

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County
R. Markley Dennis, Jr. Circuit Court Judge

RECEIVED

MAY 20 2014

S.C. Supreme Court

DONOVAN MURRAY,

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT

APPELLATE CASE NO. 2013-001267

PRO SE PETITION FOR WRIT OF CERTIORARI

DONOVAN MURRAY
PRO SE APPELLATE

Donovan Murray
B+C I SMU-145
4460 Broadriver Rd
Columbia SC 29210

PRO SE PETITIONER

INDEX

INDEX
ISSUE PRESENTED
STATEMENT.....
STATEMENT OF FACTS 6
ARGUMENT 1'

The PCR court erred in finding trial counsel effective in stipulating to the chain of custody of drug evidence where the chain of custody was broken egregiously upon absent identity of each individual that handled the evidence, the identity of the evidence itself, and the condition of the evidence upon receipt and delivery therefore rendering all evidence of drugs inadmissible.

CONCLUSION 0

ISSUE PRESENTED

whether the PCR court erred in finding trial counsel effective in stipulating to the chain of custody of drug evidence where the chain of custody was broken egregiously upon absent identity of each individual that handled the evidence, the identity of the evidence itself, and the condition of the evidence upon receipt and delivery therefore rendering all evidence of drugs inadmissible.

STATEMENT

Indictments

On March 3, 2008, Petitioner Donovan Murray was indicted by the Charleston County Grand Jury for (1) trafficking cocaine base (crack cocaine) of ten grams or more; (2) possession with intent to distribute crack cocaine within proximity of a school; (3) possession with intent to distribute cocaine ("PWID"); (4) PWID cocaine within proximity of a school; and (5) possession of a firearm during the commission of a violent crime. App. 8, 1.22-15, 1.11; 982-983; 985-986.

Trial and Guilty Verdict

On July 7-9, 2008, Petitioner was tried before the Honorable Deadra L. Jefferson and a jury. App. 1. Petitioner was represented by Daniel L. Prenner, and the State was represented by Assistant Solicitors Peter M. McCoy, Jr. and E. Cluver Kidd, IV. Id.

The jury found Petitioner guilty of PWID cocaine and PWID cocaine within proximity of school. App. 765, 1.25-767, 1.8. The jury found Petitioner not guilty of trafficking crack cocaine, not guilty of possession of a firearm during the commission of a violent crime. App. 767, 1.23-770, 1.6.

After the verdict, Judge Jefferson sentenced petitioner to serve ten years for PWID cocaine in proximity to a school and to serve fifteen years incarceration. Judge Jefferson ordered that the sentences be served concurrently, with time served. App. 798, 1.13-799, 1.9.

In addition, Judge Jefferson revoked Petitioner's probation in another matter in full, with the revocation to be served concurrently with the sentence imposed and with credit for time served, App. 803, 1.15-804, 1.8.

Direct Appeal Petitioner filed a direct appeal to the South Carolina Court of Appeals. He was represented by M. Celia Robinson of the Appellate Defense. The Court of Appeals affirmed his convictions on September 20, 2011, holding the trial court did not err in admitting (1) certain statements made by Petitioner in violation of his Miranda¹ rights; and (2) evidence and testimony regarding his possession of prescription drugs without a prescription in violation of Rules 403 and 404(b), SCRE. App. 803-807.

PCR Application, Evidentiary Hearing and Order of Dismissal

On November 8, 2011, Petitioner filed an application for Post-Conviction relief ("PCR"). App. 808-819. The state filed its Return on May 2, 2012. App. 820-826.

Petitioner was first represented in his PCR by Adam W. Breaux, and the case was originally scheduled for December 2012 term of court in Charleston County Supp. App. 1. On December 6, 2012, Judge Roger M. Young, Sr. continued the case to the next term of PCR court and ordered that Petitioner was allowed to amend his PCR application within ten days. Supp. App. 1.

Petitioner's attorney, Adam Breaux, however, did not move to amend Petitioner's PCR application and instead had Mark A. Peper substituted as counsel

¹ 384 U.S. 436 (1966)

on January 7, 2013 without Petitioners Knowledge. App. 834, 11.13-14; 835, 11.18-25; supp. App. 2.

The evidentiary hearing occurred fifteen days later on January 22, 2013 before the Honorable Markley Dennis, Sr. App. 827-937. Petitioner was represented by Mark A. Peper, and the state was represented by Assistant Attorney General Ashleigh R. Wilson. App. 827.

Mark Peper moved on behalf of Petitioner to continue the evidentiary hearing because Petitioner did not believe that his attorney appointed only fifteen days earlier and who had only spoken to Petitioner the morning of the hearing was prepared to proceed, App. 832, 1.2-836, 1.4. Mr. Peper, however, stated that he had investigated the case and felt comfortable to the one amendment that Petitioner sought to add - an allegation of ineffective assistance of Appellate Counsel. App. 837, 1.1-840, 1.16. Judge Dennis granted the motion to amend the PCR application to include the claim of ineffective assistance of appellate counsel and denied the motion to continue the hearing. App. 840, 1.17-841, 1.4.

At the evidentiary hearing, Petitioner and his trial counsel, Daniel K. Prener, both testified. App. 841-929.

On February 28, 2013, Judge Dennis filed his order of Dismissal denying Petitioners PCR application. App. 958-974. Petitioner moved to reconsider the order of Dismissal on March 1, 2013, which Judge Dennis denied by order filed April 22, 2013. App. 975-981.

This Petition for writ of Certiorari Follows.

STATEMENT OF FACTS

Relevant facts from trial

On December 12, 2007, at approximately 1:30 in the morning, Lieutenant Christopher Johnson of the North Charleston Police Department was dispatched to the Relax Inn on Ashley Proosphate Road to assist the initial dispatch officer on a drug activity call. App. 266, 1.13-267, 1.3; 272, 1.3-273, 1.23; 324, 1.7-22; 327, 11.16-22. There had been a call from a person named C.C. Derrick reporting drug activity from room 223. This C.C. Derrick left a telephone number, but officers made no attempt to contact C.C. Derrick before immediately setting out to investigate the alleged complaint. App. 266, 11.2-4; 304, 11.9-25; 334, 1.23-336, 1.8.

Lieutenant Johnson, who was driving an unmarked vehicle, at first patrolled the parking lot of the Relax Inn to see if he noticed any suspicious persons walking in and out of the room or in that area. He did not see anything suspicious. He then proceeded to Room 223 and met up with officer Patricia Jordan, the initial dispatch officer, who was also heading to the Room at the same time. App. 266, 11.4-25.

The two officers went to Room 223 and knocked on the door. Edward Ickes opened the door and looked surprised that two uniformed officers were standing at his door. The officers advised Mr. Ickes that there was a report of drug activity coming from his room. Lieutenant Johnson asked Mr. Ickes if the room was registered in his name, and Mr. Ickes advised him that the room was registered in his name. Lieutenant Johnson asked Mr. Ickes if the officers could come into the room, and Mr. Ickes said yes. When Mr. Ickes opened the door wider, the officers noticed a black male in the room who was later identified as Petitioner. App. 275, 1.1-276, 1.5.

The officers also noticed two pink colored tablets on the bed. App. 305, 11. 11-14. According to Lieutenant Johnson, Petitioner was very agitated and was making statements to Mr. Ickes like "don't let him in the room. You don't have to let him in the room. They need a search warrant. You don't have to talk to them." App. 305, 11. 15-25.

Petitioner spoke with officer Jordan and said the pills were his, that the pills were Percocet, and that he did not have a prescription for the pills. App. 306, 11. 11-14.

Within a couple of minutes, another back up officer, Darren Cobb, arrived.

Petitioner was still agitated and at one point allegedly "made a swift movement toward one of the beds, underneath the bed." App. 307, 11. 3-20. Because the officers did not know if any weapons were in the room, officer Cobb placed Petitioner in handcuffs. App. 307, 11. 20-24.

Lieutenant Johnson took Mr. Ickes into the breezeway to talk with him. Mr. Ickes was scared and nervous but very cooperative according to Lieutenant Johnson. App. 307, 1. 25-16. Mr. Ickes gave Lieutenant Johnson verbal and written consent to search the hotel room that he had rented. He also told Lieutenant Johnson that there were other drugs in the room and he would point out in the room where the drugs were located. App. 309, 11. 1-25.

During the search of the room, the officers received:

- (i) a Colt firearm in a drawer of a nightstand located farthest from the door of the hotel room.

- (2) a dark colored bag containing around twenty five grams of crack cocaine found in the same nightstand drawer as the firearm,
- (3) approximately eight grams of powder cocaine in another dark colored bag found in the same nightstand drawer farthest from the door; and
- (4) a prescription pill bottle found in the nightstand closet to the door containing two clear baggies in it, one bag did so contain the powder cocaine and one bag containing crack cocaine. This bottle contained a label indicating it was from the Veterans Administration. Mr. Ickes asserted at trial that this prescription bottle did belong to him.

App. 310, 1.3-319, 1.9; 349, 11. 11-22; 363, 1.19-368, 1.1; 370, 11. 4-9, 401, 1.14-402, 1.14; 432, 11. 13-19; 518, 1.14-519, 1.8, 526, 1.22-527, 1.8.

Jill Clark, a forensic scientist employed by the South Carolina Law Enforcement Division ("SLED"), tested the drug evidence and determined the evidence to be the following:

- (1) 23.14 grams of crack cocaine;
- (2) 7.76 grams of powder cocaine;
- (3) 0.42 grams of powder cocaine found in baggie in the prescription pill bottle.
- (4) 0.17 grams of crack cocaine, the crack cocaine found in a baggie in the prescription pill bottle.

App. 423, 1.25-426, 1.16; 436, 1.19-433, 1.3.

Both petitioner and Mr. Ickes were arrested and both charged with trafficking crack cocaine, PWID cocaine, the associated proximity charges, and possession of a firearm during the commission of a violent crime. App. 362, 1.25-362, 1.3; 495, 1.21-496, 1.5; 531, 1.22-532, 1.1. Mr. Ickes charges were still pending at the time of Petitioner's trial. App. 499, 11.17-20.

Mr. Ickes claimed in a written statement that he was just a user of drugs and that the drugs all belonged to petitioner. App. 330, 11.4-10. At trial, Mr. Ickes claimed Petitioner came by Mr. Ickes hotel room, and Mr. Ickes purchased some cocaine from Petitioner. Mr. Ickes claimed he was just a user of cocaine. App. 502, 1.15-504, 1.2. Despite telling police the night of the incident that all the drugs belong to the petitioner, at trial Mr. Ickes stated that the drugs found in the prescription pill bottle did belong to him. App. 518, 1.14-519, 1.8; 526, 1.22-527, 1.8; 536, 11.14-21. On cross-examination, Mr. Ickes admitted that he had been previously convicted in Ohio for attempt trafficking marijuana. App. 593, 11.10-14.

At trial, the following stipulation between the State and the Defense was read by the solicitor to the jury:

"The stipulation that we're placing on the record today involves a case agent in this case who is officer Patricia Jordan, who is

on vacation right now. She is the actual one who takes the drugs from the hotel room, bags the drugs, and takes them and places them into the evidence locker where the chain of custody picks up with Alex Teachey who testified earlier today. We are stipulating to the fact that the chain has not been broken, along with Mr. Premer and I, and that Patricia Jordan's link of the chain of custody is secure and that everything was properly managed and properly the whole, the whole - it was a proper function...

App. 598, 1.14 - 599, 1.14.

The jury ultimately found petitioner not guilty of trafficking cocaine, the associated proximity charge, and the possession of a firearm during the commission of a violent crime. App. 767, 1.23-770, 1.3. The jury did, however, find petitioner guilty of PWID cocaine and that associated proximity charge. App. 766, 1.5 - 767, 1.8.

Relevant facts from PCR Hearing:

Petitioner testified that he believed his trial counsel's representation of him was "very ineffective." App. 843, 11.20-21. He believed his trial counsel failed to conduct a reasonable investigation, failed to adequately prepare for trial, and made unprofessional judgments. App. 844, 11.1-4. Petitioner further testified that his trial counsel

Failed to challenge the chain of custody at trial and agreed upon the stipulation regarding the chain of custody even though Petitioner did not agree to this stipulation. App. 847, 11. 4-15. He believed the chain of custody was broken in several places. Petitioner believed the chain of custody was broken when the 0.17 grams of crack was weighed initially with the powder cocaine when the arrest warrants were obtained. App. 847, 1. 21; 848, 11. 13-14; 851, 1. 5.

Petitioner testified also that he was not provided by his trial counsel with chain of custody form completed by Alex Teachey. This chain of custody form was incomplete and failed to contain any description at all of the substance or container delivered by officer Patricia Jordan to Alex Teachey, the evidence technician employed by the North Charleston Police Department. Alex Teachey's chain of custody form also not only failed to give a description of the evidence but she also didn't document on the form who she turned the evidence over to, who she delivered it to. She testified in trial that she handed the evidence over to a S.L.E.D. evidence technician. She further testified that to her knowledge, the evidence has not been tampered with in any way. By her chain of custody form not being complete, it's unknown who she gave the evidence to. She only documented on her form that she delivered it to "SLED" but not who she delivered it to.

It's also unknown "what" she delivered or the condition. The state failed to elicit from Alex Teachey at trial who she gave it to or "what" she had. App. 423, 11. 19-25 - 424, 11. 1-9; 946 (Exhibit 3)

Petitioner testified that had he seen this chain of custody document prepared by Alex Teachey prior to trial, he would have objected to his trial counsel's stipulation at trial that the chain of custody had not been broken.

~~Due to trial counsel's agreement to the stipulation, Officer~~ Patricia Jordan was not called to testify therefore the faults in her chain of custody were not clarified. Evidence to show chain of custody proves the chain of custody did not even "begin" correctly. Her chain of custody form is incomplete because it only says she delivered the evidence to the "evidence room" not the "evidence locker" as the prosecutor expounded in the stipulation. (See attached exhibit J, Jordans chain of custody form). She gave a description of the evidence but we don't know if she gave the evidence to a evidence technician in the "evidence room" or if she actually put the evidence in a "evidence locker!" Her form just says she delivered the evidence to the "evidence room", not the "evidence locker." The "evidence room" and the "evidence locker" are two separate things and it remains a mystery because the state never called Jordan to testify because of the

stipulation agreed to by petitioners trial counsel. Did Jordan put the evidence in the locker or did someone else? The chain is broken. Therefore the chain of custody was broke before Alex Teachey recieved the evidence and then again when Alex Teachey only documents that she delivered the evidence to "S.L.E.D" but she failed to document or testify "who" she gave the evidence to or even the condition or the identity of the evidence.

Trial testimony later showed that the evidence ended up in the hands of Amy Stevens in the S.L.E.D evidence log in Room. Jill Clark testified that she recieved the evidence on January 25, 2008 from Amy Stevens who logged the evidence in from North Charleston Police Department. There is no chain of custody forms for Amy Stevens or Jill Clark as to who Amy Stevens recieved the evidence from, the condition or identity of the evidence, where the evidence was stored or how long she had the evidence before turning it over to Jill Clark. We dont know who elses hands the evidence has been in. However forty-eight days passed from the time Alex Teachey dropped the evidence off at S.L.E.D and the time Jill Clark did her analysis on the evidence. Teachey dropped the evidence off to an unknown person she testified

she handed it to on December 14, 2007. Jill Clark recieved the evidence from Amy Stevens (whom we dont know how she came in possession of the evidence) on January 25, 2007. and her analysis was done on January 31, 2007. App, 423, 11. 19-25; 434, 11. 15-16; 433, 11. 14-25.

Furthermore the detriment from Petitioners counsels agreement to stipulate to the chain of custody comes from an extensive amount of testimony as to give suspicion to possible tampering of the evidence. During trial, Lieutenant Johnson testified "very very" extensively as to his extravigant experience and certifications in the area of narcotics. Johnson testified to being certified in many different areas of narcotics. He testified he's had training in the streets and classrooms on crack cocaine. App. 268, 11. 1-25 - 269, 11. 1-25; 270, 1-18 - 271, 11. 7-25.

Lieutenant Johnson testified that he found in a drawer, a prescription pill bottle that contained two seperate baggies inside it. Interestingly this "expert" testified he discovered in doing a field analysts test, "powdery" substances that were in the baggies tested positive for "cocaine". App. 317, 11. 2-25 - 318, 11. 1-9. This "expert" testified the contents of the pill bottle was a "POWDERY SUBSTANCE" tested positive for "cocaine".

Furthermore, the states key witness, petitioner's codefendant, testified that the prescription pill bottle was his. Edward Ickes testified the pill bottle was his. He testified that he uses "cocaine" to emancipate from his problems and has been a "cocaine" user on and off for the past seven years. Ickes testified he bought thirty dollars worth of "cocaine" the night of the incident and put it in his prescription pill bottle. Ickes claimed in his testimony that it was "cocaine" in the pill bottle, App. 503, 11. 1-25 - 504, 11. 1-25 - 505, 11. 1-25 - 506, 11-18; 513, 11. 1-7; 518, 11. 13-25 - 519, 11. 1-8; 526, 11. 22-25 - 527, 11. 1-8; 548, 11. 16-25 - 549, 11. 1-4.

Even the prosecutor in his opening arguments stated that a little over a gram of "powder cocaine" was found in the pill bottle which Mr. Ickes will claim. App. 247, 11. 8-14.

All parties testified for the state about their knowledge and observations of the substances found in the pill bottle and that the substance was "powder cocaine". Yet after the chain of custody was very egregiously broken and the evidence was passed through unidentified hands with no descriptions of the condition or identity of the evidence as it transacted from one individual to the next, according to Jill Clarke's testimony and report, interestingly now "crack" cocaine is found in the pill bottle. App. 432, 11. 13-22

Petitioner testified his trial counsel should have discovered that the chain of custody of the drugs was broken and moved to have had the drug evidence suppressed, App. 873, 11. 1-14.

Petitioner iterated at the PCR hearing that he never received the Alex Teachey chain of custody form from his trial counsel prior to trial and that his trial counsel never explained the chain of custody to him, App. 856, 11. 7-13.

At the PCR hearing, trial counsel testified that he stipulated to the chain of custody in exchange for being allowed to admit the police report of officer Patricia Jordan into evidence because he felt like the report was beneficial to Petitioner, App. 898, 1. 1 - 899, 1. 3. Trial counsel said he could not recall if there were any problems with the chain of custody prior to trial but thought there must have been some problem if he had agreed to a stipulation in exchange for something in return. App. 899, 11. 4-10.

However, this was not a valid trial strategy because the report of officer Jordan was never admitted into evidence. App. 4, 216. Petitioner did not receive anything of value for this trial counsel's agreement with the state to stipulate to the sufficiency of the chain of custody. App. 217, 11. 12-25. Trial counsel even testified he didn't know crack was in the pill bottle which proved his ineffectiveness of doing his investigation. App. 924, 11. 6-17.

ARGUMENT

The PCR court erred in finding trial counsel effective in stipulating to the chain of custody of drug evidence where the chain of custody was broken egregiously upon absent identity of each individual that handled the evidence, the identity of the evidence itself, and the condition of the evidence upon receipt and delivery therefore rendering all of drugs inadmissible

“ A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction... has two components:”

Strickland v. Washington 466 U.S. 668, 687 (1984). The defendant must first demonstrate that counsel was deficient and then must also show that the deficiency resulted in prejudice. Id. To satisfy the first prong, a defendant must show counsel's performance “fell below an objective standard of reasonableness.” Franklin v. Catoe 316 S.C. 563, 570-71, 552 S.E.2d 718, 722 (2001). “To prove prejudice, an applicant must show there is a reasonable probability that but for the counsel's deficient performance, the result of the proceeding would have been different.” Id. at 571, 552 S.E.2d at 723.

The petitioner in a PCR hearing bears the burden of establishing his entitlement to relief. Suber v. State 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007). The appellate court will reverse if there is no probative evidence to support the PCR court's findings or the decision is controlled by an error of law. Miller v. State 379 S.C. 108, 115, 665 S.E.2d 596, 599 (2008)

At PCR hearing, Petitioner offered into evidence the “Form C Certificate of Proof of Chain of Custody or Control Form” prepared by North Charleston Police Department evidence technician Alex Teachey. App. 946. On this form, Alex Teachey purported to have received certain

evidence by Officer Patricia Jordan by drop box. Patricia Jordan did not testify at trial, therefore her chain of custody form was not in evidence to show that she actually delivered the evidence to the "evidence room" not the "evidence locker"; nor was she able to clarify since she failed to testify. Alex Teachey's form, however, did not list any of the evidence received by Alex Teachey and was completely blank in that regard. Id. During trial, Officer Jordan was on vacation. App. 598, 1. 14, Between the lack of Officer Jordan's testimony and the lack of any description at all on the form prepared by Alex Teachey as to what evidence was received by Alex Teachey, as well as who Alex Teachey actually gave the evidence to at SLED since her "form C" only states that she delivered it to "SLED" and not "WHO" she gave it to at SLED; the chain of custody was insufficient.

Also the chain of custody was insufficient because once Alex Teachey delivered the evidence to an "unknown" individual, forty eight days later, Amy Stevens mysteriously ends up with the evidence and delivers it to Jill Clark. There was no chain of custody form by Amy Stevens or Jill Clark. It's unknown who Amy Stevens received the evidence from, how long she had the evidence, or how long the person before her had the evidence. It's unknown what the evidence was or the condition of the evidence upon her receipt of the evidence from the unknown individual, It's also unknown where the evidence was stored. It's unknown because there is no chain

of custody form nor was she called to testify. It's unknown if the evidence was sealed upon her receipt ~~OR~~ delivery. The chain of custody was very egregiously broken from the beginning to the end. The chain of custody is in no way established. The state did not provide testimony from either of the intervening links (Jordan and Amy Stevens) in the chain. The state didn't present testimony of first or third witnesses; (could have been more individuals to handle the evidence but it's unknown due to no chain of custody forms or testimony), but did present testimony from second and last individuals in the chain. The state did not submit the testimony of each individual who handled the evidence nor did the state comply with rule which allows for admission of sworn statements in lieu of the appearance of chain of custody witness.

This court has long held that a party offering into evidence fungible items such as drugs or blood samples must establish a "complete" chain of custody as far as practicable, State v. Sweet 374 S.C. 1, 6, 647 S.E.2d 202, 205 (2007); see also Benton v. Pellum 232 S.C. 26, 33, 100 S.E.2d 534, 537 (1957). Where analyzed substances has passed through several hands, the "identity" of individuals who acquired the evidence and what was done with the evidence between the taking and the analysis must not be left to conjecture, Id at 33-34 100 S.E.2d at 537. Accordingly, if the identity of each person handling the evidence is

established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill motive. State v. Taylor 360 S.C. 18, 25, 598 S.E.2d 735, 738 (Ct. App. 2004). The courts have found evidence inadmissible where there was a missing link in the chain of custody and possession because the identity of those who handled the substance was not established at least as far as practicable. State v. Carter 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001)

In State v. Chisolm 355 S.C. 175, 584 S.E.2d 401 (2003), officer Dalton ("Dalton") placed baggies of crack into a York County Sheriff's Office evidence bag and sealed it. Dalton placed his initials and date over the seal before placing the evidence bag into a locked metal box in the police station.*178 Dates and signatures on the evidence bags "chain of custody of evidence" indicate Gary Rollins, a York County Sheriff's Office evidence technician retrieved the bag from the Rockhill Police Department drop locker May 10, 2000. The next notation on the bag indicates the evidence bag was transferred from Rene Sealy, also an evidence technician, to Cynthia Taylor on June 15, 2000. There is nothing on the bag or in the record to indicate how long Rollins possessed the bag, in what condition he received it, or where it was stored. Likewise there is no indication of when or how Sealy came into possession of the evidence or what condition she received it in. Neither Rollins nor Sealy testified at trial. Cynthia Taylor

is an employee of the sheriff's office drug analysis laboratory. Taylor did not begin working for the laboratory until May 29, 2000. Taylor testified that the evidence "stayed down in the evidence vault in the sheriff's office until June 15, 2000." Taylor tested the substance inside the evidence bag and it tested positive for crack cocaine. Before testing the substance, Taylor inspected the bag for evidence tampering. At trial Chisolm objected to the introduction of the evidence bag containing crack cocaine. Chisolm argued the chain of custody had not been established. The court overruled the objection and admitted the drugs into evidence. Chisolm argued the trial judge erred in admitting the crack cocaine into evidence because the state failed to prove sufficient chain of custody. Chisolm contended the chain of custody was incomplete and has not been established pursuant to Rule 6(b). A complete chain of evidence, tracing possession from the evidence's initial control to its final analysis must be established as far as practicable. State v. Carter. The state presented testimony of the first and last (Dalton and Taylor) links in the chain of custody. However, the state did not provide testimony from either of the intervening links (Rollins and Sealey) in the chain. Rollins received the evidence on May 10, 2000 from Rockhill drop locker but the record does not indicate when or how Sealey came into possession of the evidence for the interval Rollins or Sealey possessed it. Moreover, Taylor had not stated her employment #180 with the laboratory at the time Rollins received the

evidence and could not explain what rollins had done with the evidence.

Rule 6 (b) is a certified or sworn statement signed by each successive person having custody of the evidence he or she delivered it to or the person stated in evidence that the person had custody and made delivery as stated without the necessity of the person who signed the statement being present in court, provided (1) the statement contains a sufficient description of the substance of its container to distinguish it, and (2) the statement says the substance was delivered in substantially the same condition it was received. Petitioners case is very similar to Chisolm.

In Petitioners case, neither requirement was met in rule 6 (b) and therefore trial counsel was ineffective in failing to object to the chain of custody and request that all drug evidence be suppressed. Counsel was ineffective in stipulating to the chain of custody for something in return that he never received. It was not valid trial strategy because the report of officer Jordan was never admitted into evidence. App. 4; 216, Petitioner did not receive anything of value for trial counsels agreement with the state to stipulate to the chain of custody being sufficient. The PCR courts ruling that trial counsel made a strategic decision at trial to stipulate to the chain of custody of the drug evidence in exchange for the admission into evidence of a police report by officer Jordan is not supported by the evidence, Petitioners trial counsel was ineffective for failing to challenge the chain of custody of the

drug evidence because had he done so, the drug evidence would have been suppressed and the state therefore could not have secured convictions against Petitioner for PWID cocaine and the related proximity charge. Petitioner accordingly requests this court to reverse the PCR courts denial of Post-Conviction relief and reverse Petitioners convictions. (see attached exhibit J, Patricia Jordan Form B (Rule 6))

Petitioner was egregiously prejudiced by trial counsel's failure to object as well as investigate to know that the chain of custody was insufficient as well as violated Petitioners sixth and fourteenth amendments of the United States Constitution.

Conclusion

For the reasons set forth herein, Petitioner Donovan Murray requests this court to grant his Petition for writ of certiorari and ultimately reverse his convictions for PWID cocaine and PWID cocaine within proximity of a school.

Respectfully submitted,

Donovan Murray
Pro se Petitioner

This ____ day of _____, _____

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari ~~to~~ Charleston County
R. Markley Dennis, Jr. Circuit Court Judge

DONOVAN MURRAY

PETITIONER

v.

STATE OF SOUTH CAROLINA

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of writ of certiorari and exhibit J (officer Patricia Jordan's chain of custody form) have been served on Ashleigh R. Wilson Esquire, at Rembert Dennis Building 1000 Assembly Street, Room 519, Columbia SC 29201. ~~at~~

Donovan Murray
Pro Se Petitioner

This _____ day of _____, _____

SWORN TO BEFORE ME this _____ day
of _____, _____

(L.S.)
notary public for South Carolina

My Commission Expires: _____

Exhibit J

CONTROL NO. B 196310

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM B (RULE 6)

CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL CUSTODY OR CONTROL (Initial Custody)

This is to certify that I Patricia Jordan am employed by

N. Charleston P.D. and that on
(Name of Agency or Department)

December 12, 2007, I seized from Edward S. Ickes and Donovan T. Murray
(Date) (Name)

pursuant to Consent to search
(State Whether Subject to a Warrant, Lawful Arrest or Otherwise)

at or near 2512 Ashley Phosphate Rd. Room 223
(Place Where Seized)

the following substance(s) or container(s):
(Describe substance or container with sufficient particularity to distinguish it.)

1. Polyester bag with two plastic bags of white powder
2. Plastic bag with off white rock like substance
3. Plastic container with rock like substance and powder
4. 1 pink pill "MOVA" on one side and "500 M50" on other side
5. 1 and 1/2 pink pills "31" on one side and "93" on other side

On December 12, 2007, I made delivery of the above described
(Date)

substance(s) or container(s) to evidence room of
(Name)

N. Charleston P.D. in substantially the same condition
(Law Enforcement Agency)

as when I received it.

Patricia Jordan
(Signature)

Place: _____
Date: _____

Sworn before me on this _____ day of _____, _____

Notary Public for South Carolina
My Commission expires: _____