THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SEP 29 2014

S.C. SUPREME COURT

RAYMOND EDMONDS, 304228
Petitioner,

VS.

STATE OF SOUTH CAROLINA
Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, Rule 3(c), S.C.R.C.P.

RE: PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Now Comes, Petitioner pro se, respectfully requesting this Honorable Court to relax Court rule(s) pretaining to filing fee(s). Motion is to include number of copies that must be filed with the Court, and all other respondent(s).

Petitioner is confined as an State prisoner within the South Carolina Department of Corrections at Lee Correctional Institution. However, petitioner is employed, but receives No wages for emplovment. Petitioner, MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS be so granted, petitioner So pray.

This 24 day of September, 2014

Raymond Edmonds, 304228
Lee Correctional Institution
Florence Unit - 1128
990 Wisacky Highway
Bishopville, South Carolina 29010.

STATE OF SOUTH CAROLINA

In The Supreme Court

CERTIORARI TO COURT OF APPEALS

Appellate Case No: 2010-168749

RAYMOND EDMONDS, PETITIONER,

- - VS - -

STATE OF SOUTH CAROLINA, RESPONDENT.

CERTIFICATE OF SERVICE

I, RAYMOND EDMONDS, the petitioner to the above matter, hereby declare under the penalty of perjury, that on this day, I have served a true and complete copy of petitioner's PETITION FOR WRIT OF CERTIORARI and APPENDIX, upon the Court of Appeals and Respondent, by placing copies of same, in prison mailroom

officials hands, for depositing in the United States Mail, with First Class Postage affixed, and addressed as indicated below:

THE SOUTH CAROLINA COURT OF APPEALS
Office of the Clerk
Post Office Box 11629
Columbia, South Carolina 29211

OFFICE OF THE STATE ATTORNEY GENERAL
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211

This 24 day of September, 2014

Respectfully

RAYMOND EDMONDS
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010
PETITIONER PRO SE

STATE OF SOUTH CAROLINA

In The Supreme Court

CERTIORARI TO COURT OF APPEALS

Appellate Case No: 2010-168749

RAYMOND EDMONDS,

PETITIONER,

- - VS - -

STATE OF SOUTH CAROLINA

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 234(d) SCACR

Prepared By:

RAYMOND EDMONDS
Petitioner / Pro Se

Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

I N D E X

ISSUES PRESENTED

FIRST ISSUE PRESENTED

Trial Counsel's stewardship was "unreasonably ineffective" and "prejudicial" for failing to properly present facts to support a motion to have the Court suppress evidence which was obtained by law enforcement, through an "unlawful" search warrant, against the defendant, **and/or** - the Trial Court improperly held the search warrant was valid.

SECOND ISSUE PRESENTED

Trial Counsel was **ineffective** and **prejudicial**, for failing to request a JACKSON -vs- DENNO hearing without the Court's prompting; and her failure to prepare and call any witness during this critical stage or even present a viable argument on behalf of the defense.

THIRD ISSUE PRESENTED

Due to appellate collateral counsel failing to brief "ALL" issues (both counsel's and petitioner's) as ordered by the Court; The South Carolina Court of Appeals failed to consider petitioner's Pro Se Brief issues on the merits; resulted in an unreliable determination of the facts.

FOURTH ISSUE PRESENTED

Whether the Court of Appeals erred in ruling petitioner's claims were not preserved for appellate review.

S T A T E M E N T

Petitioner was convicted of trafficking in crack cocaine, unlawful possession of a weapon, and possession with intent to distribute marijuana after a jury trial held before the Honorable Clifton Newman in Richland County on August 5, 2004. Respective sentences of twenty-five (25) years, five (5) years, and ten (10) years were imposed. Kana Johnson, Esquire, was petitioner's trial counsel.

Petitioner timely appealed his conviction, and the South Carolina Office of Appellate Defense, was appointed to represent petitioner on appeal. Appellate counsel filed a brief pursuant to ANDERS -vs- CALIFORNIA, 386 U.S. 738. Subsequently, the appeal was dismissed by the Court of Appeals on April 25, 2006. STATE -vs- EDMONDS, Op. No. 2006-UP-158.

Petitioner filed an Application for Post-Conviction Relief on October 8, 2007, with an attached Memorandum In Support. Respondent filed their Return on October 9, 2008. After petitioner was appointed counsel, Tricia Blanchette, Esquire, of Columbia, counsel filed an Amendment to petitioner's Application For Post-Conviction Relief on July 29, 2009. An Evidentiary Hearing was convened on August 14, 2009, before the Honorable G. Thomas Cooper, Jr., Circuit Court Judge.

Petitioner was present and was represented by Tricia Blanchette, Esquire. Respondent was represented by Brian T. Petrano, Assistant Attorney General. Petitioner, trial counsel,

Angela Williams, and Philana James testified at the hearing.

Witness R.T., (a minor child), did not testify because the State stipulated to testimony that the child was present at the residence when law enforcement arrived and remained there throughout the process, and if necessary, was available to testify to the same.

On February 5, 2010, Judge Cooper issued an Order denying and dismissing petitioner's Application for Post-Conviction Relief. Counsel subsequently filed a RULE 59(e) motion which was denied on July 29, 2010.

Petitioner timely appealed Judge Cooper's denial of his Application for Post-Conviction Relief to the South Carolina Supreme Court. The Court pursuant to RULE 243(l), SCACR, transferred the matter to the South Carolina Court of Appeals. The Office of Appellate Defense was appointed to represent petitioner on appeal. A JOHNSON Petition was filed by Appellate Defender, Robert M. Pachak, on behalf of petitioner. The Court granted petitioner (45) forty-five day to provide the Court with any information (issues) relevant to these proceedings.

On January 14, 2013, the Court granted petitioner certiorari. After oral arguments the Court denied petitioner relief. On July 7, 2014, petitioner petitioned the Court pursuant to RULE 221 SCACR for rehearing. On the 26th day of August, 2014 the Court denied petitioner's petition.

This Petition now follows:

F I R S T A R G U M E N T

Trial Counsel's stewardship was "unreasonably ineffective" and "prejudicial" for failing to properly present facts to support a motion to have the Court suppress evidence which was obtained by law enforcement, through an "unlawful" search warrant, against the defendant in this case. STRICKLAND -vs- WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052 (1984) and U.S. -vs- CRONIC, 466 U.S. 648, 104 S.Ct. 2039 (1984): - and/or the Trial Court improperly held the search warrant was valid. U.S. -vs- WEAVER, 99 F.3rd 1372 (1996): OWENS -vs- LOTT, 372 F.3rd 267 (U.S. Ct. of App.)(4th Cir)(2004).

The APPIDAVIT to support the search warrant "FAILED" to establish the credibility of the informant's claim;... nor did it support a reasonable probability of criminal activity at this particular residence, (e.g. -- probable cause determination).

Appellant argues the following three (3) particulars:

FIRST PARTICULAR

When reviewing a magistrate's decision to issue a search warrant, an appellate court must be able to consider the totality of the circumstances surrounding the claim. U.S.C.A. Const. Amend. IV;... S.C. Const. Art. 1 § 10;... S.C. Code Ann. § 17-13-140;... STATE -vs JONES, 536 S.E.2d at 678 (2000).

The affidavit which Deputy Poole drafted to support the

search warrant -- failed to contain prudent information to establish the reliability of informant's information and probable cause determination; by failing to properly contained sworn testimony concerning an explicit and detailed description of the alleged wrongdoing **AND** the foundation of informant's learned knowledge to the alleged criminal activity relevant to the defendant's private residence. U.S. -vs- WEAVER, 99 F.3rd 1372 (1996).

ADDITIONALLY, ... the affidavit "omitted any reference to the following:

1.] Failed to "name," "describe" or "identify" any individual(s) which were involved in the criminal activity, or present at the location, the informant claims to have "observed," crack cocaine being stored; and,

2.] Failed to explicitly identify or describe any location within the residence the informant "claims" to have "observed" crack cocaine being stored; and,

3.] Failed to provide any reliable information relevant to crack cocaine transactions being conducted at this residence, and by whom..

[T]he information provided by the informant to police could not provide any reasonable probability that any actual drug

activity or suspects would be at this private residence, and said information could not be corroborated even through investigative works and surveillance of the residence, conducted by the Richland County Sheriff's Department (narcotic officers), to substantiate the credibility of informant's alleged claim, AND no oral testimony was used to supplement the search warrant affidavit.

Therefore, the only reasonable justification presented to support probable cause determination was by an **assumption**, and "NOT" pursuant to the principles found in S.C. Const. Art., 1 § 10 and U.S.C.A. Amend. IV.

South Carolina Code mandates that a search warrant shall be issued only upon affidavit sworn to before a magistrate, municipal judicial officer, or judge of court of record. S.C. Code Ann. § 17-13-140.

The affiant's written affidavit relied solely upon an assumption -- (that crack cocaine was being stored at this residence), without explicit facts in support (SEE: 1 through 3 above), -- which in turn, mislead the magistrate when evaluating the informant's credibility and making probable cause determination. STATE -vs- JONES, 536 S.E.2d at 678 (citing: FRANKS -vs- DELWARE, 438 U.S. 154, 98 S.Ct. 2674 (1978). The FRANKS analysis applies to acts of omission in which explicit facts are left out of an affidavit. The appellant's attack is more than conclusory and makes this allegation of deliberate falsehood or of reckless disregard for the truth, by a law enforcement officer, to obtain the unlawful search warrant. This,

in turn, erodes the basis upon which a magistrate could find probable cause to search appellant's residence. There is no doubt that Officer Poole intended to mislead the magistrate in obtaining the search warrant. When an omission is combined with an affirmative misleading assumption, it reveals that the depth of the prevarication perpetrated by Officer Poole undermines any remaining legitimacy the affidavit might support. Such practice, by those in control, may create a foundation towards implications against the prohibitions of the FOURTEENTH AMENDMENT of the U.S. Constitution and ARTICLE 1, § 3 of the S.C. Constitution.

The affiant's "assumed" characterization of information, that was said to have been provided by an informant, was the equivalent of not having an affidavit at all, for the purpose of statutory requirement -- that a search warrant shall be issued only upon affidavit sworn to before a magistrate, municipal judicial officer, or judge of court of record, -- where the magistrate depends totally on the basis of information, and not an assumption, in order to determine if probable cause existed. JONES Id. at 679. SEE Petition For Reconsideration (Volume Two, pages 742-747).

The Court of Appeals has concluded, that because of the utilization of misleading information (assumed), in affidavits, the veracity of the information can not be determined, under the "totality of circumstance test." JONES, Id. at 679. Under these circumstances, this Court is required by the "Constitution" to invalidate the search warrant where the omission and assumption failed to establish probable cause determination. FRANKS, 438

U.S. 154, 98 S.CT 2674 (1978).

A reviewing court must be able to consider all the circumstances, including the "status" ... the "basis of knowledge ... and the "veracity of the information," when determining whether or not probable cause existed to issue a search warrant. SEE: STATE -vs- BELLAMY, 336 S.C. 140, 519 S.E.2d 347 (1999).

ALSO REVIEW: STATE -vs- DRIGGERS, 322 S.C. 506, 473 S.E.2d 57 (1996) (nonconfidential informants and eyevitness have more reliable credibility than a confidential informant). Thus, more defining facts should have been established to evaluate the confidential informant's credibility, prior to the issuance of any search warrant by the issuing magistrate; especially, given the fact that police investigative works and surveillance could not collaborate, the alleged criminal activity; nor support any information provided by said informant. U.S. -vs- WEAVER, 99 F.3rd 1372 (1996).

THEREFORE, the evidence obtained by law enforcement through the unconstitutional search warrant, against the defendant, should have been suppressed, by the Trial Court, and/or rendering trial counsel's stewardship in the presentation of facts to have said evidence suppressed was ineffective,... because the supporting affidavit which contained misleading "assumptions" and the "omissions of reliable facts" -- could not provide credibility to the informant's alleged claim; nor could said information be corroborated by police investigative works and surveillance -- was prejudicial and circumvented the affidavits'

requirement mandated in S.C. Code Ann. § 17-13-140 (1985) and STATE -vs- McKNIGHT, 291 S.C. 110, 352 S.E.2d 471 (1987); STATE -vs- JONES, 536 S.E.2d 675 (2000)(citing: FRANKS -vs- DELWARE, 438 U.S. 154, 98 S.Ct. 2674 (1978)); U.S. -vs- WEAVER, 99 F.3rd 1372 (1996);OWENS -vs- LOTT, 372 F.3rd 267 (U.S. Ct. of App.)(4th Cir.)(2004); U.S.C.A. Amend. IV; and S.C. Const. Art. 1, § 10.

Such practice, when intentional, by those in control, may lay the foundation towards prohibitions of the FOURTEENTH AMENDMENTS to the U.S. Constitution and S.C. Const. Art. 1, § 3, in criminal matters.

SEE: APPELLANT'S APPENDIX: (Volume Two; page 686, 687 and 688). "Search Warrant, Affidavit In Support and Return."

SECOND PARTICULAR

On or about the 11th or 12th day of May, 2003, Deputy Michael Poole, a narcotics officer employed by the Richland County Sheriff's Department, allegedly claims to have received information from a confidential informant who claims to have observed drugs being stored at a private residence. Shortly after receiving this information, Deputy Poole states the informant led him to the location where he, the informant, claims to have observed the criminal activity.

SUBSEQUENTLY,... Deputy Poole drafted a proposed "ALL PERSONS SEARCH WARRANT" and executed an affidavit, which he presented to a state magistrate on the 14th day of May, 2003. The affidavit stated the following:

> Within the last seventy-two (72) hours a confidential and reliable informant of the Richland County Sheriff's Department has observed crack cocaine stored at the described location. The informant is reliable in that it has provided information on at least four (4) occasions that has lead to at least six (6) arrests and the seizure of illegal drugs. Through the affiant and other Richland County Sheriff's Department Narcotic Officers experience in drug enforcement, it is known that subjects at the scene of illegal drug distribution and/or possession commonly have drugs in their possession and also stored and/or transport in vehicles in their possession and control.

Based solely upon the informant's unsupported statement, Deputy Poole sought an "ALL PERSONS SEARCH WARRANT" for "crack cocaine, paraphernalia and paperwork associated with the sale, storage and use of crack cocaine." However, Deputy Poole's own testimony at defendant's criminal trial was that,... after the warrant was signed by the magistrate, and prior to the actual service of the warrant, he and other officers set up surveillance of the location, but could not collaborate the informant's claim; nor did they observed any unlawful drug or criminal activity or suspects. **SEE: Appellant's APPENDIX:** (Tr.Tr., page 52, lines 8 through 25 and page 53, lines 1 through 15.

Nevertheless, within seventy-two (72) hours from the time the confidential informant claimed to have observed crack cocaine being stored at this private residence, -- the issuing of the warrant, -- and the surveillance by Richland County Sheriff Department, -- the warrant was executed at 3501 Piedmont Avenue, in Columbia, South Carolina, on the 15th day of May, 2003.

The defendant, his sister, wife, brother-in-law, two small children and a family friend were at the residence at the time the warrant was served. Drugs were found at the location and the defendant was arrested and charged.

The FOURTH AMENDMENT ensures that citizens are "secure in their persons,... against unreasonable searches and seizures." A principle drawn from this Amendment prohibits the issuance of a search warrant without "probable cause, supported by Oath and affirmation, and must particularly describe the place to be

searched, and the person(s) and thing(s) to be seized." OWENS -vs- LOTT, 372 F.3rd 267 (U.S. Ct. of App.)(4th Cir)(2004) and U.S. -vs- WEAVER, 99 F.3rd 1372 (1996).

WHEREBY,... the issuing magistrate must, -- make a practical, common-sense decision,... and must be given all the circumstances, -- to determine whether there is a fair probability that contraband or evidence of a crime will be found in a particular place. S.C. Code Ann. § 17-13-140.

AND,.... under what circumstances, an "ALL PERSONS SEARCH WARRANT" is valid under the Fourth Amendment may present a novel issue in this state.

Appellant will argue that a premises search warrant that also authorizes the search of "ALL PERSONS" found on the premises contravenes the particularity requirement of the Fourth Amendment and is invalid on its face. OWENS -vs- LOTT, supra., and STATE -vs- COCHRAN, 217 S.E.2d 181 (Ga. Ct. of App.)(1975)

ADDITIONALLY... there is an "uncomfortable similarity between [the] "ALL PERSONS" warrant and [the] "GENERAL WARRANT," concluding that it's either the same as a General Warrant, or it is not sufficiently particular to satisfy the requirement of the Fourth Amendment's Warrant Clause. STATE -vs- COCHRAN, 217 S.E.2d 181 (Ga. Ct. of App.)(1975); OWENS -vs- LOTT, supra., and U.S. -vs- WEAVER, supra.

The ALL PERSONS search warrant was unconstitutional under S.C. Const. Article 1, § 10; and U.S. Const. Amendment IV,

because there was no "PROBABLE CAUSE" particularized with respect to YBARRA -vs- ILLINOIS, 444 U.S. 85, 62 L.Ed.2d 238, 100 S.Ct. 338 (1979), in that the connection between the proximity of a crime and involvement in the crime, [is] too tenuous to support, [an] "ALL PERSONS SEARCH WARRANT."

In this case, Deputy Poole's affidavit did not supply sufficient information to establish probable cause that everyone who happens to be on the premises during the execution of the search warrant would be involved in the storage of crack cocaine.

The only justification presented to the state magistrate for the issuance of a search warrant -- much less an "ALL PERSON SEARCH WARRANT" -- was Deputy Poole's own statement, that he and other "officers experience in drug enforcement, -- had experienced in the past that subjects present at the scene of [an] illegal drug distribution, commonly have drugs in their possession."

This generalization may undoubtedly be true, but it did not provide the kind of probability that every person found at the scene was there to partake in one side of a drug transaction or another.

In sum, the search warrant authorized the search of "ALL" individuals at the residence, based solely on -- nothing more than their proximity to a place where alleged criminal activity may or may not have occurred. And, as the United States Supreme Court has explained, "a person's mere propinquity" to suspected

criminal activity does not, without more, give rise to probable cause. YBARRA id. at 91. **ALSO REVIEW:** OWENS -vs- LOTT, 372 F.3d 267 (U.S. Ct. of App.)(4th Cir.)(2004) and U.S. -vs- WEAVER, supra.

THEREFORE, the evidence obtained by law enforcement through the unconstitutional ALL PERSONS SEARCH WARRANT, should have been suppressed, by the Trial Court, **and/or** rendering trial counsel's stewardship in the presentation of facts to have said evidence suppressed was **ineffective** and **prejudicial**,... because Deputy Poole's affidavit was based upon an assumption, and not explicit enough to reasonably support a fair probability that "ALL PERSONS" present at this residence at the time the warrant was executed, were partaking in illegal drug activity. OWENS -vs- LOTT, 372 F.3rd 267 (U.S. Ct. of App.)(4th Cir)(2004); U.S. -vs- WEAVER, 99 F.3rd 1372 (1996); STATE -vs- JONES, 536 S.E.2d 675 (2000); U.S.C.A. Amend. IV, and S.C. Const. Art. 1, § 10.

Such practice, when intentional, by those in control, may lay the foundation towards the prohibitions of the **FOURTEENTH AMENDMENT** of the United States Constitution, and Art. 1, § 3 of the South Carolina Constitution, in criminal matters.

SEE: APPELLANT'S APPENDIX: (Volume Two, page 686, 687 and 689). "Search Warrant, Affidavit In Support and Return."

THIRD PARTICULAR

The admission of evidence obtained by law enforcement, under a defective search warrant was **prejudicial** against appellant's defense. Where the evidence seized under said warrant was placed into evidence at trial, by the State, without sufficient objections, and attributed to appellant with absolutely no showing that the seized evidence matched any items allegedly seized from appellant's residence, or to any analysis conduct by law enforcement.

Appellant will argue the search warrant was invalid because it was never properly executed and returned as required by S.C. Code Ann. § 17-13-140.

Appellant's attack on the legality of the search warrant is not limited to an assertion that the State failed to fulfill the ministerial requirement of returning the warrant to the issuing judge within the ten day period as prescribed by law. Rather, his challenge is more encompassed, albeit in general terms, on an assertion that the "incomplete" - "unsigned" - and "unsworn" RETURN was never properly executed or completed. THEREFORE, it was legality defective (emphasis added).

This being the case, appellant asserts he was prejudiced from the State's complete failure to produce a search warrant and a "completed" - "signed" and "sworn" RETURN to the warrant, is manifested error in light of the State's inability to link items

allegedly seized from appellant's residence and/or any analysis conduct by law enforcement to appellant.

As stated in GILES -vs- STATE, 271 A.2d 766, 767 Md.App.1970):

> A valid search warrant properly executed and returned may produce evidence sufficient to convict a person accused of a crime. A defective and invalid search warrant produces confusion, waste and injustice, to an accused or to society, or to both

Under these circumstances, appellant argues that his rights have been violated by the failure of the State to produce a search warrant with an appropriate RETURN for the Trial Court to review; and that the prejudiced was compounded when the evidence seized under this defective warrant (RETURN) was placed into evidence, without and/or over any objection by the defense; where said evidence was attributed to appellant - "with no showing" - that the items entered into evidence against, actually matched items allegedly seized from his residence and/or to any analysis conduct by law enforcement. Thus, **exclusion** of the evidence obtained under this defective warrant would be appropriate. **SEE:** STATE -vs- McKNIGHT, 291 S.C. 110, 352 S.E.2d 471 (1987) (holding when the State is unable to demonstrate a good faith attempt to comply with the statute authorizing the "issuance" - "execution" - and "return" of a search warrant (S.C. Code Ann. § 17-13-140), **"EXCLUSION"** is the appropriate remedy. **SEE:** STATE -vs- FREEMAN,

459 S.E.2d at 872 (S.C.App. 1995).

THEREFORE, the evidence obtained by law enforcement through the invalid search warrant, should have been suppressed, by the Trial Court, **and/or** rendering trial counsel's stewardship in the presentation of facts to have said evidence suppressed was **ineffective** and **prejudicial**,... because the State was unable to demonstrate a good faith attempt to comply with the statute authorizing the ISSUANCE, EXECUTING and RETURN of a search warrant,... **prejudicing** (emphasis added), appellant by entering into evidence and attributing said evidence to him with no showing that such evidence matched any items, and/or any analysis conduct by law enforcement,... of the items allegedly seized from the appellant's residence (3501 Piedmont Avenue in Columbia, South Carolina on the 15th day of May, 2003). S.C. Code Ann. § 17-13-140; U.S.C.A. Amend. IV; S.C. Const. Art. 1, § 10; STATE -vs- McKNIGHT, 291 S.C. 110, 352 S.E.2d 471 (1987) and STATE -vs- FREEMAN, 459 S.E.2d 867 (S.C.App. 1995)

Such practices, when intentional, by those in control, may lay the foundation towards the prohibitions of the FOURTEENTH AMENDMENT of the United States Constitution and Art. 1, § 3 of the South Carolina Constitution, in criminal matters.

SEE: APPELLANT'S APPENDIX: (Volume Two, page 686, 687 and 688). "Search Warrant, Affidavit In Support and Return."

SECOND ARGUMENT

Trial Counsel was ineffective for failing to request a JACKSON -vs- DENNO hearing - "without" - the Court's prompting -- and her failure to call any witness during such critical stage or present any viable arguments on the defenses' behalf.

At the evidentiary hearing appellant and trial counsel testified that they reviewed the "DISCOVERY" together. SEE: APPELLANT'S APPENDIX, (Volume Two, page 607, lines 22-24; page 649, lines 23-25, and page 650, lines 1-5) "PCR Hearing Transcripts."

At trial Investigator Poole testified in the presence of the jury, that appellant made an oral statement, "all the drugs in the house belonged to him" SEE: APPELLANT'S APPENDIX, (Volume One, page 76, lines 13-25, page 77, lines 1-25, page 78, lines 23-25, and page 79, line 1), "Trail Transcripts."

At such time, trial counsel did not object to the questing of Investigator Poole, that appellant "spoke up and stated all the drugs found in the house belonged to him." Nor did trial counsel object, thereafter, when Investigator Poole continued, in the presence of the jury, with testimony of what appellant said and did.

During the PCR's evidentiary hearing trial counsel testified that she remember the trial court stopping the trial and asked her, if she had been provided a copy of said statement in

discovery. Counsel stated, "she had not." SEE: APPELLANT'S APPENDIX, (Volume Two, page 654, lines 18-25 and page, 655, lines 1-6), "PCR Transcripts."

Appellant asserts that he was denied his 6th Amendment right, when trial counsel failed to timely move before the trial court for a JACKSON -vs- DENNO hearing -- without first having been prompt by the trial court, whereby, counsel failed to call any witnesses or present a valid argument, at said hearing on appellant's behalf,... resulted in appellant being denied his right to a fair trial; which, is protected under the 14th Amendment, Due Process Clause.

The Trial Record and PCR Record conclusively prove that counsel did not object to this prejudicial testimony by Investigator Poole, in the presence of the jury, where appellant was to have made numerous oral statements claiming all the drugs found at this residence. Nor does appellant deny claiming the drugs. However, appellant does assert that any and all oral statements made by him, were the product of "COERCION" from Investigator Poole's "Threats" - threats made during the execution of the search warrant, that everyone present namely appellant and his wife (Sabrina Edmonds), appellant's sister (Angela Williams), along with her husband (Charles Trezvant), and (Mr. Thompson), a close friend of appellant's family, would be arrested and the Department of Social Services (DSS) would be contacted because of the mere presence of (R.T. and J.W.), minor

children being at the residence,... "if" (emphasis added), no one took responsibility for the drugs found, (**emphasis added**).

Appellant would bring to the attention of this Court, that at no time during the execution of said warrant, or during any questioning by law enforcement, that any of the above individuals were ever advised of their "rights" pursuant to: MIRANDA -vs- ARIZONA, 384 U.S. 436, 444, 478, 479, 86 S.Ct. 1602, 1612, 1630. (holding that - Unless and until these warning or a waiver of these rights are demonstrated at the trial, no evidence obtained in the questioning may be used against the accused).

A reading of the record as a whole with special consideration to counsel's testimony that she had not been provided a copy of appellant's oral statement in the Discovery, at the very least substantiates appellant's allegation of ineffectiveness, with implications towards a BRADY violation.

Investigator Poole testified during trial, (quoting), "I spoke with Mr. Edmonds and I guess to everybody there"... **SEE: APPELLANT'S APPENDIX**, (Volume One, page 76, line 6-7) "Trial Transcripts,"... "I said if there were drugs in the house to tell me, that it would make it easier if someone wanted to cooperate and tell me where the drugs were'... **SEE: APPELLANT'S APPENDIX**, (Volume One, page 76, lines 6-12), "Trial Transcripts."

It is clear that the State is setting it's ground for appellant's oral statement as with the very next question asked.

Q. Did Mr. Edmonds tell you or say anything that you recall, that you heard at the time this suspicious substance was found under the sofa?

A. Mr. Edmonds spoke up and stated all the drugs in the house belonged to him. He stated he had additional drugs in the bedroom.

SEE: APPELLANT'S APPENDIX, (Volume One, page 76, lines 13-18), "Trial transcripts."

At no time did counsel object. FURTHERMORE, the records before this Court will conclusively prove that, Investigator Poole's testimony continued in the presence of the jury.

Q. So Mr. Edmonds, when this substance was found in the living room, then claims all the drugs in the house.

A. Yes, ma'am.

SEE: APPELLANT'S APPENDIX, (Volume One, page 77, lines 1-4), "Trial Transcripts."

Q. Did Mr. Edmonds tell you anything else?

A. After I found the bag, he stated there was a gun underneath the bed in close proximity to the bag.

SEE: APPELLANT'S APPENDIX, (Volume One, page 77, lines 12-14), "Trial Transcripts."

The trial record conclusively proves the only objection made to the testimony of Investigator Poole, relevant to appellant's oral statements, is when counsel objected to the State's leading questions. **SEE: APPELLANT'S APPENDIX**, (Volume One, page 79, lines

2-4), "trial transcripts.

Appellant, contends that, counsel should have objected the first time testimony was given concerning any oral statement made by appellant, in the presence of the jury. FURTHERMORE, at this time, counsel should have moved before the Court for a mistrial, based on the prejudicial testimony of the State's leading witness, "Investigator Poole." Additionally counsel should have moved for a BRADY violation, for not being providing the oral statement in discovery.

Trial counsel had more than ample time and opportunity to raise and object, to said testimony, based on her knowledge and what was revealed to her, and when.

When asked whether counsel was given Discovery prior to trial, as to the contents of appellant's oral statement admitting that the drugs were his. Counsel explained that, the extent of "discovery," that she has been given states that... "when questioned - defendant Edmonds took investigating officer into the bedroom and showed me a paper bag"... That's the extent of it. So no, your Honor, as far as [those] oral statements other than what has happened [in] conversation, It's not written anywhere that he actually made these statements... **SEE: APPELLANT'S APPENDIX**, (Volume One, page 81, lines 2-13), "Trial transcripts."

This part of the record conclusively substantiates appellant's allegations that he was denied his 6th Amendment right to counsel and his 14th to Due Process. These rights were

violated by counsel's own admission, that nothing was written anywhere, (he) made these statements. But counsel allowed ample amounts of testimony concerning an alleged confession without an objection, in an attempt to rectify the situation.

Furthermore, appellant must point out that counsel had more than one basis on which to move prior to trial for a JACKSON -vs- DENNO, hearing and for a mistrial:... when the trial court asked whether the State has informed counsel that, "the defendant admitted that the drugs were his at the scene." Trial counsel indicated that, "the solicitor stated that -- he showed, gave a grand tour of the house, and (said) "I'm guilty, I'm guilty, It's just me" ... **SEE APPELLANT'S APPENDIX** (Volume One, page 81, lines 14-20) [Trial Transcripts.

Appellant would assert that what was conveyed to counsel, "I'm guilty, I'm guilty, It's just me," would and should have been considered as an oral confession. Clearly, counsel should have been prepared, ahead of time, to motion the trial court for a (JACKSON -vs- DENNO) hearing, far prior to the above situation even occurring; especially, in the presence of the jury.

This now sets the pace for appellant's second part of his assertion - that - counsel failed to call any witness or present any argument on his behalf, in the aforementioned DENNO hearing. Thus, denying him at such critical stage, the effective assistance of counsel, and a fair and impartial trial.

The testimony of trial counsel, that she was informed by the

State that her client said, "I'm guilty, I'm guilty, It's just me," - and - after showing and pointing to (all) the drugs, then it would seem unreasonable and unprofessional not to investigate or question your client as to the extent and nature of his statement(s); and adequately prepare for a JACKSON -vs- DENNO hearing as to the voluntariness of the statement given. Where the Burden would be upon the State to (prove) that appellant waived his Miranda Rights and any statement(s) made were made voluntarily without any threats, coercion, or any other police tactics by counsel placing any evidence submitted through an adversarial testing procedure.

Counsel's in-actions in this matter, allowed the State to shift the burden of proof, relevant to the voluntariness, upon the defense.

Appellant asserts, although he was finally given a JACKSON -vs- DENNO hearing, the damage had already been done, because the jurors heard testimony of his confession through the testimony of Investigator Poole, when trial counsel failed to object. thus counsel failed at a critical stage to put the State's case through the proper adversarial testing procedures. STRICKLAND -vs- WASHINGTON, 466, U.S. 668, 104 S.Ct. 2052 (1984) and U.S. -vs- CRONIC, 466 U.S. 648, 104 S.Ct.2039 (1984).

Appellant was (never) afforded a hearing -- "first," to determine the voluntariness of his oral statement(s) -- by the trial court, and "then" to the jury for their determination.

In this instance, the statements were presented to the jurors, before the Court held any hearing to determine its voluntariness. Then the court ruled the statements were voluntary. Either way, the jurors had already heard that the defendant on trial for drugs charges has already claimed and showed Investigators where (all) the drugs were.

In STATE -vs- CORN, 426 S.E.2d 324 (S.C.App. 1992), the Court held - when a defendant waives his Miranda Rights and gives a statement, the burden is on the State to prove his rights were voluntarily waived by a preponderance of the evidence. STATE -vs- FRANKLIN, 299 S.C. 133, 382 S.E.2d 911 (1989). The trial judge's determination of the voluntariness of a statement (must) be made on the totality of the circumstances, including the background, experience and conduct of the accused. Id. 382 S.E.2d at 914.

Although the PCR Court's Order of Dismissal address the fact that "a DSS threat could in theory be found to be an improper influence rendering the appellant's statement involuntary," citing CORN. The trial record conclusively proves that there was no request made to determine the voluntariness of any of the statements made before the jury heard testimony of the confession, was in violation of JACKSON -vs- DENNO.

The voluntariness of appellant's statements were never established beyond a reasonable doubt,prior to jurors being presented such testimony. Trial counsel failed to move before the trial court for a DENNO hearing, even with the knowledge that her client, "showed where all the drugs were" and said, "I'm guilty,

I'm guilty, It's just me," AND counsel failed to call any witnesses during this stage; thus, rendering counsel at the most -- "ill prepared" for the DENNO hearing.

It is appellant's contention that had counsel acted as a reasonable effective counsel, based on the knowledge of her client's statement, she should have motioned the Court prior to trial for a JACKSON -vs- DENNO hearing. FURTHERMORE, she would have had ample opportunity to prepare and interview the witnesses that were present when the Search Warrant was executed. Witnesses which were "eyewitness to the police threats, -- threats that, "If no one took responsibility of the drugs found, then everyone present during the execution of the warrant will be arrested and DSS contacted, because of the presences of minor children." This would have prove appellant's statement was involuntary as alleged by appellant.

In STATE -vs- CREECH, 441 S.E.2d 635 (S.C.App. 1993), the Court held:

> Assault defendant was entitled to evidentiary hearing to determine voluntariness of statement allegedly given to police, before jury heard statement, even if he was not in custody at the time the statements were made; instead, custody was one factor that would be considered in determining voluntariness."

In CREECH the defendant challenged the use of the statement in that [he] denied ever making it, that Court held that, "under these circumstances, the trial court was required to first

determine if the statement was in fact made. If the Court found that the statement was in fact made, then the Court "must hold a JACKSON -vs- DENNO, hearing to determine the voluntariness of the statement."

Appellant contends that he also must and should have been given that same consideration. Although at no time has appellant ever denied making an oral statement claiming the "contraband" found in his residence. Appellant has consistently held that, his oral statement was not voluntary in that he was "coerced" by threats of police officers that were executing the search warrant; that "DSS" would be contacted if no one took responsibility for the drugs found.

The Court held in CORN, supra., "A confession may not be extracted by any sort of threats or violence, or obtained by any direct or implied promise; however slight, or by the excertion of improper influence." citing STATE -vs- ROCHESTER, 301 S.C. 196, 391 S.E.2d 244 (1990).

Had trial counsel properly prepared for a DENNO hearing with the information she had, that her client, "showed, gave [him] a grand tour of the house, pointing out all the drugs,... and said I'm guilty, I'm guilty, It just me," **AND** discussed this issue with her client, the fact that threats were made, could be the bases for the determination of voluntariness of appellant's statement(s). FURTHERMORE, counsel had the opportunity to call many of the individuals that were present at the residence during execution of the warrant. The Trial Court would have had a

broader basis in making its determination as to the voluntariness of appellants' statement if counsel would have called said witnesses to testify during the JACKSON -vs- DENNO hearing, stage of the trial. Their testimonies would have conclusively proven that in fact a **"threat of arrest"** and **"DSS"** was made at the time of the execution and search of appellant's residence, under said warrant. As the Court ruled in CORN, supra., the testimony of the officers conceding they informed CORN, that his wife could be arrested .... and that their children taken from them, amounted to an exertion of improper influence rendering Corn's statement involuntary."

Appellant, claims he was entitled to this fact finding method before the jury heard and considered any testimony relevant to appellant statement. **SEE:** CREECH, supra.

This is requirement of the DUE PROCESS CLAUSE, in the 14th Amendment, appellant was greatly entitled too. But due to counsel's failure to, but not limited to: (A)... prepare for trial, (B)... investigate all surrounding circumstances, and (C)... to call potential witnesses, she deprived appellant of his 5th, 6th and 14th Amendment rights to a fair and impartial trial.

The standard is written in stone. A defendant has a right to the effective assistance of counsel under the 6th Amendment of the United States Constitution. U.S. -vs- CRONIC, 466 U.S. 648 (1984) and STRICKLAND -vs- WASHINGTON, 466 U.S. 668 (1984).

There is a strong presumption that trial counsel rendered

unprofessional judgement in making all significant decisions in this case. ARD -vs- CATOE, 372 S.C. 318, 642 S.E.2d at 596.

Appellant is of the belief and position, that had counsel moved, prior to trial, for a DENNO hearing and presented witnesses who were there and willing to testify, his statements would have been thrown out as involuntarily, because of the police threats; otherwise, he would have never been found guilty without this coerced statements.

NOTE: Appellant was found "NOT GUILTY" by this same jury for Indictment No: 2003-GS-40-3635, "Possession with the Intent to Distribute Cocaine (3rd)."

SEE: APPELLANT'S APPENDIX, (Volume Two, page 600, lines 14-16), "PCR Transcripts"

As the Court held in LOUNDS -vs- STATE, 380 S.C. 454, 670 S.E.2d 646 (S.C. 2008), "A criminal defense attorney has a duty to perform a reasonable investigation. ARD Id. 642 S.E.2d at 597.

While the scope of a reasonable investigation depends upon a number of issues, at a minimum counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Id. at 642 S.E.2d at 597.

In the instant case, the PCR Court found the testimony of Investigating Officers: Poole, Lutz, Martin, and Linfert,... that -- "appellant's statements were spontaneous and/or voluntary;

where the trial judge need not find the statement voluntary beyond a reasonable doubt, that task is for the jury. **SEE: APPELLANT'S APPENDIX**, (Volume Two, page 710). "PCR Order."

FURTHERMORE, the PCR Court found that, "It is not unreasonable for trial counsel not to elicit testimony (even if credible) from Appellant and/or his sister and/or a minor child to rebut the credible testimony of the four law enforcement officers... even if the Appellant, his sister, and the minor child had testified, it would not have outweighed the credible testimony of the four law enforcement officers... **SEE APPELLANT'S APPENDIX** (Volume Two, page 710 and 711). "PCR Order"

Appellant asserts that the PCR Court's finding is itself unreasonable in light of the facts before it. Since counsel never presented any testimony on the DENNO hearing as to the threats made by the Officers that -- "DSS" would be contacted, -- when the only testimony heard, at said hearing, was that of law enforcements, own version,... claiming no threats were made. THEREFORE, it would be unreasonable to believe that any Court would have found Appellant's oral statement was voluntary in light of appellant's testimony, his sister's testimony and a minor child's testimony - all testifying to the same fact that:... "a DSS and arrest threat was made."

ADDITIONALLY, the PCR Court referred to STATE -vs- MILLER, 375 S.C. 370, 652 S.E.2d 444 (S.C.App. 2007), in evaluating appellant's DENNO hearing, the Court claim that Miller's hearing was similar to appellant's hearing, in that, the trial judge need

only find the State to establish the voluntariness of the statement by a preponderance of the evidence. At the Miller hearing, Miller did not testify -- why -- Miller was tried in his absentia. At appellant's hearing he was available and witnesses were available to rebut the credibility of those law enforcement officers testimony; however, trial counsel was unprepared to present a defense in this critical stage of appellant's criminal trial.

As to the PCR Court's finding on the credibility of appellant and/or his sister and/or the minor, as "self serving and not credible that he claimed the drugs belonged to him, because of an alleged threat to -- arrest all adults and contact DSS -- is conclusively refuted by the record.

The trial transcripts along with trial counsel's testimony clearly lends credibility to appellant; his sister and the minor child's' testimony. Counsel's only reasoning for not calling any witnesses to the DENNO hearing was simply. "It didn't occur to me too. **SEE APPELLANT'S APPENDIX**, (Volume Two, page 659, lines 14-16. - (emphasis added), "PCR Transcripts."

FURTHERMORE, the PCR Record shows no inconsistency to the testimony given by appellant's witnesses. What the record does reveal is that there was a DSS THREAT made by police officers prior to appellant taking ownership of the drugs found -- **AND** -- witnesses were available for the DENNO hearing, but were not called. **SEE: APPELLANT'S APPENDIX**, (Volume Two, page 664, lines

24-25; page 665, lines 14-25 and page 666, lines 1-3), "PCR Transcripts."

THIRD ARGUMENT

Due to appellate collateral failing to brief "ALL" issues (both counsel's and petitioner's) as ordered by the Court; The South Carolina Court of Appeals failed to consider petitioner's Pro Se Brief issues on the merits; resulted in an unreliable determination of the facts.

Relevant Facts

The record reflects, on November 24, 2010 the Court received Counsel's JOHNSON Petition and granted petitioner 45 (forty-five days to file a Pro Se Brief. See: EXHIBIT No. 1 .

Following the above "Order" petitioner filed his Pro Se Brief on January 10, 2011, raising only 2 (two) issues. REVIEW : FIRST and SECOND ISSUES PRESENTED above.

ARGUMENT IN SUPPORT

Petitioner argues that although the Court of Appeals "Ordered" counsel of record, Robert Pachak, of the S.C. Appellate Defense to file and prefect an initial brief addressing "all" issues before the Court. Counsel failed to include the (2) two issues contained in petitioner's Pro Se Brief.

To support petitioner's position, he asserts that counsel's JOHNSON petition and counsel's Brief of Petitioner are identical, abandoning petitioner's issues.

Petitioner understands that when counsel has been appointed all pleading must be presented to the Court through counsel; unless ordered otherwise by the Court.

However, in this case, petitioner was ordered by the Court to file a Pro Se Brief on his own behalf, taking any hybrid representation analysis away from petitioner pro se filing because as the record reflects, petitioner was ordered by the Court to do so. SEE: EXHIBIT No.1 .

Petitioner further argues that it is unclear if it was in petitioners' best interest for the Court to allow counsel to re-file Same Brief which was identical to Counsel's initial JOHNSON petition; therefore, leaving petitioner meritorious pro se issues out to dry.

Petitioner ask this Honorable Court to correct this unjust because if justice is not served to petitioner, this Court would be unjustly forcing petitioner to pursue Federal Habeas Corpus with no issues preserved for federal review. The Court of Appeals ruled petitioner's claim were not preserved for appellate review. SEE: O'SULLIVAN -vs- BOERCKEL 119 S.Ct. 1728 (1999).

Finally, petitioner contents that it was no fault of his own that his Pro Se Brief was not ruled upon by the Court of Appeals, based upon the merits. It is obvious that petitioner's Pro Se Brief had merit in order for the Court to grant certiorari following the filing of petitioner's Pro Se Brief; and, it is also obvious that appellate counsel did not abide by the Court's

"order" and brief "all issues" including the issues raised in petitioner's Pro Se Brief, as instructed by the Court. SEE: EXHIBIT No. 2 .

FOURTH ARGUMENT

Whether the Court of Appeals erred in ruling that petitioner's claim was not preserved for appellate review.

ARGUMENT IN SUPPORT

Petitioner shall argue that his claim of "Defense Counsel was ineffective in failing to provide an adversarial challenge to the State's case" -- was preserved for appellate review.

As stated and outlined in Appellate Counsel's, 'Brief Of Petitioner', page 6 and page 7, appellate counsel pointed to many arguments that supported,... "defense counsel was ineffective in failing to provide an adversarial challenge to the State's case." In otherwords, petitioner's claims were preserved for appellate review. SEE: INITIAL BRIEF, page 6 and 7.

To support petitioner's argument, petitioner points to GLOVER -vs- MIRO, 262 F.3rd 269 (4th Cir.2001) and GRAVES -vs- PADULA, 73 F.Supp.2d ____ (Dist.SC.2010).

In GLOVER, supra, Glover made rigourous arguments that his trial counsel was ineffective for failing to contact any of his alibi witness prior to trial, citing UNITED STATES -vs- CRONIC, 104 S.Ct. 2039 (1984) analysis.

The point of the matter, in GLOVER -vs- STATE 458 S.E.2d 538 (1995), Glover never argued the CRONIC analysis; however, the merits of the issue was all the same and preserved for appellate and federal review.

Even in GRAVES, supra, Graves main objection was both the PCR Court and the Magistrate Judge improperly analyzed his claim under the test announced in STRICKLAND -vs- WASHINGTON, 104 S.Ct. 2052 (1984), when the claim should have been analyzed under CRONIC analysis.

However, under an opinion issued the same day as STRICKLAND, in CRONIC -- in rare instances, a court may forgo an individual inquiry into whether but for counsels' deficient performance, the results of the proceedings would have been different, and may presume "prejudice."

Petitioner argues his case is identical to GRAVES and GLOVER on the background of steps on the legal argument from a claim reviewed under STRICKLAND in the PCR Court and reviewd under CRONIC in the appellate court.

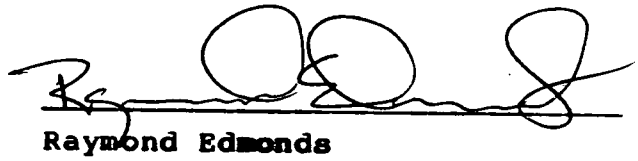
C O N C L U S I O N

Applicant has present several genuine issues of material fact, revelant to Appellant's 5th, 6th and 14th Amendments to the United States Constitution being violated in this criminal proceeding, **AND** had established there exist GOOD CAUSE why this Court should exercise a complete review of the record;... and in doing so, no prejudice should come to any party associated with this case.

For "NO" Court in this Country; nor among any established authorities would allow a conviction under these unconstitutional and prejudicial circumstances... **OTHERWISE**, it would be an approval to the kind of prohibitions our Constitution(s) forbid. Rendering the current conviction, under such practices, - shocking to the universal sense of justice.

For reasons set forth above, and under these circumstances, appellant prays respectfully upon this Honorable Court to reverse his conviction and remand this matter back to the Court of General Sessions, for a New Trial.

APPELLANT FOREVER PRAYS...



Raymond Edmonds
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

This ____ **day of**
September, 2014

Raymond Edmonds, 304228
Lee Correctional Institution
Florence Unit - 1128
990 Wisacky Highway
Bishopville, South Carolina
29010.

The Supreme Court of South Carolina
Office of the Clerk
P.O. Box 11330
Columbia, South Carolina 29211

RE: Appealing Decision of South Carolina Court of Appeals,
Appellate Case No: 2010-168749

Dear Mr. Daniel E. Shearouse,
Please find enclosed for filing:

(1). Motion For Leave To Proceed In Forma Pauperis, Rule 3(c), S.C.R.C.P.

(2). Petitioner's Petition For Writ of Certiorari, prose

(3). Appendix and Certificate of Service.

Thank you for this Court's time and attention in this matter.

Respectfully Submitted,

September 24, 2014

Raymond Edmonds, 304228