totally fabricated." (App. p. 1516, lines 4-12). During the PCR hearing trial counsel admitted that, prior to trial and the suppression hearing, he was aware that Officer Ratliff had been disciplined by the police department and demoted from the narcotics unit. (App. p. 1573, lines 13-16).

Respondent's twin brother, John Rowland, testified at the PCR hearing and denied having any conversation with Officer Ratliff about any purported drug activity involving Respondent. (App. p. 1545, lines 8-18). The twin brother also testified at the PCR hearing that he met with trial counsel prior to trial and told trial counsel that the drugs found in the house were his. (App. p.

1540, line 20 – p. 1541, lines 1-25). The brother testified that trial counsel told him he would call him when he needed him but never called. (App. p. 1541, lines 11-25). The brother did not testify at trial. (App. p. 1542, lines 1-3). The brother testified that he was available to testify at trial and provided trial counsel with his cell phone number and his wife's number. (App. p. 1542, lines 4-16).

Trial counsel admitted at the PCR hearing that he met with Respondent's twin brother prior to trial. (App. p. 1561, lines 11- 13). Trial counsel was unsure about any alleged statements made by the brother about Respondent's purported drug activity. (App. p. 1570, line 1 – p. 1571, lines 1-23). Trial counsel testified that the twin brother talked with him prior to trial "about what if he were the one to testify that it was his drugs." (App. p. 1561, lines 15-18). Trial counsel advised the brother that he needed to talk with an attorney and have the attorney contact him, but he never heard back from the brother or his attorney. (App. p. 1561, line 19 – p. 1562, lines 1-5). Unlike claiming ownership of the drugs, the brother's testimony that he did not have a conversation with Officer Ratliff about his brother's purported drug activity was not incriminating and would not have required the appointment of a lawyer. Trial counsel was ineffective in failing to call the twin brother to testify at the suppression hearing.

In the order granting relief the PCR judge wrote:

> Applicant's brother John Rowland testified at the PCR evidentiary hearing. John Rowland stated that he was present at his brother's trial and was available to testify. Had he been called to testify at the suppression hearing, John Rowland would have stated that that never spoke with Investigator Ratliff regarding his brother and his any drug activity. At the evidentiary hearing trial counsel failed to provide a sufficient explanation for not calling John Rowland to testify at the suppression hearing. The court finds that trial counsel was deficient for not calling John Rowland to testify; and, had he testified a the hearing, his testimony would have impeached Investigator Ratliff's testimony and it is likely the trial court would have suppressed the search.

(App. p. 1624). The PCR judge correctly found that trial counsel was deficient in failing to call the twin brother to testify at the suppression hearing. Based on the brother's testimony, trial counsel could have argued that the Officer's supplemental oral testimony in support of probable cause contained a deliberate falsehood or reckless disregard for the truth, another factor the magistrate should consider under the totality of the circumstances. See Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978). Respondent was prejudiced by the deficient performance.

The failure to call the brother to testify at the suppression hearing to contradict the officer's testimony was not a valid trial strategy, especially in light of the officer's discipline and demotion from the narcotics unit. The failure to call the brother during the suppression hearing is a separate issue from the failure to call the brother to testify at trial that the drugs belonged to him. The PCR judge correctly found that trial counsel failed to provide a sufficient explanation for not calling the brother to testify at the suppression hearing.

b. The PCR judge correctly found that trial counsel was ineffective for failing to use Officer Ratliff's prior statement that he did not leave a copy of the affidavit in support of the search warrant at the residence, in violation of S.C. Code §17-13-150, as part of the totality of circumstances showing a lack of probable cause to support the search warrant.

In addition to failing to challenge the complaints of narcotics activity referenced in the affidavit in support of the search warrant because the complaints were anonymous and undated, failing to challenge the affidavit because it characterized a single "hand to hand" transaction observed by the officers as a narcotics transaction when no testimony was offered at the suppression hearing that the officers observed narcotics or an exchange of money, failing to object to testimony about a transaction with a man on a bicycle that was not included in the affidavit, and

failing to challenge the statements of the driver of the blue Honda involved in the "hand to hand" transaction as unreliable, and failing to call Respondent's twin brother to deny supplemental information the officer provided the magistrate in support of probable cause, trial counsel failed to argue that the officer failed to leave a copy of the affidavit in support of the search warrant at the residence as required by S.C. Code §17-13-150. While the failure to comply with the statute would not be grounds for suppression alone, this additional information should have been argued at the suppression hearing.

During a preliminary hearing Officer Ratliff testified that the affidavit in support of the search warrant was not left at the residence that was searched. (Supp. App. p. 337). S.C. Code §17-13-150 provides that, "When any person is served with a search warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued." During the suppression hearing Officer Ratliff testified, "Because things of a sensitive nature, we don't typically like to put – you know, share a whole bag with the party. He is given a copy of the affidavit at the conclusion of the search warrant when it's served, but sensitive information we don't give out due to protecting identities." (App. p. 61, line 25 – p. 62, lines 1-5).

In the amended PCR application Respondent alleged that trial counsel was ineffective in failing to argue that, "The SIU officer executing the search warrant failed to leave a copy of the search warrant affidavit in violation of S.C. Code Ann. §17-13-150. Additionally the SIU officers executing the search warrant were not in possession of the Affidavit when the warrant was executed." (Supp. App. p. 328).

During the PCR hearing trial counsel confirmed that he reviewed the preliminary hearing transcript prior to the suppression hearing. (App. p. 1565, lines 7-12). Trial counsel confirmed that there was an inconsistency between the officer's testimony at the preliminary hearing that he

did not leave a copy of the affidavit in support of the search warrant at the residence and his testimony at the suppression hearing. (App. p. 1565, line 13- p. 1566, lines 1-3). Trial counsel testified that he did not challenge the prior inconsistent statement because "I didn't see any value in trying to make the jury think he was an absolute liar or something of that sort." (App. p. 1566, lines 4-10). When questioned about the fact that the suppression hearing was not held in front of the jury, trial counsel responded, "I understand that. But at the same time I would imagine I would I would have, I would imagine that we would be – if assuming that we were not going to win the suppression hearing, which I always assume quite frankly, that I didn't think it was necessarily wise to set it up as a you know the police officer is a liar type of theme to continue through the trial." (App. p. 1566, line 20 – p. 1567, line 1). When asked if the inconsistency would help to support the motion to suppress trial counsel testified, "I don't think it would impress the bench that the officer was mistaken or that there was some inconsistency." (App. p. 1567, lines 16-18).

During the PCR hearing Respondent's mother was asked if the officers left a copy of the search warrant, not the affidavit in support. (App. p. 1556, line 6). The mother testified, "I think so; I'm not sure about that. It's been a very long time ago. Joseph was not there at the time; that's all I know to tell you." (App. p. 1556, lines 7-9). Like the testimony of the twin brother, Officer Ratliff's prior statement that he did not leave a copy of the affidavit in support of the search warrant at the residence was another factor, under the totality of the circumstances, the judge should have considered in determining that the search warrant lacked probable cause.

2. The PCR judge correctly found that trial counsel was ineffective in failing to object when the State introduced evidence seized pursuant to the search warrant lacking in probable cause.

On direct appeal one of the issues argued by Respondent was that, "The trial court erred in denying Appellant's motion to suppress the drug evidence on the ground the search warrant was

not supported by probable cause." (App. p. 601, pp. 608-615). In an unpublished opinion the South Carolina Court of Appeals found the issue was not preserved. State v. Rowland, Op. No. 2017-UP-225 (S.C. Ct.App. filed May 24, 2017).(App. pp. 670-671). In the amended PCR application Respondent alleged that, "Trial counsel was ineffective for not renewing the objections he raised during the pre-trial suppression hearing by making contemporaneous objection when the drug evidence was introduced at trial. By failing to make this contemporaneous object, the issues regarding the warrant's inaccurate address and the lack of probable cause were not preserved for appellate review." (Supp. App. p. 329). The record reflects that trial counsel did not renew the objections made during the suppression hearing when the drugs, gun and other items seized pursuant to the search warrant were introduced in evidence at trial

In the order granting relief, the PCR judge addressed the items introduced at trial without objection and found counsel deficient for failing to renew the objections. (App. p. 1622). The PCR judge then wrote, "Other than the evidence seized during the search warrant there was little other evidence of guilt. The court therefore finds that had trial counsel properly preserved the issue for appellate review there is a reasonable probability the Applicant's appeal would have been successful." (App. pp. 1622-1623). The PCR judge correctly found prejudicial deficient performance.

With regard to deficient performance, in McHam v. State, 404 S.C. 465, 474, 746 S.E.2d 41, 46 (2013), abrogated by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018), the South Carolina Supreme Court wrote:

> Although the PCR judge found trial counsel was not deficient, it is clear from the record that counsel did not object on Fourth Amendment grounds when the drug evidence was admitted at trial. At the PCR hearing, trial counsel was forthright in acknowledging that he failed to renew his objection. When asked if he objected to the drug evidence when it was introduced at trial, counsel admitted: "Going back through the transcript it doesn't look like I did object to or at least preserve my

> objection during the course of the trial." Counsel stated, "And if that were the case, and it wasn't preserved, then he would not have been able to argue the most critical piece of his trial, which was the ... denial of the suppression motion." Counsel agreed with the characterization by McHam's PCR attorney that McHam "basically [ ] won or lost the case on that motion of suppression[.]" Contrary to the PCR judge's determination, we find counsel's failure to renew the Fourth Amendment objection constituted deficient performance that satisfies the first prong of the *Strickland* test. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The proper measure of counsel's performance remains whether he has provided representation within the range of competence required by attorneys in criminal cases.").

As in McHam, trial counsel in the present case was deficient for not renewing the objections to the search warrant lacking probable cause. The present case is distinguished from McHam with regard to the prejudice prong of Strickland because, as discussed above, trial counsel was not only deficient in failing to renew the objections to the search warrant, he was also deficient in failing to adequately challenge the search warrant as lacking probable cause.

A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Courts evaluate allegations of ineffective assistance of counsel using a two-pronged test. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). First, the applicant must demonstrate counsel's representation was deficient, which is measured by an objective standard of reasonableness. Strickland, 466 U.S. at 687–88, 104 S.Ct. 2052. "Under this prong, '[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. 2052). Second, the applicant must demonstrate he was prejudiced by counsel's performance in such a manner that, but for counsel's error, there is a reasonable probability the

result of the proceedings would have been different. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id.

In the present case, based on the arguments presented in the first issue, there is a reasonable probability that if trial counsel had adequately challenged the search warrant and then also renewed the objections, the convictions would have been reversed on direct appeal, if not suppressed at trial. There is evidence in the record to support the finding of the PCR judge. Respondent met his burden of demonstrating deficient performance and prejudice.

3. The PCR judge correctly found that trial counsel was ineffective in failing to call Respondent's father (Leroy Rowland) to testify that the gun Respondent was charged with belonged to him.

In the amended PCR application Respondent alleged that, "Trial counsel was ineffective for not calling Leroy Roland as a witness in the defense's case in chief. On information and belief Leroy Roland would have testified that he owned the hand gun found at the residence." (Supp. App. p. 329). During the PCR hearing Leroy Roland, Respondent's father, testified that the gun found during the execution of the search warrant at the house where he lived with his wife and son belonged to him. (App. pp. 1551 – 1552).

Trial counsel testified at the PCR hearing that, prior to trial, he had several conversations with Leroy Roland about the gun. (App. p. 1563, lines 7-12). Trial counsel seems to mistakenly believe that the trial judge directed a verdict of acquittal for the gun charge because trial counsel testified, "And I think the transcript reflects that we got a directed verdict on the gun. So it wasn't necessary to put him on the stand about the gun." (App. p. 1563, lines 13-15). Trial counsel testified that he did not want to emphasize the location of where the gun was found when the judge had directed a verdict of acquittal for the gun charge. (App. p. 1564, line 6 – p. 1565, lines 1-2). The record reflects that the trial judge directed a verdict of acquittal only on the unlawful

possession of a stolen pistol charge, not the possession of a firearm during the commission of a violent crime charge. (App. pp. 218-219).

In the order granting relief the PCR judge wrote, "Additionally, the Court finds had Leroy Rowland testified before the jury that he was the owner of the gun found at his residence, there is a reasonable probability that the jury would have acquitted Applicant on the indictment under S.C. Code §16-23-490 (possession of a weapon during the commission of a violent crime). (App. pp. 1623-1624). Pursuant to Strickland the PCR judge correctly found that trial counsel was ineffective in failing to call Leroy Howland to testify that the gun belonged to him. There is evidence in the record to support the finding of the PCR judge. Respondent met his burden of demonstrating deficient performance and prejudice.

Trial counsel's failure to call the father to testify that the gun belonged to the father was not a reasonable trial strategy. The father's testimony about ownership of the gun would not have highlighted the location of the where the gun was found. Instead, from the testimony of the father, the jury could have concluded that Respondent did not possess the gun. In United States v. McCoy, 410 F.3d 124, 135 (3d Cir. 2005), the Third Circuit Court of Appeals wrote:

> We agree with the Government that courts have been highly deferential to counsel's strategic decisions, see, e.g., Strickland, 466 U.S. at 690, 104 S.Ct. 2052 (stating that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable"); United States v. Otero, 848 F.2d 835, 838 (7th Cir.1988), but merely labeling a decision as "strategic" will not remove it from an inquiry of reasonableness. See generally Davidson v. United States, 951 F.Supp. 555, 558 (W.D.Pa.1996); see also Gov't of the V.I. v. Weatherwax, 77 F.3d 1425, 1431–32 (3d Cir.1996).

In Kellogg v. Scurr, 741 F.2d 1099, 1102 (8th Cir. 1984), the Eighth Circuit Court of Appeals wrote, "We agree that the label 'trial strategy' does not automatically immunize an attorney's performance from sixth amendment challenges." See also Quartararo v. Fogg, 679 F Supp 212, 247 (ED NY, 1988) (noting that "not all strategic choices are sacrosanct" and that

"[m]erely labeling [counsel's] errors 'strategy' does not shield his trial performance from Sixth Amendment scrutiny"). "Tactical decisions do not render assistance ineffective merely because in retrospect it is apparent that counsel chose the wrong course. Baldwin v. Blackburn, 653 F.2d 942 (5th Cir.1981). However, certain defense strategies or decisions may be "so ill chosen" as to render counsel's overall representation constitutionally defective. Adams v. Balkcom, 688 F.2d at 738; Washington v. Watkins, 655 F.2d 1346, 1366 (5th Cir.1981), *cert. denied,* 456 U.S. 949, 102 S.Ct. 2021, 72 L.Ed.2d 474 (1982)." Willis v. Newsome, 771 F.2d 1445, 1447 (11th Cir. 1985). The PCR court correctly granted relief.

4. The PCR judge correctly treated the testimony of Respondent's twin brother (John Rowland) claiming ownership of the drugs found pursuant to the search warrant as after discovered evidence because, even though trial counsel was aware of the potential testimony prior to trial, trial counsel was not certain the twin brother would admit to ownership of the drugs at the time of trial.

In the amended PCR application Respondent alleged that, "As an additional ground for relief, Respondent is in possession of newly discovered evidence, namely an affidavit by John Rowland in which he claims ownership of the cocaine found in the residence. The affidavit further states that the reason the affiant did not come forward with this information sooner is because he feared that DSS would have sought to remove his children from his custody based on his possession of cocaine while his children were present." (Supp. App. p. 329). During the PCR hearing Respondent's twin brother testified that the cocaine found in the residence was his. (App. p. 1540, line 20 – p. 1541, lines 1-25). Respondent testified at the PCR hearing that prior to trial he did not know that the drugs found belonged to this twin brother. (App. p. 1535, lines 10-25). Trial counsel testified at the PCR hearing that, prior to trial, the twin brother talked with him, "about what if he were the one to testify that it was his drugs." (App. p. 1561, lines 15-18). Trial counsel advised the brother that he needed to talk with an attorney and have the attorney contact

him, but he never heard back from the brother or his attorney. (App. p. 1561, line 19 – p. 1562, lines 1-5). Trial counsel testified that he did not place the twin brother's name on the witness list. (App. p. 1563, lines 5-6).

In the order granting relief, the PCR judge cited Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983) and wrote:

> John Rowland's testimony is credible because he is admitting guilt to a felony with a sentencing range of 7 to 25 years and a fine of $50,000. S.C. Code §44-53-3709 e)(2)(b)1. Moreover, the court finds credible John Roland's explanation for his failure to come before Joseph Roland's trial. Applicant testified that prior to his trial is was unaware that his brother was willing to truthfully testify regarding ownership of the cocaine found in the Gucci bag and elsewhere throughout the house. John Rowland's testimony is material to the issue of Applicant's innocence. The court finds that John Rowland's testimony meets the criteria set forth in Hayden for consideration at a PCR hearing. Had the jury heard John Rowland's testimony it is reasonably likely that the jury would have acquitted Applicant of the cocaine trafficking charge.

(App. p. 1625).

In Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983), the South Carolina Supreme Court wrote:

> A party requesting a new trial based on after-discovered evidence must show that the evidence:
>
> (1) Is such as would probably change the result if a new trial was had;
> (2) Has been discovered since the trial;
> (3) Could not by the exercise of due diligence have been discovered before the trial;
> (4) Is material to the issue of guilt or innocence; and,
> (5) Is not merely cumulative or impeaching.

Although trial counsel was aware of the twin brother's **potential** testimony prior to trial, trial counsel was not certain the twin brother would admit to ownership of the drugs at the time of trial.

In State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (Ct. App. 2011), the South Carolina Court of Appeals wrote:

> The credibility of newly-discovered evidence is for the trial court to determine. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). Only the trial court and not the appellate court has the power to weigh the evidence; the trial court's judgment will not be disturbed except for error of law or abuse of discretion. *Id.* "In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). "On review, we may not make our own findings of fact. The deferential standard of review constrains us to affirm the trial court if reasonably supported by the evidence." Id.

The PCR judge correctly treated the testimony of Respondent's twin brother (John Rowland) claiming ownership of the drugs found pursuant to the search warrant as after discovered evidence because, even though trial counsel was aware of the potential testimony prior to trial, trial counsel was not certain the twin brother would admit to ownership of the drugs at the time of trial.

CONCLUSION

Based on the above argument, the decision by the PCR judge granting relief should be affirmed.

Respectfully Submitted,

Kathrine H. Hudgins
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR RESPONDENT

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Jun 25 2025
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Charleston County

Honorable Bentley Price, Circuit Court Judge

JOSEPH TODD ROWLAND,

RESPONDENT

V.

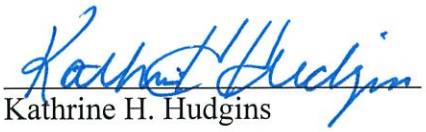
STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2021-00089

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Brief of Respondent in the above-referenced case has been served upon Andrew D. Powell, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Joseph Todd Rowland, #290065, Manning Correctional Institution, 502 Beckman Rd., Columbia, SC 29208, this 25th day of June, 2025.



Kathrine H. Hudgins
Senior Appellate Defender

ATTORNEY FOR RESPONDENT

From: Stock, Chris
To: Andrew Powell; Grace Sommer
Cc: Hudgins, Kathrine
Subject: 2021-00089 - Joseph Todd Rowland v. The State - Brief of Respondent
Date: Wednesday, June 25, 2025 3:00:00 PM
Attachments: 2021-00089 - Joseph Todd Rowland v. The State - Brief of Respondent.pdf
2021-00089 - Joseph Todd Rowland v. The State - Brief of Respondent - AG Cover Letter.pdf

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Mr. Powell,

Please find attached for service the Brief of Respondent for Joseph Todd Rowland's appeal which will be filed today with the Court of Appeals.

Thank you,

Chris Stock
Administrative Coordinator
Commission on Indigent Defense
Appellate Division
(803) 734-1330