STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lancaster County

Brooks P. Goldsmith, Circuit Court Judge

Christopher J. Francis,

Petitioner,

V.

State of South Carolina,

Respondent,

RESPONSE TO JOHNSON PETITION

ISSUES PRESENTED

1. The PCR court's findings of fact are clearly erroneous as there is no reliable evidence on the record to support said findings thus invalidating any legal conclusions made based upon those unsupported facts.

2. Trial counsel erred in failing to move to supress evidence that was obtained in volation of the Fourth Amendment and allowing Petitioner to plead guilty without knowledge of the law in relation to the facts of his case.

STATEMENT

Petitioner Christopher Francis, pro se, would like to incorporate the following argument and exhibits into the Petition for Writ of Certiorari that was filed by Appellate Counsel. These arguments and exhibits are part of the PCR record but were erroneously omitted from the Appendix. Petitioner wishes that only the arguments presented here and on the record at the PCR hearing be reviewed by the Court. All other arguments and claims for relief presented by appellate counsel and/or Respondent in its Order of Dismissal are without merit and accordingly were not raised by Petitioner.

Attachments:

1. Amendment and Brief in Support of PCR
2. Incident Report A (detailed)
3. Incident Report B (summary)
4. Map A
5. Map B

ARGUMENT

The PCR court's/Respondent's factual findings pertaining to the evidence the police officers had prior to taking Petitioner away from his home is totally unsupported by the record and is clearly erroneous.

The PCR court's/Respondent's findings of fact as to what information the officers had to support probable cause for an arrest are identical to the solicitor's version of the facts given at the plea. Compare App. 18-p.19 with App. 125. At the PCR hearing Petitioner challenged the veracity of the information relayed by the solicitor when compared to the police incident reports. App. 71-p.72. Petitioner did so because Respondent had previously argued that the solicitor's version of the facts supported probable cause in its return to a federal habeas corpus petition filed in 2005. This was their sole defense to Petitioner's claim of ineffective assistance of counsel for failure to suppress illegally obtained evidence. At the PCR hearing Petitioner made it his first order of business to enter the police incident reports into evidence and show how the solicitor and the police have different scenarios as to what the facts were and how it would be beyond all reason and logic to take the solicitor's "version" of what happened over the testimony of the police who were actually involved. Petitioner never raised the factual errors/spin made by the solicitor as a claim for relief and only brought up the point to counteract the falsehood that Respondent was attempting to present as its defense. App. 75, l. 22-p.76, l. 1-17.

Seeing as how Respondent prepared the final order to reflect its own position on Petitioner's issues, the solicitor's version of what happened has morphed into a "finding of fact by the court". The only part of the PCR record that would support such a finding

would be the provenly false and twisted version of the facts given at the plea by the solicitor. In the face of the police incident reports that were entered into evidence, the court's "finding" is clearly erroneous as it is absolute absurdity to accept the solicitor's version of what happened over what the police said themselves. App. 76, l. 6-17. For Respondent to misrepresent this issue as a claim for relief is disingenuous to say the least. Petitioner does not need for Respondent to create frivolous claims that it may easily shoot down in its attempt to run away from the actual facts and meritous issues. An honest review of the record does not support the court's "findings" and accordingly certiorari should be granted to rectify this error and to review Petitioner's claims of illegal search and seizure on an legitimate factual and legal basis.

Plea counsel's representation was ineffective for failing to make a motion to suppress evidence that was obtained in violation of the Fourth Amendment.

At the PCR hearing Petitioner entered into the record an Amendment and Brief detailing the legal arguments in support of his claim. App. 65, l. 11-23. Petitioner also entered two separate incident reports and two copies of the GPS satellite maps of the area. App. 79, l. 14-20. This was done to definitively establish what the totality of the circumstances were in order to properly review Petitioner's Fourth Amendment claims. These exhibits were properly entered into the PCR record and should have been included in the Appendix and are hereby incorporated into the appellate record.

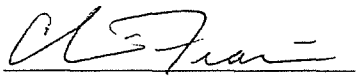
Petitioner would like to incorporate the legal arguments made in said Amendment into the current stage of review (Please see attached Amendment and Brief). All claims not raised in said Amendment (ie. those created by Respondent in its order of dismissal) are to be ignored as they are clearly meritless and the Court should not waste its

resourches by reviewing clearly meritless issues that were not even raised by Petitioner.

CONCLUSION

Petitioner again asks that the Court grant certiorari to review the issues and legal arguments presented in the attached Amendment and Brief and to considered the attached exhibits in its review.

Respectfully submitted,



Christopher Francis, pro se

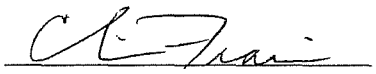
2033 Park Drive

Lancaster, SC 29720

Date: 8/9/2011

CERTIFICATE OF SERVICE

I certify that a true copy of the Response to Johnson Petition with attachments has been served on Respondent at Rembert Dennis Building, 1000 Assembly St., Room 519, Columbia, SC 29201, this 9th day of August, 2011.



Christopher Francis, pro se

State of South Carolina

6th Judicial Circuit

Court of Common Pleas

Christopher Francis #287847

Applicant

vs

State of South Carolina

Respondent

PCR No: 03-CP-29-500

Amendment and Brief in Support of Post-Conviction Relief

Table of Contents

Table of Authorities	p. 2
Definitions of Key Terms	p. 2
Statement of Issues	p. 3
Arguments	p. 4
Conclusion	p. 13

Table of Authorities

Beck v Ohio 85 S.Ct. 223

Boyd v US 6 S.Ct. 524

Brown v Illinois 95 S.Ct. 2254

Dunaway v NY 99 S.Ct. 2248

Florida v Royer 103 S.Ct. 1319

Harbury v Deutch 233 F.3d 596 (CADC 2000)

Henry v US 80 S.Ct. 168

Illinois v Gates 103 S.Ct. 2317

Kimmelman v Morrison 106 S.Ct. 2574

Mallory v US 77 S.Ct. 1356

Mapp v Ohio 81 S.Ct. 1684

McCarthy v US 89 S.Ct. 1166

Seminole Tribe of Florida v Florida 116 S.Ct. 1114

Shirley v State 411 SE2d 215 (1991)

State v Cannon 151 SE2d 752

Steagald v US 101 S.Ct. 1642

Stoner v California 84 S.Ct. 889

Terry v Ohio 88 S.Ct. 1868

US v Berry 670 F.2d 583

US v Chronic 104 S.Ct. 2039

US v Hill 626 F.2d 429

US v Matlock 94 S.Ct. 988

US v Sanders 954 F.2d 227 (4th Cir. 1992)

US v Swift 220 F.3d 502 (7th Cir. 2000)

US v Ventresca 85 S.Ct. 741

US v Whitfield 939 F.2d 1071

Wilkes v Young 28 F.3d 1362 (4th Cir.)

West v Cabell 14 S.Ct. 752

Definitions of Key Terms

1. objective - Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions <the objective facts>.

2. subjective - Based on an individual's perceptions, feelings, or intentions, as opposed to externally verifiable phenomena.

3. suspicion - The apprehension or imagination of the existence of something wrong based only on inconclusive or slight evidence, or possibly even no evidence.

Statement of Issues

I. Did the officers have probable cause to arrest Applicant prior to obtaining the incriminating statement?

II. Did the officers violate Applicant's 4th Amendment rights when they took him to the police station for questioning and subjected him to custodial interrogation?

III. Did the officers violate Applicant's 4th Amendment rights when they searched his personal effects without his consent?

IV. Are the fruits of the officer's illegal conduct inadmissable in court?

V. Did counsel err by failing to make a motion to suppress the illegally obtained evidence and advising Applicant to plead guilty and did his advice prejudice Applicant rendering his guilty plea involuntary?

Arguments

The officers did not have probable cause to arrest Applicant prior to obtaining the incriminating statement (Issue I).

Relevant Facts and Discussion

According to the incident reports the description given of the suspect was a black male armed with what was believed to be a shotgun wearing a long black coat or cape, black gloves, a white bandana over his face, and a cap pulled down over his face driving a white older-model 2-door, possibly an Oldsmobile. This information can best be described as vague and lacking in detail. As a result of the officer's investigation of Applicant they discovered that Applicant's vehicle, a white 2-door Buick Regal which was parked in his yard, contained a black .22 rifle, an old rusted over shotgun, a few hats, some knit gloves, and a white bandana with black printing among its various contents. Under the objective analysis required by law these facts could not provide the officers with sufficient evidence to allow a magistrate to accept it as probable cause to arrest Applicant for armed robbery (Steagald v US 101 S.Ct. 1642 warrant necessary because law enforcers "may lack sufficient objectivity to weigh correctly the strength of the evidence supporting the contemplated action against the individual's interests in protecting his own liberty."; Terry v Ohio 88 S.Ct. 1868 [18] "facts must be judged against objective standard"; Beck v Ohio 85 S.Ct. 223, 225 "the probable cause test then, is an objective one.") First, the suspect vehicle was described as possibly being an Oldsmobile and Applicant's vehicle is a Buick which is at variance with the description of the suspect vehicle. If the suspect vehicle could have possibly been a Buick, it could have possibly been a Chevy, Cadillac, Lincoln, or any of numerous 2-door vehicles. Secondly, the officers never discovered Applicant wearing any of the items attributed to the suspect, only observing a few innocuous items among the general clutter of Applicant's parked vehicle. None of those items could objectively be matched to the description, either by their mere presence in the vehicle or by any distinctive characteristics

given by the witness that they could be compared to; they were everyday items that might be found on the premises of many homes or in someone's vehicle. So all the officers had to go on was a vague and indistinctive description of the suspect's clothing and vehicle, a tenuous match of Applicant's vehicle in color and body type with the suspect vehicle, and items in Applicant's vehicle that had very little if any objective weight when compared to the witness' description. Overall, this scant amount of information, although sufficient to justify a reasonable suspicion, was insufficient to provide the officers with probable cause to arrest Applicant for armed robbery (Henry v US 80 S. Ct. 168, 170 "common rumor or report, suspicion, or even 'strong reason to suspect' was not adequate to support a warrant for arrest."; West v Cabell 14 S. Ct. 752, 753-54 "a warrant for the arrest of a person charged with a crime must truly name him, or describe him sufficiently to identify him. The principle of the common law, by which warrants of arrests ... must specifically name or describe the person to be arrested, has been affirmed in the American constitutions; ... a warrant that does not do so will not justify the officer making the arrest.") The body of 4th Amendment jurisprudence reflects this conclusion but Applicant would draw attention to one case in particular, US v Swift 220 F. 3d 502 (7th Cir. 2000), to further illustrate his point. In Swift, the officers involved in an armed robbery investigation encountered a vehicle that almost exactly matched the description of the suspect vehicle, with a partial tag number match, and two occupants who matched the general description of the suspects. The officers transported the two men to the police station and the court properly held that the officers' actions constituted an illegal arrest because the officers lacked sufficent factual knowledge to make a probable cause determination and arrest the men. However, the court held the illegal arrest to be harmless as the chief investigating officer, who was at the crime scene, would have held probable cause to arrest the men had the officers waited on the investigator to arrive; he observed tape and a red earbud in the vault at the crime scene and later found matching tape and headphones missing a red earbud in the mens' vehicle at the police station. The point

is, the initial match of the men's vehicle to the general description of the robbers', viewed objectively, was insufficient to provide the officers with probable cause. Only the investigator's observation of the matching tape and earbud found in the men's vehicle, both of which were distinctive, could provide an objectively reasonable basis for a probable cause determination (See also US v Sanders 954 F.2d 227 (4th Cir. 1992) match of suspect's car to vague witness description insufficient to justify an arrest).

In addition Applicant would like to clarify circumstances not expressly stated in the incident reports and misrepresented by the solicitor at Applicant's plea. Capt. Bailey's supposed observation of Applicant near the intersection of Potter, Beacon, and Juneau Rds. would have occured approximately 8 miles away from the crime scene and that intersection is approximately .3 miles away from Applicant's home on Tryon St. So the remark made by the solicitor at Applicant's plea that Applicant was observed leaving the crime scene (R. 18 ll. 16-18) is misleading and inconsitent with the facts and the officers' own testimony. Applicant would also point out that Capt. Bailey, although he supposedly saw Applicant, never pursued the observed vehicle; according to the incident reports he was called to Applicant's home by Det. Hilton, who himself did not show up at Applicant's home until 30 minutes after the crime (R. 22 ll. 5-13) and was approximately 7 miles away from Applicant's home when Capt. Bailey's supposed observation would have occurred.

Furthermore, the officers involved in the investigation never claimed that they had probable cause to arrest Applicant prior to obtaining an incriminating statement and their own version of events reinforces the fact that they did not have probable cause to arrest Applicant and that they were aware of the fact. The incident reports states that, after initiating an investigative detention, they asked Applicant to come in for questioning (an illegal seizure) and that Applicant consented to do so, asserting the position that Applicant could not be compelled to go to the police station at that time and that it was entirely consensual; in other words the officers did not have probable cause to arrest Applicant but were attempting to pressure Applicant into giving evidence against himself. The other incident report states

that the suspicious circumstances of the encounter at Applicant's home led to Applicant's investigation at the police station. The Supreme Court, in its analysis and rationale of Brown v Illinois 95 S.Ct. 2254 and Dunaway v NY 99 S.Ct. 2248, unequivocally stated that such actions by police officers are virtual concessions of the fact that there was no probable cause to arrest a suspect ("The impropriety of the arrest was obvious; awareness of the fact was virtually conceded by the two detectives when they repeatedly acknowledged... that the purpose of their action was for 'investigation' or for 'questioning'." Brown v Illinois at 2262 and Dunaway v NY at 2258; "the 'unreasonable searches and seizures' condemned in the Fourth Amendment are almost always made for the purpose of compelling a man to give evidence against himself... and compelling a man 'in a criminal case to be a witness against himself,' which is condemned in the Fifth Amendment, throws light on the question as to what is an 'unreasonable search and seizure' within the meaning of the Fourth Amendment." Boyd v US 6 S.Ct. 524, 534); "whomever the police arrest they must arrest on 'probable cause.' It is not the function of the police to arrest, as it were, at large and to use an interrogation process at police headquarters in order to determine whom they should charge before a committing magistrate on 'probable cause'." Mallory v US 77 S.Ct. 1356, 1360; US v Sanders 954 F.2d 227 (4th Cir. 1992) officers admitted there was no probable cause based on match of suspect's car to a vague description). Under the doctrine of stare decisis, this Court must follow this long standing line of reasoning by affirming the fact that there was no probable cause to arrest Applicant and that the officers' own actions and explications reinforces and affirms this fact. (Seminole Tribe of Florida v Florida 116 S.Ct. 1114 (1996) Court bound by higher court's explications of the governing rules of law and the portions of the opinion necessary to the result; Horbury v Deutch 233 F.3d 596 (CADC 2000) Firm and considered dicta by US Supreme Court is binding).

In conclusion, it cannot be said that the officers clearly had probable cause to arrest Applicant for armed robbery. As stated above, the officers only had a tenuous match of Applicant's vehicle with the suspect vehicle; they did discover some items in Applicant's vehicle but they

had insufficient factual knowledge to reasonably match any of these items to the description, which was indistinctive; the officers themselves never claimed that any of the items they discovered was of sufficient weight to constitute probable cause. In light of these facts and they presence of some type of distinctive match between the suspects and the witness' descriptions in the relevant case law, which is lacking in the present case, the present case can, at most, only be classified as marginal as to whether or not the officers had probable cause to arrest Applicant. As the officers never obtained a warrant prior to taking Applicant to the police station for questioning, this Court must resolve this issue in Applicant's favor and rule that the officers lacked probable cause to arrest Applicant for armed robbery (US v Ventresca 85 S.Ct. 741, 746 and Illinois v Gates 103 S.Ct. 2317, 2331 n.10 doubtful or marginal cases should be determined by the preference for warrants; Wilkes v Young 28 F.3d 1362, 1375 (4th Cir.) "a court revisiting the probable cause issue... should resolve 'doubtful or marginal cases in the defendant's favor'").

The officers violated Applicant's 4th Amendment rights when they took him to the police station for questioning, subjected him to custodial interrogation, and searched his personal effects without his consent (Issues II and III).

Relevant Facts

The relevant facts on this issue are as follows: 1) Police officers initiated an encounter with Applicant at his home 2) he was told he was the focus of a criminal investigation, frisked, questioned, given commands, and asked to give consent to search his vehicle 3) he was supposedly asked, warned, and supposedly consented to go to the police station for questioning 4) at the police station he was given Miranda warnings and interrogated in a small room for over an hour until an incriminating statement was obtained 5) after Applicant was taken away the remaining officers waited at Applicant's home until his mother arrived, requested and obtained her consent, and searched Applicant's bed 6) money was found under the mattress.

Discussion

Applicant does not contest the validity of the initial seizure, as it would be justifiable under the principles of Terry v Ohio 88 S. Ct. 1868 and its progeny. However, when the officers supposedly asked Applicant to go to the police station for questioning, it converted the initial valid seizure into an illegal seizure which would invalidate Applicant's supposed consent to go to the police station, despite any warnings Applicant supposedly recieved ("Justice White announced the judgement of the Supreme Court and delivered an opinion holding that... police exceeded the limits of an investigative stop where they asked defendant to accompany them to a small police room." Florida v Royer 103 S.Ct. 1319; See also US v Berry 670 F.2d 583 and US v Hill 626 F.2d 429). In Royer, the Supreme Court decreed that, without probable cause, under no circumstances are police officers to attempt to conduct a custodial interrogation after initiating an investigative stop, not even by asking for and obtaining consent to do so ("Nor may the police seek to verify their suspicions by means that approach the conditions of arrest. Dunaway v NY made that clear." Royer at 1325). Therefore, as a result of the officers' illegal line of questioning Applicant supposed consent would invalid, and the officer's supposed warnings cannot attenuate the taint of their illegal actions ("the 'confinement' in this case went beyond the limited restraint of a Terry investigative stop and Royers consent was thus tainted by the illegality, a conclusion that required reversal in the absence of probable cause to arrest." Royer at 1326; "statements given during a period of illegal detention are inadmissable even though voluntarily given if they are the product of the illegal detention" Royer at 1326; "If Miranda warnings, by themselves, were held to attenuate the taint of an unconstitutional arrest, regardless of how wanton or purposeful the Fourth Amendment violation, the effect of the exclusionary rule would be substantially diluted." Brown at Illinois 95 S.Ct. 2254, 2261).

The circumstances behind how Applicant got to the police station, which in and of itself constituted an illegal arrest, are moot in light of the illegal custodial interrogation of Applicant at the police station. The controling authority on this issue, Dunaway v NY 99 S.Ct. 2248 which is based on Brown v Illinois 95 S.Ct. 2254, is unequivocal in its condemnation of custodial

interrogations held without probable cause. The facts of the Dunaway case and Applicant's case are indistinguishable as a matter of law ("differences in form must not be exalted over substance. Once in the police station, Brown was taken to an interrogation room and his experience was indistinguishable from petitioner's." Dunaway at 2258). As in the Brown and Dunaway cases, Applicant was taken to the police station for questioning without probable cause, he was given Miranda warnings, and was subjected to custodial interrogation until an incriminating statement was obtained. Therefore, under the doctrine of stare decisis this Court must follow the reasoning and conclusions of Dunaway and hold that Applicant's 4th Amendment rights were violated as a result of the illegal custodial interrogation of Applicant at the police station.

With reguard to the search of Applicant's bed, the controling authority on this issue, US v Matlock 94 S.Ct. 988 (See also US v Whitfield 439 F.2d 1071), is unequivocal in holding that unless a third-party has mutal use of or control of the property or effects to be searched, that third-party cannot provide valid consent to search the property or effects. Applicant, as an adult, undoubtedly has a legitimate expectation of privacy in his personal bed and the area underneath his mattress, a fact commonly recognized by society as a whole. Applicant in no way shared his bedroom, much less his bed, with his mother. It must also be recognized that Applicant's rights were at stake in the search of his personal bed and not his mother's, giving Applicant exclusive authority to consent to its search ("It is important to bear in mind that it was the petitioner's constitutional right which was at stake here, and not the night clerk or the hotel's. It was a right, therefore, which only the petitioner could wave by word or deed." Stoner v California 84 S.Ct. 889, 893). Therefore, Applicant's mother's consent to search his personal effects was invalid and the subsequent search was illegal.

The fruits of the officers' illegal conduct are inadmissable in court as a matter of law (Issue IV).

Relevant Facts

The relevant facts on this issue are as follows: 1) the purpose of the illegal custodial interrogation was to obtain an incriminating statement 2) the incriminating statement was given as a result of the custodial interrogation; Applicant was interrogated for over an hour until a statement was given

with no intervening circumstances in between 3) subsequent written statements were made by Applicant while in illegal custody 4) money was discovered and seized as a result of the illegal search of Applicant's personal effects.

Discussion

It is obvious that the purpose of the officers' illegal seizure was to coerce an incriminating statement from Applicant to be used against him as probable cause ("the 'unreasonable searches and seizures' condemned in the Fourth Amendment are almost always made for the purposes of compelling a man to give evidence against himself." Mapp v Ohio 81 S.Ct. 1684, 1687 citing Boyd v US 6 S.Ct. 524, 533). The Supreme Court, based on the principles handed down in Brown v Illinois 95 S.Ct. 2254, held that statements given as a result of an illegal custodial interrogation are inadmissable (Dunaway v NY 99 S.Ct. 2248). The voluntariness of the statement is irrelevant for 4th Amendment analysis as the 5th Amendment voluntariness analysis is only the threshold requirement for the 4th Amendment analysis and Applicant chooses not to contest the voluntariness of the statement at this time ("Satisfying the Fifth Amendment is only the 'threshold' condition of the Fourth Amendment analysis required by Brown." Dunaway at 2260; "If Miranda warnings, by themselves, were held to attenuate the taint of an illegal arrest, regardless of how wanton or purposeful the Fourth Amendment violation, the effect of the exclusionary rule would be substantially diluted." Brown at 2261; statements given during a period of illegal detention are inadmissable even though voluntarily given Dunaway at 2259-2260). As stated above, the facts of Applicant's case and those of Dunaway and Brown are indistinguishable as a matter of law and under the doctrine of stare decisis, this Court must follow the reasoning and conclusions of the Supreme Court and hold that the incriminating statement is inadmissable. As for the subsequent statements, they are part and parcell of the first statement and the first statement vitiated Applicant's incentive to avoid further incrimination ("not only the involuntary confession but acts or statements on the part of the appellant which are in effect a part and parcell of the confession, should be excluded." State v Cannon 151 SE2d 752, 757; Brown at 2262 n. 12). Furthermore, this Court is bound under stare decisis to follow the reasoning and conclusions of Brown and Dunaway, as the facts are

indistinguishable from Applicat's case, and hold the subsequent statements to be the fruit of the first illegally obtained statements and therefore inadmissable.

With reguard to the illegally obtained money from under Applicant's mattress, it is inadmissable under the general principles of the 4th Amendment exclusionary rule as the direct result of an illegal search (Mapp v Ohio 81 S.Ct. 1684).

Counel erred by failing to make a motion to suppress the illegally obtained evidence and advising Applicant to plead guilty and that misadvice prejudiced Applicant rendering his guilty plea involuntary (Issue V).

Relevant Facts

The relevant facts on this issue are a follows: 1) Applicant's 4th Amendment claims have merit. 2) counsel never made a motion to suppress the illegally obtained evidence 3) Counsel strongly advised Applicant to plead guilty 4) Applicant never had knowledge of the law in relation to the facts of his case 5) if counsel had made a motion to suppress Applicant would not have plead guilty and insisted on a trial in which he would have prevailed.

Discussion

As clearly stated and demonstrated above, Applicant's 4th Amendment rights were violated and the fruits of those violations are inadmissable as evidence against him. It is a concrete fact that counsel did not make a motion to suppress this illegally obtained evidence, which would have been Applicant's only possible defense to the charges he was facing. It is a concrete fact that counsel strongly advised Applicant to plead guilty and repeatedly stated that there was nothing more he could do (R. 4, ll. 3-6; R. 15, ll. 10-20). Had counsel made a motion to suppress prior to Applicant's guilty plea it is clear that his motion would have prevailed. With the sole evidence against Applicant suppressed there would not have been a case against Applicant and the court would have had to direct a verdict of acquittal on all charges, thus Applicant would have had knowledge of the law in relation to the facts of his case and would not have plead guilty. Taking these circumstances in their entirety, it cannot be said that counsel's

performance fell within the range of competence demanded of criminal attorney's, rendering his performance ineffective (Kimmelman v Morrison 106 S.Ct. 2574 counsel ineffective for failure to make timely motion to suppress; Shirley v State 411 SE2d 245 (1991) counsel ineffective for failing to make motion to suppress). Despite any explanations by counsel as to the reasons why the motion to suppress was never made it would not change the fact that he never made any motions on Applicant's behalf which should have been done ("If no actual 'Assistance' 'for' the accused's 'defense' is provided, the constitutional guarantee has been violated." US v Cronic 104 S.Ct. 2039, 2044). Nor can it be said that Applicant had knowledge of the law in relation to the facts of his case, which is evident from the simple fact of these Post-Conviction proceedings ("For this waiver to be valid under the Due Process Clause, it must be 'an intentional relinquishment or abandonment of a known right or privilege'... it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." McCarthy v US 89 S.Ct. 1166, 1171). Taking these circumstances in their entirety, Applicant guilty plea was involuntarily given.

Conclusion

Having shown counsel's performance to be outside the range of professional norms, and having shown how counsel's subpar performance prejudiced Applicant, Applicant would respectfully move to have this Honorable Court vacate his conviction and remand this matter to General Sessions Court for prompt disposal and with instructions for a direct verdict of aquittal on all charges as there is no evidence outside of that which was illegally obtained that would support a conviction.

Respectfully submitted,

Christopher Francis #287847
Evans Correctional Institution
610 Hwy 9 West
Bennettsville, SC 29512

William R. Sims
PO Box 645
Kershaw, SC 29067

Attorney for Applicant

Entered By: TANYA ERVIN, On 03/14/2002 3:40:41 PM
Edited By: TANYA ERVIN, On 03/14/2002 4:01:30 PM

Title: INCIDENT REPORT A

1

IN REFERENCE TO THIS INCIDENT, THIS I/O, JEFF HILTON, RESPONDED TO AN ARMED ROBBERY THAT HAD OCCURRED AT THE HEATH SPRINGS TELEPHONE CO. IN HEATH SPRINGS. THE DESCRIPTION GIVEN WAS A B/M WEARING BLACK GLOVES, A WHITE COLORED BANDANA OVER HIS FACE, A CAP THAT WAS PULLED DOWN TO COVER HIS FACIAL FEATURES, AND A LONG BLACK CAPE OR COAT. THE SUSPECT LEFT THE AREA IN WHAT WAS DESCRIBED AS A WHITE COLORED OLDER TWO DOOR POSSIBLY AN OLDSMOBILE. WHEN THIS INFORMATION WAS GIVEN, THIS I/O ALONG WITH CAPT. BAILEY AND R/D RUSSELL WERE AT THE SHERIFF'S OFFICE. UPON HEARING THE CALL, WE RESPONDED IN SEPARATE VEHICLES TO THIS AREA. THIS I/O WENT TOWARDS 522 (ROCKY RIVER RD) AS THE DIRECTION OF TRAVEL GIVEN BY WITNESSESS WAS NORTH ON 521. CAPT. BAILEY PROCEEDED TO THE AREA OF SOUTH POTTER RD. ALONG WITH R/O RUSSELL. UPON REACHING THE AREA OF BEACON RD, I HEARD CAPT. BAILEY ADVISE R/D RUSSELL TO TAKE BEACON RD. IN AN EFFORT TO COVER THE AREA AS MUCH AS POSSIBLE. CAPT. BAILEY THEN ADVISED HE HAD JUST PASSED A WHITE COLORED TWO DOOR VEHICLE BEING OCCUPPIED BY A B/M WITH A LOT OF HAIR. HE STATED THE VEHICLE WAS DRIVING AT A HIGH RATE OF SPEED AND THE VEHICLE WAS HEADED NORTH ON POTTER ROAD TOWARDS 903. CAPT. BAILEY ADVISED THE VEHICLE HAD TURNED EITHER ONTO JUNEAU ST. OR BEACON RD. BECAUSE HE DID NOT SEE THE VEHICLE AFTER HE TURNED AROPUND AND HE HAD VISUAL SIGHT TO 903. R/D RUSSELL STATED HE HAD TURNED AROUND ON BEACON RD. AND HAD NOT MET THE VEHICLE. CAPT. BAILEY STATED THAT THE VEHICLE MOST LIKELY TURNED ONTO JUNEAU ST. AS HE HAD NOT SEEN THE VEHICLE APPROACH 903. OTHER UNITS HAD ARRIVED AT THE INCIDENT LOCATION AND THE UNITS IN THE AREA OF 903 CONCENTRATED ON CHECKING THIS AREA FOR THE VEHICLE.

2

UPON ARRIVING IN THE AREA, THIS I/O CHECKED THROUGH JUNEAU ST. AND DROVE THROUGH THE ADJOINING STREETS. UPON REACHING TRYON ST., I THEN DROVE TO THE END OF TRYON ST. AND AS I PROCEEDED BACK NORTH ON TRYON ST., I OBSERVED A MOBILE HOME (LATER DETERMINED TO BE 1090 TRYON ST.) BEHIND A BRICK RESIDENCE. I OBSERVED A B/M ON THE PORCH OF THE MOBILE HOME AND IT APPEARED AS IF WHEN HE SAW MY PATROL CAR HE RAN BACK INSIDE THE MOBILE HOME. THE B/M APPEARED TO BE SLIM IN BUILD AND HAD WHAT APPEARED TO BE A LARGE AMOUNT OF HAIR (AN AFRO). THIS APPEARED TO BE VERY SUSPICIOUS ACTIVITY TO THIS I/O AND I THEN DECIDED TO BACK UP AND WATCH THE RESIDENCE FOR FURTHER ACTIVITY. AFTER APPROX. 2 MINS., I THEN OBSERVED THE B/M OPEN THE SCREEN DOOR OF THE MOBILE HOME AND HE LOOKED OUTSIDE IN THE DIRECTION OF WHICH I FIRST SAW HIM. HE THEN EXITED THE MOBILE HOME AND RAN TOWARDS A WHITE COLORED VEHICLE AND WENT TOWARDS THE BACK OF THE VEHICLE. HE WAS THERE FOR APPROX. 30 SECS. AND THEN I OBSERVED HIM RUN BACK TOWARDS THE MOBILE HOME WITH SOMETHING IN HIS HAND. AS HE APPROACHED ABOUT THE MIDWAY POINT BETWEEN THE MOBILE HOME AND VEHICLE, I OBSERVED THE B/M THROW WHAT APPEARDED TO BE A LICENSE PLATE TOWARDS THE SIDE OF HIS RESIDENCE. THE B/M CONTINUED UNTIL HE WAS INSIDE THE MOBILE HOME. UPON

OBSERVING THIS SEQUENCE OF EVENTS AND BEING ADVISED A POSSIBLE TAG NUMBER ON THE SUSPECT VEHICLE WAS 520, I THEN PULLED INTO THE DRIVEWAY OF THE BRICK HOME THAT WAS IN FRONT OF THE MOBILE HOME. THE WHITE TWO DOOR WAS FOUND TO BE A MID 80'S BUICK AND THE TAG WAS MISSING FROM THE VEHICLE. THE VEHICLE WAS VISIBLE FROM TRYON ST. AND WITHOUT ENTERING THE DRIVEWAY OF THE BRICK HOME. UPON FINDING THAT THE VEHICLE MATCHED THE DESCRIPTION OF THE SUSPECT VEHICLE USED IN THE ARMED ROBBERY, I BACKED OUT OF THE DRIVEWAY AND NOTIFIED CAPT. BAILEY AND ANY UNITS CLOSE. THIS I/O PARKED ON THE ROADSIDE OF TRYON ST. IN FRONT OF THE BRICK RESIDENCE, WHEN I OBSERVED THE B/M WALK FROM AROUND THE SOUTH END OF THE BRICK HOME. THE B/M LOOKED IN MY DIRECTION AND THEN STARTED YELLING SOMETHING, THIS I/O COULD NOT DETECT WHAT HE WAS SAYING AND I ASKED HIM TO COME TO ME SO THAT I COULD UNDERSTAND HIM. THE B/M STARTED WALKING IN MY DIRECTION AND WAS TALKING AS HE WALKED. HE ASKED IF THERE WAS A PROBLEM OR IF I NEEDED TO SEE HIM FOR ANYTHING. HE PLACED HIS HANDS INSIDE HIS POCKET AND I IMMEDIATELY REQUESTED HE REMOVE HIS HANDS. HE DID AS I REQUESTED AND I THEN EXPLAINED TO HIM WHAT HAD OCCURRED AND THE FACT THAT WE WERE INVESTIGATING A ROBBERY THAT HAD OCCURRED IN HEATH SPRINGS. I REQUESTED CONSENT TO PERFORM A SEARCH FOR WEAPONS AND THE B/M GAVE CONSENT. THE SEARCH REVEALED NOTHING. THE B/M IDENTIFIED HIMSELF AS CHRISTOPHER JOESPH FRANCIS AND HE STATED HE LIVED IN THE MOBILE HOME BEHIND THE BRICK RESIDENCE. HE STATED THAT HIS GRANDMOTHER LIVED IN THE BRICK HOME AND HE RESIDED WITH HIS MOTHER AND SISTER IN THE MOBILE HOME. FRANCIS STATED THAT NO ONE ELSE WAS AT THE RESIDENCE AT THIS TIME.

AT THIS POINT, CAPT. BAILEY ARRIVED AND IDENTIFIED THE WHITE TWO DOOR AS BEING THE SAME VEHICLE HE PASSED ON POTTER RD. HE ALSO STATED THE MALE WAS THE SAME MALE HE HAD OBSERVED DRIVING THE VEHICLE ON POTTER RD. CAPT. BAILEY THEN REQUESTED CONSENT TO SEARCH THE VEHICLE OF WHICH FRANCIS STATED BELONGED TO HIM. FRANCIS GAVE VERBAL CONSENT TO SEARCH HIS VEHICLE AND BEFORE ENTERING THE VEHICLE THIS I/O OBSERVED TWO LONG GUNS IN THE BACK FLOOR BOARD OF THE VEHICLE. I ALSO OBSERVED A WHITE BANDANA, A PAIR OF BLACK GLOVES, A GRAY COLORED TOBOGGAN, AND SEVERAL BLACK COLORED HATS IN THE FRONT SEAT AREA OF THE VEHICLE. CAPT. BAILEY DID PERFORM THE CONSENT TO SEARCH OF THE VEHICLE AND ALSO LOCATED A LICENSE TAG IN PLAIN VIEW NEAR WHERE I OBSERVED THE B/M THROW THE LICENSE PLATE AS EARLIER DESCRIBED. THE TAG NUMBER ON THE PLATE WAS 560 MRV (1984 BUICK 2DR REGISTERED TO CHRIS J. FRANCIS - 1090 TRYON ST., LANCASTER). FRANCIS STATED HE HAD RECEIVED A LETTER FROM THE HIGHWAY DEPARTMENT ABOUT THE TAG AND HE THOUGHT THAT WAS WHY WE WERE AT HIS RESIDENCE AND THAT WAS WHY HE TOOK THE TAG OFF. WE THEN REQUESTED FRANCIS COME TO THE SHERIFF'S OFFICE FOR AN INTERVIEW AND EXPLAINED THIS WOULD BE ON A VOLUNTARY BASIS ONLY. FRANCIS STATED HE WOULD GO BECAUSE HE WANTED TO CLEAR HIS NAME. R/D RUSSELL DID GIVE FRANCIS A RIDE TO THE S/O AND ESCORTED HIM TO THIS I/O OFFICE.

UPON MY ARRIVAL AT THE OFFICE, I FIRST ADVISED CHRISTOPHER JOESPH FRANCIS OF HIS RIGHTS ACCORTDING TO THE MIRANDA. HE STATED HE UNDERSTOOD THESE RIGHTS AND SIGNED A WRITTEN WAIVER TO THIS EFFECT. THE FOLLOWING IS A BRIEF SYNOPSIS OF THE STATEMENT GIVEN BY FRANCIS:

ACADEMIC SCHOLORSHIP. HE STATED HE DROPPED OUT IN SEPTEMBER OF 1999 AND THINGS HAD STARTED GO G DOWN FOR HIM SINCE. HE S .TED HE HAD BEEN CHARGED WITH DUS 2ND OFFENSE LAST WEEK AND WAS SCHEDULED FOR COURT IN THE NEXT FEW WEEKS. HE STATED HE WAS AFRAID IF HE DID NOT HAVE THE MONEY, HE WOULD GO TO JAIL. FRANCIS STATED HE LEFT HIS RESIDENCE IN THE 1984 BUICK 2 DOOR THIS MORNING AND WENT TO GET SOMETHING TO EAT. HE STATED ON HIS WAY BACK HE STARTED THINKING ABOUT THE MONEY. HE STATED HE STARTED RIDING AROUND AND ENDED UP PASSING THE PLACE IN HEATH SPRINGS. HE STATED HE CIRCLED THE BUSINESS AND PARKED ON THE SIDE. FRANCIS STATED HE TOOK THE RIFLE AND WENT INSIDE WEARING A WHITE BANDANA AND HIS BLACK COAT. HE STATED HE WENT INSIDE THE BUSINESS, POINTED THE GUN AT A LADY AND DEMANDED THE MONEY. HE STATED HE TOOK THE MONEY AND LEFT THE BUSINESS AND WENT BACK TO HIS RESIDENCE ON POTTER RD. HE STATED HE PUT THE MONEY UNDER HIS MATTRESS IN HIS BEDROOM.

AFTER TAKING THIS STATEMENT FROM CHRISTOPHER JOESPH FRANCIS HE WAS GIVEN A COPY OF ALL PAPERWORK COMPLETED AND THEN HE WAS PLACED IN THE LCDC.

AS A RESULT OF THESE STATEMENTS WARRANTS WERE SIGNED FOR ARMED ROBBERY AND POSSESSION OF A FIREARM DURING THE COMMISSION OF A VOILENT CRIME. I WAS ALSO ADVISED BY CAPT. BAILEY HE HAD RECEIVED CONSENT TO SEARCH THE RESIDENCE FROM FRANCIS'S MOTHER AND THEY HAD LOCATED $769 IN CASH BETWEEN THE MATTRESSES IN CHRIS'S BEDROOM.

Lancaster County Sheriff's Office

Case File Coversheet

INCIDENT REPORT B

Case Number: 02-04641	Description of Property Stolen: Cash
Incident Type: Armed Robbery	
Poss. Of Firearm D/Violent Crime	
	Value of Stolen Property: $769.00
Incident Date: 03-13-2002	
Victim: Heath Springs Telephone Co.	Value of Recovered Property: $769.00
Defendant(s): Christopher Joseph Francis	Value of Property Damage:
Witness (es):	

Crime Scene Activity:			Principal Investigating Officers:
Photographs Taken	Yes	No	Inv. Jeff Hilton
Sketches Produced	Yes	No	Capt. C. Bailey
SLED Assistance	Yes	No	
Autopsy Performed	Yes	No	

Summary of Investigative Activity:

On 03-13-2002, a Black male entered the Heath Springs Telephone Company armed with what was believed to be a shotgun. The B/M then demanded the money from the one of the clerks – Brenda Horton. The man exited the business and then fled the area in a White colored 2-door vehicle described as possibly an older Oldsmobile. Officers from the S/O responded to the area and while on Potter Rd., Capt. Bailey passed a vehicle that matched the description of the vehicle involved. This vehicle was being driven by a B/M described by Capt. Bailey as having a lot of hair. Bailey turned around on the vehicle and upon completing the turn, stated he had lost sight of the vehicle. He stated the vehicle did not go to the stop sign at the intersection of Hwy 903 and Potter Rd. as he had visual sight of this intersection. He stated the vehicle most likely turned onto either Beacon Rd. or onto Juneau St. A unit was traveling on Beacon Rd. and advised he had not passed on vehicle fitting this description. Officers then started checking the area of Juneau St. for the vehicle. While checking the area of Tryon St. (that adjoined Juneau St.), Inv. Hilton observed a White older model 2-door vehicle parked behind a residence on Tryon St. A B/M with a noticeable afro was observed on a porch of a mobile home later found to be 1090 Tryon St. and he appeared to be acting in a suspicious manner. The B/M later found to be Christopher Joseph Francis, was observed removing the tag from his vehicle and throwing the tag into the wooded area near the residence. This along with other suspicious activity by Francis eventually led to the questioning and subsequent investigation of Christopher Joseph Francis who resides at 1090 Tryon St. A post-Miranda statement was taken from Francis in which he admitted he entered the business armed with a rifle (found in the White vehicle along with a shotgun) and pointed the weapon at a clerk and demanded money. Francis admitted he was driving the White 2 door Buick that he owns at the time. Francis admitted he hid the money from the robbery under his mattress in his bedroom. A total of $769.00 was recovered from the bedroom of Christopher Joseph Francis. As a result

Lancaster County Sheriff's Office

Case File Coversheet

of the statement given by Francis and evidence collected during the investigation, warrants were signed for armed robbery and possession of a firearm during the commission of a violent crime.

Directions to 1090 Tryon St, Lancaster, SC 29720-7695

YAHOO!

Total Time: 21 mins, Total Distance: 9.41 mi

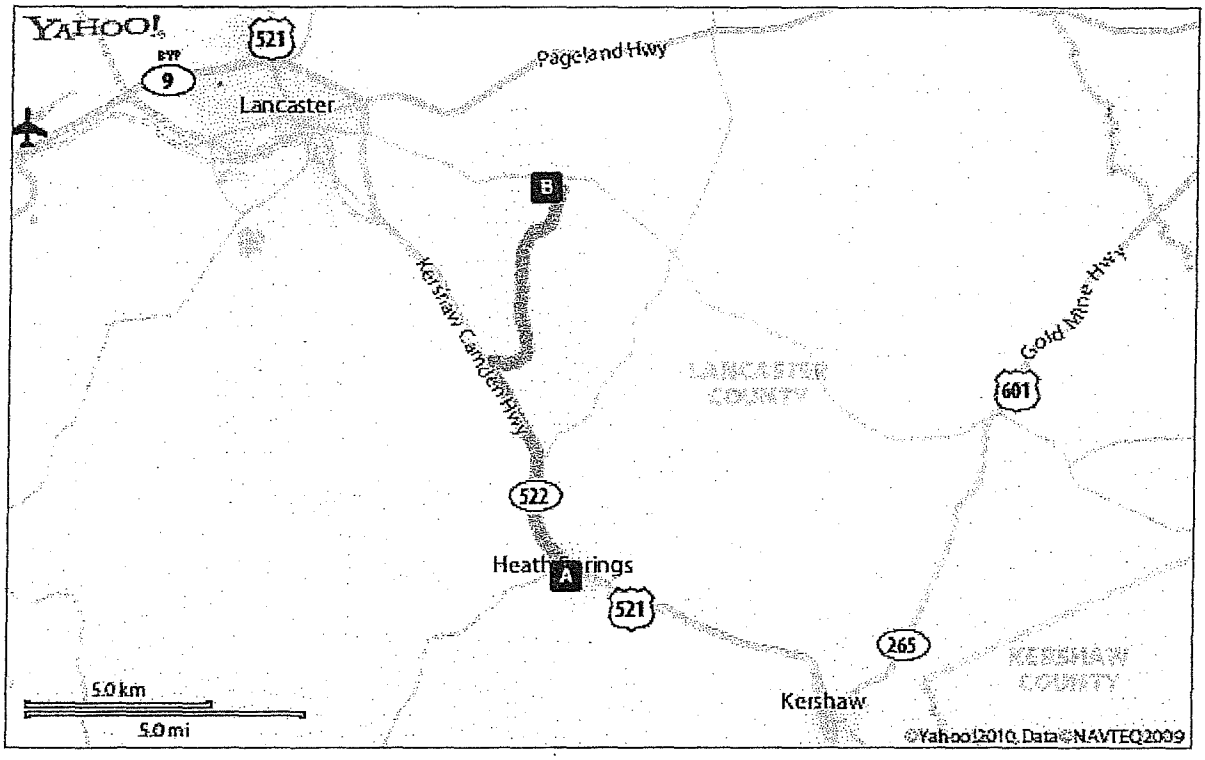
MAP A

Heath Springs to Tryon St, Lancaster, SC

A	1. **Starting in HEATH SPRINGS, SC on E SPRING ST go toward MAIN ST**	go **220** ft
	2. Turn R on **MAIN ST(US-521)**	go **0.95** mi
	3. Continue to follow **US-521**	go **3.7** mi
	4. Turn R on **COTTAGE RD**	go **0.87** mi
	5. Turn L on **S POTTER RD**	go **3.55** mi
	6. Turn L on **JUNEAU RD**	go **0.28** mi
	7. Turn L on **TRYON ST**	go **154** ft
B	8. **Arrive at 1090 TRYON ST, LANCASTER, on the R**	

Distance

Time: 21 mins, Distance: 9.41 mi



When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.

MAP A

Directions to Dwight Crossroads, SC 29720

YAHOO!

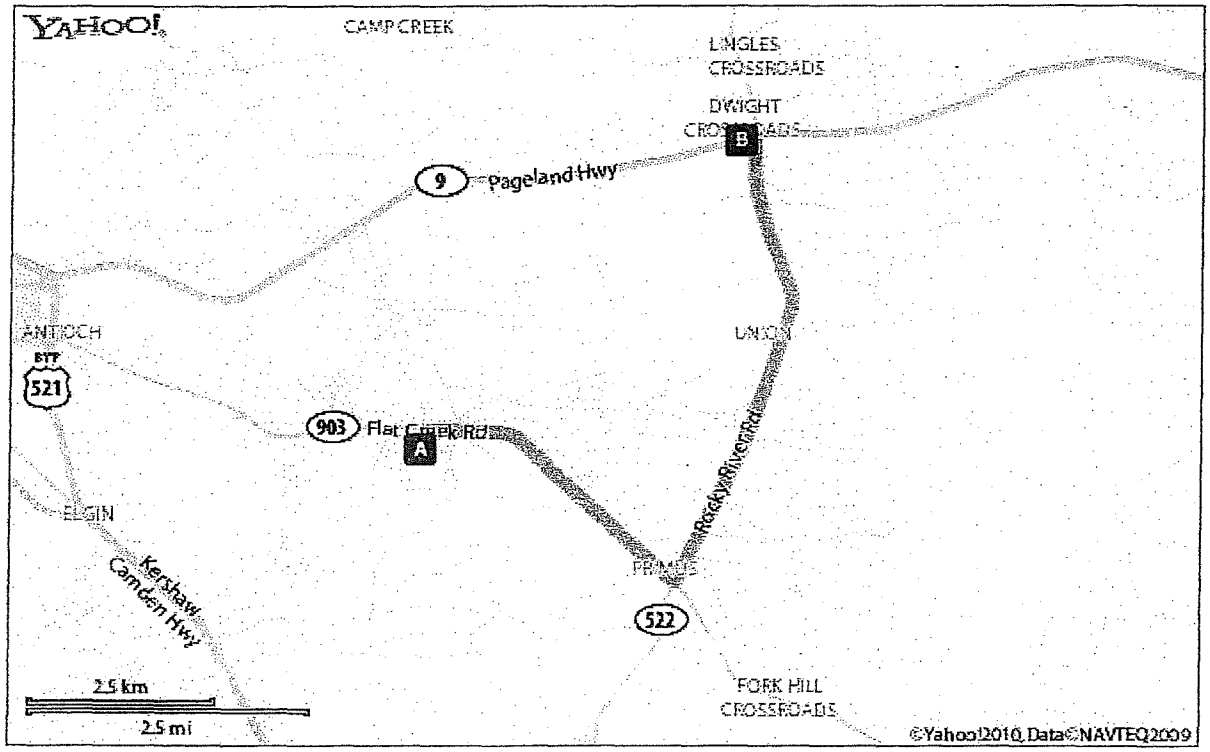
Total Time: 12 mins, Total Distance: 8 mi

MAP B

Buford Crossroads/Dwight Crossroads to Tryon St.

		Distance
A	1. **Start at 1090 TRYON ST, LANCASTER going toward JUNEAU RD**	go **0.18** mi
	2. Turn R on **FLAT CREEK RD(SC-903)**	go **3.02** mi
	3. Turn L on **ROCKY RIVER RD(SC-522)**	go **4.68** mi
	4. Turn L on **PAGELAND HWY(SC-9)**	go **0.12** mi
B	5. **Arrive at the center of DWIGHT CROSSROADS, SC**	

Time: 12 mins, Distance: 8 mi



When using any driving directions or map, it's a good idea to do a reality check and make sure the road still exists, watch out for construction, and follow all traffic safety precautions. This is only to be used as an aid in planning.

MAP B