

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.

A P P E N D I X

Prepared By:

RAYMOND EDMONDS
Petitioner / Pro Se

Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina
29010

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Raymond Edmonds, 304228
Applicant.

Vs.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2007-CP-40-6691

PETITION
FOR
RECONSIDERATION

In light of this honorable court's decision the applicant humbly request for reconsideration of its analysis of the ~~the~~ search warrant and Affidavit supporting Search warrant, allowing ~~a~~ search of the execution and search of "ALL PERSONS" without a particular description of what "persons to be search," see Groh vs. Ramirez, 540 U.S. 551, 157 L. Ed. 2d 1068, 124 S.Ct. 1284, 1289 (2004).

See, Katz vs. United States, 389 U.S. 347, 357, 19 L. Ed. 2d 576, 88 S.Ct. 507 (1967), a principle drawn from the Fourth Amendment prohibition against the issuance of warrants without "probable cause, supported by oath and or affirmation, and particular describing the place to be searched, and the persons or things to be seized." U.S. Constitution Amend. 4.

The applicant ask that this Court examine the totality of the circumstances as to whether the Magistrate issuing the Search Warrant was given reliable and credible information to "make a practical common-sense decision whether given all the circumstances set forth by the official in the affidavit . . . there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois vs. Gates, 462 U.S. 213, 238, 76 L. Ed. 2d 527, 105 S.Ct. 2317 (1983).

The applicant contends that technical scrutiny should be applied in reviewing the sufficiency of the officer's supporting affidavit for an "all persons" warrant.

The applicant contends that the search warrant issued on May 14th, 2003, can not pass constitutional muster because Affiant Poole gave no particularity a requirement of the Fourth Amendment that illegal criminal activity was being conducted at the residence The warrant as well as the affidavit only stated in general that an "Informant within the last 72 hours observed crack cocaine stored at the location" nothing was attested that everyone found on the premises being searched would be involved in illegal activity and that evidence of a crime would be found on their person. The court has held that such a search violates the fourth Amendment's guarantee against "unreasonable searches and seizures, Saucier vs. Katz, 535 U.S. 194, 200, 150 L.Ed. 2d 272, 121 S.Ct. 2151 (2001).

Furthermore, affiant Poole inflated his facts to secure the search warrant by boasting as Narcotic Officers, their experience in drug enforcement, it is known that subjects present at the scene of illegal drug distribution and / or possession commonly have drugs in their possession

The applicant contends that the record would reflect that there was no so-called drug activity at the residence to support a claim of particularized probable cause to search all persons found on the premises, the Court, citing Ybarra vs. Illinois, 444 U.S. 85, 62 L. Ed. 238, 100 S.Ct. 333 (1979), the Court noted that without more, "the connection between proximity to crime and involvement in crime [is] too tenuous to support [an] 'all persons warrant.'" J.A. 339-40.

Furthermore, affiant Poole's testimony at trial clearly stated that a "Control buy" was conducted after the issuance of the Search Warrant by the Magistrate, Tr. Trans. Pg. 53 ins 10 thru 15. This disclosure at best leaves much to be considered... why didn't the control buy occur prior to pursuing the Search Warrant, such a procedure would have indeed validated a Narcotic Officer's experience and status as a professional. Also throughout testimony of approximately five (5) police officers, not one, other than affiant Poole said anything about this alleged control buy which did not even occur before or after the Search Warrant was issued. This Court should determine that there was no probable cause and that the search was constitutionally invalid and that the Officer's conduct violated a constitutional right.

Affiant Poole further testifies that prior to obtaining the Search Warrant in this case, surveillance was conducted on the Residence. See Tr. Trans. Pg. 52 ins. 8 thru 24. This descriptive fact clearly shows that if there was any type of illegal distribution of drugs such traffic of cars and/or people going and coming would have been seen and surely documented by the authorities, in some type of manner. Based on the above disclosures an "all persons" warrant wasn't valid because there was no illegal activity and evidence of the crime would be found on their person, State vs. De Simone, 60 N.J. 319, 288 A.2d at 854.

The applicant contends that the information provided to the Magistrate by affiant Poole was insufficient to issue a Search Warrant. This was an illegal intrusion into a private residence with all the

makings of Stromtroopers kicking in the doors, shouting get down on the floor, show me your hands and flashing guns on a peaceful scene causing probable trauma of two minors aged ~~seven~~ ^{seven} (7) years old and five (5) years old. This infringement of their rights continued when all the females were search and the males being pat down and search. The State asserts that this specific conduct was permissible because that the Magistrate could conclude that probable cause existed to search "all persons" at the scene of illegal drug distribution... But the record will show there was no testimony or facts provided that would establish probable cause to believe every person found on the premises was likely involved in the selling and buying of drugs. Again there is no testimony, for example, that this particular residence had a history of drug related activities associated with known drug dealers or users were frequenting the place or residence of the applicant. See, Commonwealth vs. Graciani, 381 Pa. Super. 626, 554 A. 2d 560, 562 (Pa. Super. Ct. 1989).

Furthermore, the Confidential Informant did not report having seen any type of illegal drug distribution or his buying illegal drugs from the applicant's residence on any single occasion. Nor was there any mention of "regular drug traffic" as commonly associated with illegal drug activity, see State vs. Loins, 26 Kan. App. 2d 624, 993 P. 2d 1231, 1235 (Kan. Ct. App. 1999).

This issue of an "All Persons" warrant was raised by the applicant at the Post-Conviction Relief (PCR) hearing on August 14, 2009, that trial Counsel should have argued that the "All Persons" clause within the search warrant was unconstitutional vague or Overbroad pursuant to State vs. Thompson, 363 S.C. 192, 609 S.E.2d 556 (Ct. App. 2005). In furtherance of this argument the applicant ask that this Court weigh against the affiant's information given to the Magistrate to obtain the "All Persons" warrant as oppose to the affiant's testimony at trial during (In Camera), the validity of the Confidential Informant, Officer Poole's testifying to establish the reliability and credibility of this alleged Confidential Informant, apparently from his testimony he (affiant Poole), deliberately mischaracterize the identification of a "Concern Citizen", in the Columbia area who volunteered his assistance because he was concerned about drug activity. see, Tr. Trans. Pgs. 47 Ins. 11 thru 25; Pg. 48 Ins. 1 thru 5. It is clear that affiant Poole from this testimony knew that the information he (affiant), was receiving was from a mere tipster and not a Confidential Informant, where upon he misled the Magistrate. This Court is asked to assume the legal stance of our Court of Appeals characterizing that the utilization of the false term "Confidential Informant" in the affidavit as the equivalent of not having an affidavit ~~at~~ all. see State vs. Jones, 536 S.E.2d 675 (S.C. 2000).

Whether, and under what circumstances, an "All Persons" warrant is valid or not no-longer remains unanswered in our Circuit, see Dwens vs. Lott, 372 F.3d 267 (4th Cir. 2004).

The majority of Federal Courts have addressed the difficulties presented by the inclusion of "All Persons" language in a premises search warrant. See, Marks vs. Charlie, 102 F.3d 1012, 1029 (9th Cir. 1997); Baker vs. Monroe Township, 50 F.3d 1186, 1188-89 n.1 (3d Cir. 1995); id. at 1199, also United States vs. Graham, 563 F.Supp. 149, 151 (W.D.N.Y. 1983); Burns vs. Loranger, 907 F.2d 233, 234 n.2 (1st Cir. 1990); Guzman vs. Estelle, 493 F.2d 532, 533-34 + n.7 (5th Cir. 1974); United States vs. Johnson, 154 U.S. App. D.C. 393, 475 F.2d 977, 979 n.5 (D.C. Cir. 1973). The most extensive treatment of the question, by far, has been given in the state courts. See, Guadarrama, 128 F.Supp. 2d at 1206-09 (compiling a comprehensive list of state court decisions from more than thirty-five (35) jurisdictions). The view emerging from these decisions as well from our Circuit in Owens vs. Lott, 372 F.3d 267 (4th Cir. 2004) is that a premises search warrant that also authorizes the search of "All Persons" found on the premises being searched contravenes the particularity requirement of the Fourth Amendment and is invalid on its face.

The applicant contends that in the matter of Owens vs. Lott, Supra., that the circumstances are similar to this present case. The difference in the cases involves the language in the first sentence of the affidavit of the search warrant, the "Owens Affidavit" stated in-part: Within the past 72 hours a Confidential and reliable informant has observed cocaine distributed from the location to be searched... That is the only difference in reference to the search warrant about what the Confidential

Informant observed in applicants case, the Affidavit states: Within the last 72 hours a Confidential and reliable informant of the Richland County Sheriff's Department has observed crack Cocaine stored at the described location . . . and yet this may not have happen. Wherefore, the fourth (4th) Circuit Court of Appeals agreed with the district Court in the Owens, Supra. Case that Deputy Maldonado's affidavit did not supply sufficient information to establish probable cause that anyone who happen to be on the premises during the execution of the search warrant was involved in the sale of illegal drugs. The only justification Deputy Maldonado gave is the very same as affiant Poole's in this case presented to the Magistrate for the "All Persons" at the premises, was his (affiant Poole) and other Richland County Sheriff's Department Narcotic Officers experience in drug enforcement . . . that Subjects present at the scene of an illegal drug distribution . . . commonly have drugs in their possession." J. A. 247. The Court acknowledged this generalization, but stated it did not provide the kind of particularized ~~informant~~^{affiant} information that would have permitted the Magistrate to reasonably conclude that there was a fair probability that any persons seen by officers on the premises was there to partake in one side of a drug transaction or another. The Court finally stated, the search warrant authorized the search of persons in Owens, Supra., was based on nothing more than their proximity to a place where criminal activity may or may not have occurred. The Supreme Court has explained "a persons mere propinquity" to ~~the~~^{an} suspected criminal activity "does not, without more, give rise to probable cause to search a person." Ybarra, 444 U.S. at 91.

In this particular case affiant Poole's affidavit offered no specific facts nor was there any testimony that he (Affiant Poole), provided the Magistrate with any background information other than what affiant Poole originally provided. See, Tr. Trans. Pgs. 46 Ins. 10 thru 25; Pgs. 47 Ins. 2 thru 25; Pgs. 48 Ins. 1 thru 25; Pgs. 49 Ins. 1 thru 7; Pgs. 50 Ins. 14 thru 22; Pgs. 51 Ins. 6 thru 12; also see Search Warrant and Affidavit in Support of Search Warrant.

The applicant would ask that this Honorable Court take judicial notice of the United States Court of Appeals for the Fourth Circuit affirming the District Court ruling that such affidavits do not give sufficient information to supply the Magistrate with information to establish probable cause that "All Persons" at the residence were likely involved in illegal drug transactions. See Dwens Vs. Lott, 372 F.3d. 267 (2004 U.S.App.).

There was no ongoing drug activity at the applicants residence. See, People Vs. Johnson, 805 P.2d. 1156, 1161 (Colo. Ct. App. 1990). Nor was there any "regular traffic" of individuals to and from the applicants residence that would have suggest on-going drug activity. See State Vs. Lains, 26 Kan. App. 2d 624, 993 P.2d 1231, 1235 (Kan. Ct. App. ~~2d 624~~ 1999). Furthermore, there was nothing about the condition of the house itself, its location or its surrounding neighborhood to suggest it served as a place likely to attract only people involved in the drug trade. See, People Vs. Nieves, 36 N.Y. 2d. 396, 330 N.E. 2d. 26, 34, 369 N.Y.S. 2d 50 (N.Y. 1975).

The District Court for South Carolina in the Dwens Vs. Lott, Supra, defined the issue as that the Search violated the Fourth Amendment rights of the Plaintiffs, absent a showing of particularized probable

course to search each individual on the premises. When the warrant was executed, Angela Williams and Sabrina Edmonds were inside the house with Angela's minor children and nephew. Also, Charles Trezvant, ~~Damon~~ Damon Thompson and the applicant Raymond Edmonds. Officers, initially handcuffed, Sabrina, Trezvant, Thompson and Raymond. Subsequently, Angela Williams, was taken onto the porch with the minor children. Everyone was searched, no drugs or weapons were found on the person of the occupants.

The applicant contends that it's because of the above wide-ranging exploratory searches that the framers intended to prohibit by requiring particularity in the warrant, he specific indescribing its objects to discourage the State from embarking on a "general exploratory rummaging through a private residence. See, Maryland vs. Garrison, 480 U.S. 79, 84, 94 L.Ed. 2d 72, 107 S.Ct. 1013 (1987); United States vs. Glover, 982 F.2d 133, 138 (4th Cir. 1993).

In holding the search unconstitutional under the Fourth Amendment, the applicant contends that there was no probable cause particularized with respect to occupants and that their "mere propinquity to a Storage of drugs, without any description of any particular individual involved in the distribution of the Crack or Cocaine in the warrant, without more, the basis for probable cause was missing.

In, [Ybarra], the Court noted that because of the particularity requirement of the warrant clause, general warrants is impermissible, and " [I]t follows that a warrant to search a place cannot normally be construed to authorize a search of each individual in the Place." Id. at 92 n. 4.

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As with the Majority view held in De Simone, that an "All Persons" warrant can pass constitutional muster "if" the affidavit and information provided to the Magistrate supply enough detailed information to establish probable cause to believe that all persons on the premises at the time of the search are involved in the criminal activity. As in this particular case the language in the affidavit did not supply enough detailed information to establish probable cause for an "All Persons" warrant.

In sum, affiant Peole was not given sufficient information by his Confidential Informant and or mere tipster and, in turn, did not supply the Magistrate with information to establish probable cause that "All Persons" at the residence were likely involved in illegal drug transactions.

CONCLUSION

WHEREFORE, it is manifestly apparent by the cited judicial decisions in various jurisdictions and by our own Fourth Circuit an "All Persons" warrant is unconstitutional when particularized persons are not articulated in the affidavit to sustain the validity of the warrant per requirement of the Fourth Amendment.

Therefore, the applicant pray that this Honorable Court for the reasons set forth in this Petition For Reconsideration, reverse its prior decision to his favor.

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Date: February 22, 2010


Raymond Edmonds 304228
Lee Correctional Institution
Kershaw - South - Rm 2116
@ ~~Columbia~~
990 W. Socky Highway
Bishopville, South Carolina 29010

STATE OF SOUTH CAROLINA]
COUNTY OF RICHLAND]

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Raymond Edmonds. 304228]
Applicant,]

2007-CP-40-6691

vs.]

PETITION
FOR
RECONSIDERATION

State of South Carolina.]
Respondent.]

The applicant would argue in support for this Court's reconsideration that affiant Poole's oral testimony and/or information sworn to before the Magistrate Omitted, Mislead or Mischaracterize the Identification of the Informant.

This Court's, in its decision stated this issue fails when the applicant claimed that trial counsel was ineffective for failing to challenge the warrant, the applicant was not only concern about its overbreadth but also its vagueness which became evident during the course of the trial in a Motion To Suppress The Evidence.

Because of the testimony given by Officer Poole under direct examination (In-Camera), the applicant believes under the totality of the circumstances test, this Court by reconsidering its decision should consider all circumstances, including the probable assumption that a deliberate mischaracterization was made in order to secure the Search Warrant.

The affiant, police officer Poole testifies as to the following about the basis of the warrant....

Poole - Direct (Spears - In Camera)Tr. Trans. Pgs. 47, lns. 17 thru 25.

17. Q - Did you come into contact with this Confidential
 18. informant because they were in some way involved
 19. in drugs that became know to you through law
 20. enforcement ?
21. A - No.
22. Q - How would you without giving away identity, describe
 23. this Confidential informant ?
24. A - The informant contacted me earlier than the day of
 25. the Search warrant and was concerned about drug

Tr. Trans. Pgs. 48, lns. 1 thru 5.

1. Activity in the Columbia area and
 2. volunteered his assistance to me.
3. Q - Okay. So a concerned citizen would be ~~a~~ ^a fair
 4. a fair description.
5. A - Yes.

The applicant will respectfully submit based upon the testimony and the description agreed to by Officer Poole who is the affiant by signature on the Search warrant that his information came from a "Concerned Citizen" whom he falsely use must

assume identified as an Confidential Informant (C.I.) in the affidavit circumvented the affidavit requirement of S.C. Code Ann. § 17-13-140 (1985) and State vs. McKnight, 291 S.C. 110, 352 S.E. 2d. 471 (1987). And in view of the Fact that the Magistrate relied upon the false statement when making his probable cause determination under a Franks analysis, probable cause did not or does not exist under the Fourth Amendment of the United States Constitution. See Franks vs. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed. 2d 667 (1978); State vs. Sachs, 264 S.C. 541, 216 S.E. 2d 501 (1975).

In this case, the affidavit contained false information, i.e., the identification of the informant as a Confidential Informant (C.I.). The affiant admitted under direct examination at trial the description of the information would be a "Concerned Citizen." The affiant even during the examination attempts to correct his blunder of the truth of the phone call from a concerned citizen could not correct the truth of the matter. Our General Assembly has imposed stricter requirements than Federal Law for issuing a search warrant. Both the fourth Amendment of the U.S. Const. and Article I, § 10 of the South Carolina Constitution.

Pursuant to Franks vs. Delaware, 438 U.S. 154, 98 S.Ct. 2674. When allegations are claimed about misstatements in a search warrant the defendant has the right to challenge through an evidentiary hearing. However, such a procedure is not applicable under the circumstances but it is appropriate for this Court to consider the totality of the circumstances to arrive at the truth of the matter. The applicant

argues that affiant Poole's information to the Magistrate not only was a reckless regard for the truth but he went even further by omitting certain information that he personally had gathered from a surveillance of the applicants residence. This Omitted information surfaced by Cross-examination of affiant Poole at trial.

Poole - Cross (Rahman - In Camera)

Tr. Trans. Pgs. 52, Ins. 8 thru 16.

8. Q - Did any officers of the Sheriff's Department perform
9. any surveillance of the house?
10. A - I did.
11. Q - Tell me about the nature of the surveillance.
12. A - I checked the residence on three or four occasions
13. between the time I received the information and the
14. time I served the warrant trying to determine who
15. lived there or what cars belong there. The times I
16. checked it, there were usually no cars there.

The applicant would submit^{ed} that if the Magistrate had any awareness of the above information about the surveillance that gather nothing in the manner of illegal drug traffic or activity he would not have issue the warrant without more, See, De Simone, 288 A.2d at 850-51. None of the above facts appear in affiant's Poole affidavit, One can assume that if such facts were actually presented to the Magistrate during the warrant application

process it would not have supported a probable cause finding.

The applicant argues further that as the cross-examination continues affiant Poole's testimony becomes more evasive about when the surveillance took place.

Poole - Cross (Rahman - In Camera)

Tr. Trans. Pgs. 52. lns 17 thru 24

17. Q - Okay. So that was subsequent to hearing the
18. testimony from the informant but prior to getting
19. the actual search warrant that you did the surveillance?
20. A - That was between meeting with the informant and
21. learning of the location and the execution of the
22. warrant on the day we arrested him.
23. Q - When was the meeting with the informant then?
24. A - Within three days of May 13th.

The above testimony reveals that Poole did on May 10, 2003, met or received information from the alleged Confidential Informant "(C.I.)" or "Concerned Citizen" three (3) days before he actually went before the Magistrate on May 14, 2003. So it's fair to conclude that he with held information that characterize that no criminal activity, that's common with illegal drug traffic occurred although he had personally watched the house for three or four occasions.

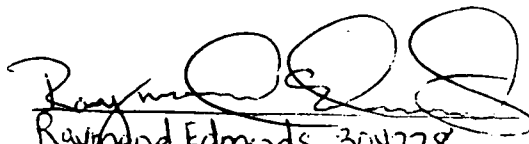
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The applicant argues that this Court should recognize that none criminal activity obviously presented difficulties for securing a warrant which resulted in the ~~the~~ TRUTH being withheld by affiant Poole.

In State vs. Jones, 536 S.E.2d 675 (S.C. 2000), the Court of Appeals characterized a false affidavit as the equivalent of not having an affidavit at all, and held § 17-13-140 had been violated. The affidavit in applicants case was secured in a similar manner as the affidavit against Jones.

The applicant argues that this Court can find a logical determination to reconsider its decision based upon the facts presented that the affidavit or information given to secure it wasn't truthful, that with the truth of the circumstances being omitted the affidavit contents were insufficient to support a finding of probable cause by the Magistrate. The applicant humbly request that this Honorable Court take judicial notice of State vs. Jones, 536 S.E.2d 675 and rule according to its findings in this matter.

Date : February 22, 2010


Raymond Edmonds 304228
Lee Correctional Institution
Kershaw - South - Rm. 2116
990 Wilsecky Highway
Bishopville, South Carolina 29010

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Raymond Edmonds,

APPLICANT

vs.

State of South Carolina,

RESPONDENT.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CASE NO. 2007-CP-40-06691

ORDER

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 JUL 30 AM 9:18

RICHLAND COUNTY
FILED

After careful consideration of the record in this case and the Motion for Rehearing and/or Motion to Alter or Amend by the Applicant, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby DENIES the Applicant's Motion for Rehearing and/or Motion to Alter or Amend. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



G. Thomas Cooper, Jr.
Presiding Judge, Circuit Court

7-29, 2010

OF SOUTH CAROLINA
Y OF RICHLAND

SEARCH WARRANT

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Form approved by SC Attorney

General - Section 17-13-160

March 15, 1978

BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

ng from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under
s of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

dence to be searched is located at 3501 Piedmont Avenue. The residence is located at the corner of Piedmont
and Roosevelt Street. The residence is a single story blue/gray wood frame building trimmed in blue. The
; 3501 appear over the door facing Piedmont Avenue. The search is to include all persons at the premise, vehicles
or operated by persons at the premise and outbuilding on the curtilage of the property.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to
ch property if found:

DESCRIPTION OF PROPERTY

ocaine, paraphernalia and paperwork associated with the sale, storage and use of crack cocaine.

03 MAY 15 AM 11:39
RECEIVED
DENTSVILLE MAGISTRATE

This Search Warrant shall not be valid for more than ten days from the date of issuance.
A written inventory of all property seized pursuant to this Search Warrant shall be made to

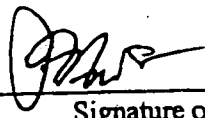
ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy
h inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of
search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the
n in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the
n, a copy shall be attached to a prominent place on such premises.

mbia, S.C.

MAY 14, 2003

11:39 AM



Signature of Judge

(LS)

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF RICHLAND

Personally appeared before me, one M A Poole who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Crack cocaine, paraphernalia and paperwork associated with the sale, storage and use of crack cocaine.

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED**

The residence to be searched is located at 3501 Piedmont Avenue. The residence is located at the corner of Piedmont Avenue and Roosevelt Street. The residence is a single story blue/gray wood frame building trimmed in blue. The numbers 3501 appear over the door facing Piedmont Avenue. The search is to include all persons at the premise, vehicles owned or operated by persons at the premise and outbuilding on the curtilage of the property.

**REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES**

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's and other Richland County Sheriff's Department Narcotic officers experience in drug enforcement, it is known that subjects present at the scene of illegal drug distribution and/or possession commonly have drugs in their possession and also stored and/or transported in vehicles in their possession and control.

Sworn to and Subscribed before me

this 14 day of May, 2003



(LS)

Signature of Judge



Affiant

Richland County Sheriff's Department

5623 Two Notch Road, Columbia, S.C. 29223

Phone (803) 691-9000

RETURN

569

I received the attached Search Warrant _____, 2003, and have executed it as follows:
on _____, 2003 at _____ o'clock _____ M, I searched
the person) described in the warrant and (the premises)

I left a copy of the warrant with _____
name of person searched or "at the place of search" with
together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

RECEIVED
DEPUTY SHERIFF
DAVID L. MAGISTRATE

This inventory was made in the presence of _____

AND _____

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this _____ }

day of _____, 2003 }

(LS) }

(Signature of Officer Executing Warrant)

Signature of Judge

1 THAT THIS INFORMANT WAS COMPENSATED FOR HIS OR HER
2 TESTIMONY?

3 A THE INFORMANT MAY HAVE BEEN COMPENSATED. I DON'T
4 RECALL WHEN. I NEVER SAID THE INFORMANT WASN'T
5 COMPENSATED.

6 Q WAS HE COMPENSATED FOR THIS INCIDENT?

7 A YES.

8 Q DID ANY OFFICERS OF THE SHERIFF'S DEPARTMENT PERFORM
9 ANY SURVEILLANCE OF THE HOUSE?

10 A I DID.

11 Q TELL ME ABOUT THE NATURE OF THE SURVEILLANCE.

12 A I CHECKED THE RESIDENCE ON THREE OR FOUR OCCASIONS
13 BETWEEN THE TIME I RECEIVED THE INFORMATION AND THE
14 TIME I SERVED THE WARRANT TRYING TO DETERMINE WHO
15 LIVED THERE OR WHAT CARS BELONGED THERE. THE TIMES I
16 CHECKED IT, THERE WERE USUALLY NO CARS THERE.

17 Q OKAY. SO THAT WAS SUBSEQUENT TO HEARING THE
18 TESTIMONY FROM THE INFORMANT BUT PRIOR TO GETTING THE
19 ACTUAL SEARCH WARRANT THAT YOU DID THE SURVEILLANCE?

20 A THAT WAS BETWEEN MEETING WITH THE INFORMANT AND
21 LEARNING OF THE LOCATION AND THE EXECUTION OF THE
22 WARRANT ON THE DAY WE ARRESTED HIM.

23 Q WHEN WAS THE MEETING WITH THE INFORMANT THEN?

24 A WITHIN THREE DAYS OF MAY 13TH.

25 Q DO YOU REMEMBER WHAT DAY IT WAS?

1 A YES, BUT WITHIN THREE DAYS OFF. I DON'T WANT TO SAY
2 RIGHT NOW.

3 Q DO YOU REMEMBER WHAT TIME OF DAY?

4 A NO, I DO NOT. IT WAS NIGHTTIME. IT WAS DARK.

5 Q OKAY. WAS THIS INFORMANT EQUIPPED WITH ANY RECORDING
6 DEVICE OR ANYTHING LIKE THAT?

7 A NO.

8 Q BEG THE COURT'S INDULGENCE.

9 (PAUSE).

10 DID YOU PERFORM ANY BUYS TO ENSURE THE
11 RELIABILITY OF THIS INFORMANT?

12 A YES, I DID.

13 Q OKAY. AND DID YOU DO THE BUY PRIOR TO GETTING THE
14 SEARCH WARRANT FROM JUDGE NEWSOME?

15 A NO. IT WAS AFTER GETTING IT, THE SAME DAY.

16 MS. RAHMAN: THANK YOU, YOUR HONOR. NO FURTHER
17 QUESTIONS.

18 THE COURT: ANY REDIRECT?

19 MS. SPEARS-WALSH: MAY THE WITNESS STEP DOWN?
20 NO FURTHER QUESTIONS.

21 THE COURT: YOU MAY STEP DOWN, SIR.
22 ANYTHING FURTHER FROM THE STATE?

23 MS. SPEARS-WALSH: NO, SIR.

24 THE COURT: ANYTHING THE DEFENSE WOULD LIKE TO
25 OFFER?

1 overruled, Your Honor.

2 (WHEREUPON, APPLICANT'S Exhibit No. 1 is marked
3 for identification and received in evidence.)

4 Q Now, Raymond, you said you were appointed a second
5 attorney. And who was that?

6 A Ms. Martin.

7 Q Okay. And once she was appointed did you have the
8 opportunity to meet with her?

9 A Yes, I did.

10 Q Okay. And do you recall how many times you met with
11 her?

12 A We met on several times.

13 Q Okay. And when she was appointed were you actually
14 out on bond?

15 A Yes, I did. Yeah, I had got out on bond.

16 Q And did you have the opportunity to actually go to
17 her office and meet with her then?

18 A Yes, I did.

19 Q Okay. Was that one of the first things you did once
20 you got out on bond?

21 A Yes, ma'am.

22 Q Okay. And when you went to her office did you have
23 the opportunity to review the discovery?

24 A The discovery that she gave me; yes, ma'am.

25 Q Okay. Do you know if she hired an investigator in

1 Thank you.

2 **MS. BLANCHETTE:** Your Honor, at this time I
3 would call Kana Johnson to the stand.

4 **THE COURT:** Come around, Ms. Johnson.

5 KANA JOHNSON, after being duly sworn, testifies
6 as follows:

7 DIRECT EXAMINATION

8 **BY MS. BLANCHETTE**

9 **Q** Could you state your name for the record, please?

10 **A** Kana Johnson, formerly Kana Rahman.

11 **Q** Okay. And you practice law here in Richland County.
12 Is that correct?

13 **A** Yes, ma'am, I do.

14 **Q** Okay. And what type of law do you practice?

15 **A** I do family, criminal, and immigration law.

16 **Q** Okay. And were you appointed to represent Raymond
17 Edmonds?

18 **A** Yes, ma'am, I was.

19 **Q** Do you remember approximately when you were appointed
20 to represent him?

21 **A** No, I don't. I don't have my appointment order. I
22 apologize.

23 **Q** Do you recall specifically how many times you met
24 with him or how many times you had an opportunity to
25 review the case with him?

1 **A** I would say at least a dozen times, including one
2 time after the trial.

3 **Q** Okay. And during those meetings did you have the
4 chance to go over the discovery with him?

5 **A** Yes, ma'am, I did.

6 **Q** Did you use a private investigator in this case?

7 **A** I did later on as we were getting prepared for trial.
8 I did not during the course of the investigation in
9 leading up to the trial.

10 **Q** Now, Raymond explained in detail this issue regarding
11 Danny Brown. Did you use the investigator to try to
12 locate him?

13 **A** I did subsequently, after I contacted him myself. I
14 do recall talking to Danny Brown and having him come
15 to the Solicitor's Office. Actually, he came to my
16 office first and gave a statement to me that he
17 wanted to take responsibility for the drugs. I then
18 contacted Solicitor Spears and Investigator Poole and
19 told them that I had located a witness that was
20 taking responsibility for the drugs. We then
21 arranged a meeting at the Solicitor's Office. Mr.
22 Brown appeared and rendered the first statement.

23 **Q** Okay. And did you keep up communication with him
24 prior to trial? Or when was it that you were no
25 longer able to locate him?

POOLE - DIRECT (SPEARS)

76

1 EARLY WHEN YOU WERE FIRST IN THE HOUSE?

2 A THERE WAS SOME -- A SUSPICION SUBSTANCE WAS LOCATED
3 AT A COUCH NEAR THE FRONT OF THE HOUSE.

4 Q OKAY. AND DID THAT CAUSE YOU TO MAKE AN ADDITIONAL
5 SPEECH?

6 A IT WASN'T REALLY A SPEECH. I SPOKE WITH MR. EDMONDS
7 AND I GUESS TO EVERYBODY THERE. I SAID IF THERE WERE
8 DRUGS IN THE HOUSE TO TELL ME, THAT IT WOULD MAKE IT
9 EASIER IF SOMEONE WANTED TO COOPERATE AND TELL ME
10 WHERE THE DRUGS WERE, IT WOULD JUST MAKE IT EASIER,
11 THAT WE WERE GOING TO SEARCH THE HOUSE, AND WE WOULD
12 FIND IT ANY WAY.

13 Q DID MR. EDMONDS TELL YOU OR SAY ANYTHING THAT YOU
14 RECALL, THAT YOU HEARD AT THE TIME THIS SUSPICIOUS
15 SUBSTANCE WAS FOUND UNDER THE SOFA?

16 A MR. EDMONDS SPOKE UP AND STATED ALL THE DRUGS IN THE
17 HOUSE BELONGED TO HIM. HE STATED HE HAD ADDITIONAL
18 DRUGS IN HIS BEDROOM, WHICH WAS AT THE RIGHT REAR OF
19 THE RESIDENCE. I ASKED HIM IF HE WOULD COME BACK TO
20 THE BEDROOM AND SHOW ME.

21 Q SO MR. EDMONDS, WHEN THIS SUBSTANCE WAS FOUND IN THE
22 LIVING ROOM, THEN CLAIMS ALL THE DRUGS IN THE HOUSE?

23 A YES, MA'AM.

24 Q AND WHERE DOES HE TAKE YOU TO SHOW YOU ADDITIONAL
25 DRUGS?

Denno hearing
PERJURY (Poole). See 'Search Warrant Return'; it shows that officer Martin actually disassembled the
hand Gun in back Bedroom underneath. Read Ins. 1-16.

POOLE - DIRECT (SPEARS)

72

1 A WE WALKED INTO THE BEDROOM, AND THE BED WAS AGAINST
2 THE RIGHT-HAND WALL. THERE WAS LIKE A TABLE BESIDE
3 THE BED. THERE WAS A PAPER BAG UNDERNEATH THAT
4 TABLE. HE STATED THERE WERE DRUGS IN THAT BAG.

5 Q OKAY. DID YOU LOOK AT THAT BAG?

6 A YES, I DID.

7 Q AND WHAT DID YOU FIND IN THAT BAG?

8 A I BELIEVE THERE WAS CRACK AND MARIJUANA. I'M NOT
9 SURE IF THERE WAS A LITTLE COCAINE OR NOT.

10 Q YOU DID FIND DRUGS IN THE BAG?

11 A YES. THERE WERE DRUGS IN THE BAG, YES.

12 Q DID MR. EDMONDS TELL YOU ANYTHING ELSE?

13 A AFTER I FOUND THE BAG, HE STATED THERE WAS A GUN
14 UNDERNEATH THE BED IN CLOSE PROXIMITY TO THE BAG.

15 Q AND DID YOU FIND A GUN UNDER THE BED?

16 A YES, I DID.

17 Q OKAY. AT THIS POINT, DID HE TELL YOU THERE WERE ANY
18 OTHER DRUGS?

19 A I THEN ASKED IF HE HAD ANY OTHER DRUGS, AND HE STATED
20 HE DID NOT.

21 Q SO WHAT DID YOU DO NEXT?

22 A I THEN TOOK HIM BACK IN THE KITCHEN AREA OR THE DEN
23 AREA, AND THEN I WENT BACK INTO THE BEDROOM TO SEARCH
24 IT.

25 Q AND WHERE -- IN THE SEARCH OF A BEDROOM, WHERE DO YOU

1 START AND WHAT DO YOU DO?

2 A THERE --

3 Q I DIDN'T MEAN TO STOP YOU, I'M SORRY. WERE OTHER
4 INVESTIGATORS THERE WITH YOU?

5 A YES.

6 Q ARE THEY ALSO SEARCHING PEOPLE?

7 A YES.

8 Q ARE THEY ALSO SEARCHING THE RESIDENCE?

9 A YES.

10 Q SO YOU ARE IN THE ROOM MR. EDMONDS TOOK YOU TO?

11 A SINCE I STARTED IN THAT ROOM, I DECIDED TO SEARCH
12 THAT ROOM.

13 Q TELL US, TELL THE JURY, WHAT YOU DO TO SEARCH A
14 BEDROOM, WHAT YOU DID IN THIS CASE.

15 A TO MAKE IT EASIER, I NORMALLY SEARCH THE AREA AROUND
16 THE BED FIRST, LOOK UNDER THE MATTRESSES, UNDER THE
17 BED. AS I SEARCH, I PLACE THINGS ON THE BED FROM
18 OTHER PARTS OF THE ROOM. THAT'S THE WAY YOU DO IT
19 BECAUSE IF YOU STACK THE BED FIRST, IT'S HARD TO LOOK
20 UNDER IT.

21 Q AND WHAT DID YOU -- YOU SAY YOU START WITH THE BED?

22 A CORRECT.

23 Q YOU HAVE ALREADY BEEN SHOWN A SACK OF DRUGS NEXT TO
24 THE BED?

25 A CORRECT.

1. Finally an 'Objection By Counsel ON the grounds of Leading Questions'. But Counsel never asked for any correction measure, but the court.

2. Q: Can too many Leading Question during such critical stage (Trial) be prejudicial toward defendant? Is it enough to warrant an Reversal?

POOLE - DIRECT (SPEARS)

793

1 Q YOU HAVE BEEN TOLD ABOUT A GUN UNDER THE BED.

2 MS. RAHMAN: YOUR HONOR, I'M GOING TO OBJECT TO
3 ALL THESE LEADING QUESTIONS. I HAVE BEEN LETTING IT GO
4 FOR A MINUTE.

5 THE COURT: THE OBJECTION IS SUSTAINED.

6 BY MS. SPEARS-WALSH

7 Q WHAT DID YOU SEARCH FOR, WHAT DID YOU LOOK FOR NEXT?

8 A I THEN TURNED THE MATTRESS BACK AFTER LOOKING UNDER
9 THE COVERS ON THE BED, AND I SAW A CINGULAR PHONE BOX
10 UNDER THE MATTRESS BETWEEN THE BOX SPRINGS.

11 Q DID YOU OPEN THAT BOX?

12 A YES, I DID.

13 Q AND WHAT DID YOU FIND?

14 A THAT CONTAINED CRACK COCAINE, MARIJUANA, AND I
15 BELIEVE POWDER COCAINE.

16 Q OKAY. IT CONTAINED DRUGS?

17 A YES.

18 Q WHERE ELSE DID YOU SEARCH IN THAT BEDROOM, IF
19 ANYWHERE?

20 A AFTER I HAD FINISHED THE BED, I THEN SEARCHED THE
21 DRESSER. IN THE TOP DRESSER DRAWER I FOUND \$1,000
22 CASH.

23 Q WAS THERE ANYTHING UNIQUE ABOUT THE MONEY?

24 A IT WAS IN WHAT I CALL LITTLE FOLDS. IT WAS 10 LITTLE
25 FOLDS OF \$100 EACH, LIKE FIVE 20S OR FOUR 20S AND TWO

1. See pp. 76-77, Trial Judge had to excuse Jurors and bring to attention of Counsel that testimony had been through a witness explaining defendant Guilt. (Denno hearing)
2. No continuance was requested before the Court for (Denno Hearing). Counsel was unprepared. Know witnesses for defense were called / subpoenaed.
- POOLE - DIRECT (SPEARS)

Do Not copy 80
This side

1 10S OR WHATEVER THE DENOMINATIONS WERE. IT WAS IN
2 \$100 FOLDS EQUALLING 1,000.

3 Q AND YOU'VE BEEN ESTABLISHED AS AN EXPERT IN NARCOTICS
4 INVESTIGATIONS. DOES THAT ARRANGEMENT OF THE MONEY
5 MEAN ANYTHING TO YOU?

6 A I WAS GOING TO --

7 THE COURT: OFFICER, BEFORE YOU RESPOND TO THAT
8 QUESTION, I'M GOING TO HAVE THE JURORS GO TO THE JURY ROOM
9 FOR A BREAK AT THIS TIME. YOU MAY STEP DOWN, SIR. WE'LL
10 RESUME YOUR TESTIMONY WHEN YOU COME BACK.

11 LADIES AND GENTLEMEN, PLEASE GO TO THE JURY
12 ROOM. PLEASE DO NOT DISCUSS THE CASE WHILE YOU'RE IN THE
13 JURY ROOM. WE'LL HAVE YOU COME BACK AS SOON AS POSSIBLE.
14 THANK YOU VERY MUCH.

15 (WHEREUPON, THE JURY LEFT OPEN COURT AT
16 APPROXIMATELY 3:26 P.M.)

17 THE COURT: I HAD THE JURY TO GO OUT BECAUSE THE
18 OFFICER HAS GIVEN TESTIMONY IN EFFECT WHICH CONSTITUTES A
19 CONFESSION BY THE DEFENDANT OR A STATEMENT ADMITTING TO
20 GUILT OR CONFESSING, CONFESSING TO THE SUBSTANCE.

21 NO JACKSON V. DENNO HEARING WAS REQUESTED OR NO
22 OBJECTION MADE TO ANY OF THE TESTIMONY. MS. -- I WANT TO
23 BE SURE I GET THE PRONUNCIATION, PAHMAN.

24 MS. RAHMAN: THAT'S FINE, RAHMAN.

25 THE COURT: IS THAT RIGHT?

1 **A** His allegation that there was a mischaracterization
2 of the informant?

3 **Q** Correct.

4 **A** No, I did not discuss it. I didn't see it his way.

5 **Q** Did you discuss with him the "all persons" clause
6 that's in the search warrant.

7 **A** I do recall that. Because I remember from reading
8 the search warrant it says: All persons to be
9 searched within the premises located at 3501
10 Piedmont, or something -- and I'm paraphrasing
11 because I don't have it in front of me. But I
12 remember telling him that their surveillance and the
13 obtaining of the search warrant was based on their
14 observance of that particular address, that the
15 reason why I believe they put down "all persons" is
16 so that they can prove both a constructive possession
17 case alongside with the actual possession case.

18 **Q** Okay. And regarding the oral admission that came up
19 during the trial, do you recall when the judge
20 stopped the trial after the officer indicated that
21 Mr. Edmonds had made an oral admission?

22 **A** I do. I do. I remember being asked if I had been
23 provided that statement in discovery and I stated I
24 had not. And then Judge Newman asked: Well, now
25 that you've been provided it, you know, we have to

1 deal with it because certainly the officer wants to
2 testify to it. It had come out in front of the jury
3 and he sent the jury out and at that point we did a
4 Jackson v. Denno. Had I been provided that in
5 discovery beforehand, I probably would have requested
6 a Jackson v. Denno beforehand.

7 Q So that's not something you discussed with Mr.
8 Edmonds prior to trial, that he made that oral
9 admission?

10 A I didn't know about the oral admission.

11 Q And once you became aware of it, were you concerned
12 that you didn't have any witnesses that were in the
13 home when he made the oral admission?

14 A Is he maintaining that he was alone in the home when
15 he made the admission? I don't remember that.

16 Q No. What I'm asking is, did you see it prudent at
17 that time to ask for a continuance to get some of the
18 witnesses that were present at the home at the time
19 he made that admission?

20 A I have to say I didn't see that it was prudent
21 because I didn't ask for the continuance. Whether
22 that was correct or not, I'll defer to you all.

23 Q Now, going back to Danny Brown, you indicated in this
24 report that you couldn't find him, but yet you raised
25 an argument regarding third-party guilt. What was

POOLE - DIRECT (SPEARS)

8/22

1 MS. RAHMAN: RAHMAN.

2 THE COURT: MS. RAHMAN, WERE YOU GIVEN DISCOVERY
3 PRIOR TO TRIAL AS TO THE CONTENT OF THE ORAL STATEMENT BY
4 THIS DEFENDANT ADMITTING THAT THE DRUGS WERE HIS?

5 MS. RAHMAN: THE EXTENT OF THE DISCOVERY THAT
6 I'VE BEEN GIVEN STATES THAT, AND ACTUALLY, I WAS READING
7 IT WHILE THIS WAS GOING ON. "WHEN QUESTIONED, DEFENDANT
8 EDMONDS TOOK INVESTIGATING OFFICER INTO THE BEDROOM AND
9 SHOWED ME A PAPER BAG." THAT'S THE EXTENT OF IT.

10 SO NO, YOUR HONOR, AS FAR AS THOSE ORAL
11 STATEMENTS OTHER THAN WHAT HAS HAPPENED IN CONVERSATION,
12 IT'S NOT WRITTEN ANYWHERE THAT HE ACTUALLY MADE THESE
13 STATEMENTS.

14 THE COURT: WELL, DID THE SOLICITOR TELL YOU
15 THAT THE DEFENDANT ADMITTED THAT THE DRUGS WERE HIS AT THE
16 SCENE?

17 MS. RAHMAN: THE SOLICITOR STATED THAT MY CLIENT
18 SHOWED, GAVE HIM A GRAND TOUR OF THE HOUSE, AND POINTED
19 OUT ALL THE DRUGS HERE AND THERE AND EVERYWHERE AND SAID,
20 "I'M GUILTY. I'M GUILTY, IT'S JUST ME," WHICH IS PART OF
21 OUR CASE BECAUSE THERE'S NO EVIDENCE OF ALL THIS OTHER
22 THAN INVESTIGATOR POOLE STATING SUCH.

23 THE COURT: THAT'S WHY IT'S UP TO THE JURY TO
24 BELIEVE OR NOT BELIEVE IT.

25 MS. RAHMAN: CORRECT.

1 THE COURT: THE REASON I HAD THE JURY GO OUT,
2 THERE WAS NO REQUEST FOR A JACKSON V. DENNO HEARING TO
3 DETERMINE THE VOLUNTARINESS OF ANY STATEMENTS MADE AT THE
4 SCENE. DO YOU JUST DISPUTE THE EXISTENCE OF THE
5 STATEMENT?

6 MS. RAHMAN: YOUR HONOR, MAY WE APPROACH?

7 THE COURT: YES.

8 (WHEREUPON, THERE WAS A BENCH CONFERENCE.)

9 THE COURT: WE'LL TAKE A RECESS FOR ABOUT FIVE
10 MINUTES.

11 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

12 THE COURT: MS. RAHMAN, WOULD YOU WANT THE COURT
13 TO CONDUCT A JACKSON V. DENNO HEARING?

14 MS. RAHMAN: YES, YOUR HONOR. THE TESTIMONY
15 FROM THE OFFICER BEFORE THE COURT ADJOURNED OR RECESSED,
16 AFTER GOING INTO THE TESTIMONY THAT MR. EDMONDS HAD SHOWN
17 HIM WHERE THE DRUGS WERE AND WENT INTO TESTIMONY THAT HE
18 ACTUALLY ADMITTED THAT THESE DRUGS WERE HIS PROMPTED THE
19 RECESS. WE WOULD AT THIS TIME REQUEST A HEARING TO
20 DETERMINE THE VOLUNTARINESS OF THOSE STATEMENTS.

21 THE COURT: ALL RIGHT. WE'LL PROCEED WITH THAT.
22 OFFICER, IF YOU WILL RESUME THE STAND.

23 MS. SPEARS, IF YOU WILL CONDUCT AN EXAMINATION.

24 MS. SPEARS-WALSH: I TAKE THIS IS TO BE ON THE
25 VOLUNTARINESS ON THE CONFESSION?

1 FIND THE DEFENDANT, RAYMOND EDMONDS, NOT GUILTY OF
2 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE; INDICTMENT
3 NUMBER THREE, POSSESSION WITH INTENT TO DISTRIBUTE
4 MARIJUANA, WE THE JURY FIND THE DEFENDANT, RAYMOND
5 EDMONDS, GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE
6 MARIJUANA; INDICTMENT NUMBER FOUR, POSSESSION OF STOLEN
7 PISTOL, WE THE JURY FIND THE DEFENDANT, RAYMOND EDMONDS,
8 GUILTY OF POSSESSION OF A STOLEN PISTOL, AUGUST 5TH, 2004.

9 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.
10 YOU MAY BE SEATED. IF YOU WILL PASS THAT TO THE CLERK.

11 MADAM FORELADY AND MEMBERS OF THE JURY, IF THAT
12 IS YOUR VERDICT, PLEASE LET IT BE KNOWN BY RAISING YOUR
13 RIGHT HANDS, ALL MEMBERS OF JURY.

14 (ALL ANSWERED AFFIRMATIVELY)..

15 THANK YOU VERY MUCH. ANY ADDITIONAL POLLING
16 REQUESTED BY THE DEFENSE?

17 MS. RAHMAN: NO, YOUR HONOR.

18 THE COURT: ALL RIGHT. MR. EDMONDS, YOU MAY
19 HAVE YOUR SEAT ALONG WITH COUNSEL.

20 LADIES AND GENTLEMEN, I CERTAINLY WANT TO THANK
21 YOU. IF YOU WILL HAND ME THE VERDICT AND LET ME REVIEW IT
22 FOR FORM.

23 (PAUSE).

24 LADIES AND GENTLEMEN, THE VERDICT APPEARS TO BE
25 IN ORDER. I WANT TO THANK YOU FOR YOUR SERVICES IN THIS

1 THE COURT: WELL, I SEE A CROWD GATHERING. DO
2 WE HAVE SOME NEWS?

3 THE CLERK: THEY HAVE A VERDICT.

4 THE COURT: OKAY. FIND YOUR DEFENDANT.

5 (PAUSE).

6 OKAY. THE DEFENDANT IS HERE. EVERYONE IS HERE.
7 PLEASE BRING THE JURY.

8 (WHEREUPON, THE JURY RETURNED TO OPEN COURT WITH
9 THE VERDICT AT 12:20 P.M.)

10 THE BAILIFF: YOUR HONOR, THE JURY IS PRESENT.

11 THE COURT: MADAM FORELADY, IF YOU WILL STAND
12 FOR ME, PLEASE.

13 HAVE YOU REACHED A VERDICT?

14 THE FOREMAN: YES, SIR.

15 THE COURT: WOULD YOU LIKE TO PUBLISH THE
16 VERDICT, OR WOULD YOU LIKE THE CLERK TO READ IT?

17 THE FOREMAN: I CAN READ IT.

18 THE COURT: ALL RIGHT. PUBLISH IT FOR US.

19 THE DEFENDANT, PLEASE STAND.

20 PLEASE READ THE VERDICT FORM.

21 THE FOREMAN: INDICTMENT NUMBER ONE, TRAFFICKING
22 CRACK COCAINE 100 TO 200 GRAMS, WE THE JURY FIND THE
23 DEFENDANT, RAYMOND EDMONDS, GUILTY OF TRAFFICKING CRACK
24 COCAINE 100 TO 200 GRAMS; INDICTMENT NUMBER TWO,
25 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE, WE THE JURY

WITNESSES

RCSD - POOLE

S/S

DOCKET NO. 2003-GS-40-03625

The State of South Carolina

County of Richland

72

COURT OF GENERAL SESSIONS

JULY TERM 2003

THE STATE
vs.

RAYMOND EDMONDS

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 7/7/03

VERDICT

Foreperson of Petit Jury

Date:

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plea
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for

TRAFFICKING CRACK COCAINE 1ST
100 TO 200 GRAMS

SC Code: 44-53-375

CDR Code: 0368

Class: X/FELONY

569

(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

571
TRAFFICKING CRACK COCAINE 1ST, 100 TO 200 GRAMS

At a Court of General Sessions, convened on **JULY 16, 2003** the Grand Jurors of Richland County present upon their oath:

THAT RAYMOND EDMONDS DID IN RICHLAND COUNTY ON OR ABOUT MAY 15, 2003, KNOWINGLY SELL, MANUFACTURE, CULTIVATE, DELIVER, PURCHASE OR BRING INTO THIS STATE, OR DID PROVIDE FINANCIAL ASSISTANCE OR DID OTHERWISE AID, ABET, ATTEMPT OR CONSPIRE TO SELL,, MANUFACTURE, CULTIVATE, DELIVER, PURCHASE OR BRING INTO THIS STATE, OR DID KNOWINGLY ACTUALLY OR CONSTRUCTIVELY POSSESS OR DID KNOWINGLY ATTEMPT TO BECOME IN ACTUAL OR CONSTRUCTIVE POSSESSION OF 100 GRAMS BUT LESS THAN 200 GRAMS OF CRACK COCAINE, OR ANY MIXTURES THEREOF, IN VIOLATION OF S.C. CODE SECTION 44-53-375, TO WIT: 170 GRAMS OF CRACK COCAINE.

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

WITNESSES

RCSD - M. POOLE *SP*

The State of South Carolina
County of Richland

72

COURT OF GENERAL SESSIONS

JULY TERM 2003

THE STATE
vs.

RAYMOND EDMONDS

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER
H-416954

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *7/2/03*

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

POSSESSION OF UNLAWFUL
WEAPON BY A CONVICTED FELON

SC Code: 16-23-30, 50(A)(1)

CDR Code: 2364

Class: F/FELONY

573
STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

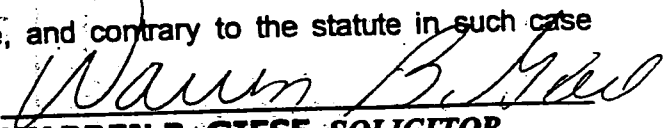
INDICTMENT

POSSESSION OF UNLAWFUL WEAPON BY A CONVICTED FELON

At a Court of General Sessions, convened on **JULY 16, 2003** the Grand Jurors of Richland County present upon their oath:

THAT RAYMOND EDMONDS DID IN RICHLAND COUNTY ON OR ABOUT MAY 15, 2003, WILFULLY AND UNLAWFULLY, AFTER HAVING BEEN CONVICTED OF A CRIME OF VIOLENCE, PURCHASE AND POSSESS AN UNLAWFUL WEAPON, TO WIT: A .380 CALIBER HIGH POINT PISTOL, SERIAL #P744769, IN VIOLATION OF S.C. CODE SECTION 16-23-30, 50(A)(1).

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


WARREN B. GIESE, SOLICITOR

WITNESSES

RCSD - M. POOLE

SS

DOCKET NO. 2003-GS-40- 03635

The State of South Carolina

County of Richland

72

COURT OF GENERAL SESSIONS

JULY TERM 2003

THE STATE

vs.

RAYMOND EDMONDS

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 7/17/03

VERDICT

Foreperson of Petit Jury
Date:

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE, 1ST

SC Code: 44-53-370(B)(1)

CDR Code: 0183

Class: D/FELONY

575

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE, 1ST

At a Court of General Sessions, convened on **JULY 16** the Grand Jurors of Richland County present upon their oath:

THAT RAYMOND EDMONDS DID IN RICHLAND COUNTY ON OR ABOUT MAY 15, 2003, MANUFACTURE, DISTRIBUTE,, DISPENSE, DELIVER, PURCHASE OR AID, ABET, ATTEMPT, OR CONSPIRE TO MANUFACTURE, DISTRIBUTE, DISPENSE, DELIVER, OR PURCHASE, OR POSSESS WITH INTENT TO MANUFACTURE, DISTRIBUTE, DISPENSE, DELIVER, OR PURCHASE A CONTROLLED SUBSTANCE, TO WIT: COCAINE, IN VIOLATION OF S.C. CODE SECTION 44-53-370(B)(1).

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

WITNESSES

RCSD - M. POOLE

S/S

DOCKET NO. 2003-GS-40- 03636

The State of South Carolina

County of Richland

72

COURT OF GENERAL SESSIONS

JULY TERM 2003

ARREST WARRANT NUMBER

H-416955

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 7/17/03

VERDICT

Foreperson of Petit Jury

Date:

THE STATE

vs.

RAYMOND EDMONDS

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SC Code: 44-53-370(B)(2)

CDR Code: 0186

Class: F/FELONY

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST
A TRUE COPY

Barbara C. Scott

577

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

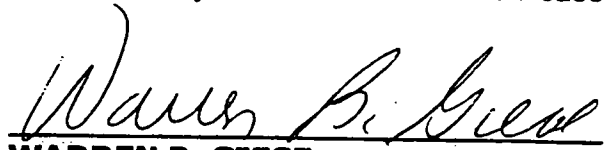
INDICTMENT

POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA

At a Court of General Sessions, convened on **JULY 16, 2003** the Grand Jurors of Richland County present upon their oath:

THAT RAYMOND EDMONDS DID IN RICHLAND COUNTY ON OR ABOUT MAY 15, 2003, MANUFACTURE, DISTRIBUTE,, DISPENSE, DELIVER, PURCHASE OR AID, ABET, ATTEMPT, OR CONSPIRE TO MANUFACTURE, DISTRIBUTE, DISPENSE, DELIVER, OR PURCHASE, OR POSSESS WITH INTENT TO MANUFACTURE, DISTRIBUTE, DISPENSE, DELIVER, OR PURCHASE A CONTROLLED SUBSTANCE, TO WIT: MARIJUANA, IN VIOLATION OF S.C. CODE SECTION 44-53-370(B)(2).

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


WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Edmonds, Jr., Raymond, 00304228,

2007CP4006691

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

JEANETTE W. McBRIDE
C.C.P. & G.S.

2010 FEB -5 PM 2:35

RICHLAND COUNTY
FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 8, 2007. The Respondent made its Return on October 14, 2008. The Application references a memorandum that the Respondent denied ever receiving.¹ Nevertheless, the Applicant, through counsel, later submitted his amendments to his PCR application on July 29, 2009. An evidentiary hearing into the matter was convened on August 14, 2009 at the Richland County Courthouse. The Applicant was present at the hearing and was represented by Tricia Blanchette, Esquire. Brian T. Petrano of the South Carolina Attorney General's Office represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The Applicant presented testimony from Ms. Angela Williams and Philana James. The Applicant attempted to call a minor child to the stand (R.T.); instead the State was willing to

¹ This Court was never provided the supposed memorandum from the PCR application.

stipulate that the child was present at the residence when law enforcement was processing the scene and that he would have testified to the same. The Applicant's trial counsel, Kana Johnson, Esquire also testified. This Court had before it the records of the Richland County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the appellate decision and Anders brief.²

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Kana Johnson, Esquire. On August 5, 2004, after a jury trial with the Honorable Clifton Newman, the Applicant was convicted and sentenced to the following:

7-03	2003GS4003625	0368 44-53-0375(C)(2)(c) * Exactly 25 * Drugs / Trafficking crack - 100 g - 200 g V.S	25	No
7-03	2003GS4003633	2384 18-23-0050(A)(1) * 5 * Weapons / Possession by, certain persons unlawful; stolen pistol	5	No
7-03	2003GS4003636	0189 44-53-0370(b)(2) * 5-20 * Drugs / PWID Marijuana - 3rd or sub. offense	10	No
7-03	2003GS4003635	0185 44-53-0370(b)(1) * 15-30 * Drugs / PWID Cocaine - 3rd or sub. Offense S	not guilty	No

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence following and Anders brief. State v. Edmonds, Op. No. 2006-UP-158 (S.C. Ct. App. filed April 25, 2007).

² Anders v. California, 386 U.S. 738 (1967).



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In the amended PCR application the Applicant alleges:

1. Ineffective Assistance of Trial Counsel, specifically but not limited to the following grounds:
 - a. Failure to prepare and investigate, specifically failure to review discovery, prepare for trial and prepare witnesses.
 - b. Failure to negotiate a plea agreement and/or advise the Applicant regarding plea negotiations.
 - c. Failure to request that the State's witnesses be sequestered during trial.
 - d. Failure to properly prepare and present the motion to compel the disclosure of the confidential informant.
 - e. Failure to present all available arguments during the motion to suppress the search warrant and failure to call any witnesses on the Applicant's behalf.
 - f. Failure to request a Jackson v. Denno hearing without the Court's prompting and failure to call any witnesses or present a viable argument on the Applicant's behalf.
 - g. Failure to locate Danny Brown and failure to properly utilize and/or investigate the statements of Danny Brown prior to trial.
 - h. Failure to enter contemporaneous objections to the introduction of the drug evidence, gun, and janitorial paperwork.
- i. Failure to properly address the situation regarding the presence of children in the home at the time the search warrant was executed.
- j. Failure to file any post trial motions with the Court.
- k. Failure to follow up with the Applicant and provide the Applicant with paperwork from the pending forfeiture action.

At the evidentiary hearing, the Applicant proceeded in general on the allegations stated in the amended application for post-conviction relief.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. § 17-27-80 (1985).

Applicant's testimony at the PCR hearing

The Applicant testified that his wife (Sabrina) was a co-defendant to these charges. The Applicant testified that his attorney Kana Johnson was appointed but that originally Amy Rushing was his counsel until Ms. Johnson was appointed. The Applicant explained that he discussed suppression with trial counsel, that he had received a full copy of the public defender's file including some emails regarding Mr. Danny Brown who rented a room from the Edmonds. The Applicant explained that while he was out on bond he met with trial counsel at her office. The Applicant testified that he knew trial counsel was using an investigator and that the investigator had met with his co-defendant wife. The Applicant testified that it was his understanding that the investigator was trying to locate Danny Brown but could not do so. The Applicant testified that he wanted a trial despite trial counsel's suggestion and explanation of a plea offer made by the State. The Applicant maintains that trial counsel failed to meet with any witnesses and that she failed to

have the State's witnesses including police officers sequestered during the trial. The Applicant testified that he did not testify at the suppression hearing. The Applicant also explained that he did not take the stand at all during the trial. The Applicant complained that despite investigator Poole's testimony, the warrant does not mention surveillance, nor does the warrant describe the people to be searched – the Applicant maintained that the warrant should have been suppressed. The Applicant testified that an issue arose regarding whether investigator Poole made any threats to the Applicant, and the Applicant claims that trial counsel was ineffective for not calling the other witnesses that overheard the DSS threats. The Applicant testified that he was aware of Danny Brown's 3rd statement [recantation] and that trial counsel was ineffective for eliciting Brown's statements from investigator Poole who read Brown's 3rd statement into the record. The Applicant testified that he wanted a continuance to find Danny Brown to show 3rd party guilt. The Applicant testified that he confessed only due to DSS threat and that the officers claimed that the children did not appear until after the arrest. The Applicant claims that the notary on Brown's 3rd statement is a forgery. The Applicant claimed trial counsel called his co-defendant wife to the stand but that her prior statements came in that implicated the Applicant as a drug dealer.

Trial counsel's testimony

Trial counsel testified that she met with the Applicant at least twelve (12) times, that she reviewed the discovery with him. Trial counsel testified that she

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used an investigator throughout the case. Trial counsel explained that she tried to locate Danny Brown for use at trial. Trial counsel testified that Brown met with her at her office and was going to take full responsibility of the drugs. Trial counsel testified that she communicated the plea offer made by the State to the Applicant. Trial counsel explained that one charge (distribution of crack cocaine) was not proessed because of her motion to reveal the confidential informant (C.I.), and that because the State was unwilling to disclose the identity of one of their C.I.s that charge was not proessed.³ Trial counsel testified that she saw no problem with the warrant beyond what she argued and that the return was blank and was full of notations as to which officer was where. Trial counsel testified that she saw nothing wrong with the "all persons" clause in the search warrant. Trial counsel explained that (as indicated in the transcript) that the oral statements by the Applicant were not fully explained in the discovery materials, and once relayed by investigator Poole, the Court conducted a Jackson v. Denno hearing regarding the voluntariness of the Applicant's statements/confession that the drugs were his.⁴ Trial counsel testified that she did not see it prudent to request a continuance during the Jackson v. Denno hearing. Trial counsel testified that she tried to apply a 3rd party-guilt defense concerning Brown's statement(s) taking responsibility for the drugs – but that his later recantation did not help. Trial counsel testified that she was not

³ Trial transcript, p. 9 – 10.

⁴ This hearing is commonly referred to as a Jackson v. Denno hearing based upon the United States Supreme Court's decision in that case. 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

concerned that the substances may have been referenced as drugs prior to actually testimony from the analyst. Trial counsel testified that despite the Applicant's claims to the contrary she does not see any legitimate objection to the gun. Trial counsel testified that it did not occur to her to call any children at the Jackson v. Denno hearing to establish their presence. Trial counsel testified that she warned the Applicant that his co-defendant wife's statements would come in to evidence if she testified but that the Applicant insisted that she call her because, as he explained, she was going to explain her prior inconsistent statements and present testimony favorable to the Applicant. Trial counsel explained that she saw nothing to warrant any post-trial motion(s), and that the communications between her and the Applicant "broke-down" after the trial. Trial counsel testified that the Applicant would not accept the plea offer - either the offer was for seven (7) years and the Applicant wanted five (5) or the offer was for ten (10) and the Applicant wanted (7).

Witness Williams' testimony at the PCR hearing

Angela Williams testified that she is the Applicant's sister and that she was present when law enforcement was at the residence. Witness Williams testified that she did not know who the drugs belonged to, and that law enforcement made threats regarding whether DSS would be called. Witness Williams testified that she arranged for her father to take the children. Witness Williams testified that she would have testified at the Jackson v. Denno hearing if requested and could have provided testimony to counter the testimony of law enforcement that no children

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were present. Witness Williams explained that while she testified at the Applicant's trial, trial counsel did not prepare her.

Witness James

Philana James testified that she is a family relative and it was her concern that trial counsel was "nonchalant." Witness James testified that she saw the solicitor come from the back (where the jury was) with a box of evidence and thought it was odd that trial counsel did not seem interested.

Witness R.T.

Witness R.T. was a minor child who did not ultimately testify at the PCR hearing. The State stipulated to the testimony that the child was present at the residence when law enforcement was processing the scene and that he was available to testify to the same.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. As discussed throughout, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

While the Applicant may have testified credibly as to what the record clearly establishes, otherwise this Court finds the Applicant's testimony, for the most part, was not credible, while also finding Applicant's counsel's testimony is credible. Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that counsel failed to render reasonably effective assistance under prevailing professional norms. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by counsel's performance.

Jackson v. Denno issue

This Court finds that the Applicant's claims regarding ineffective assistance of counsel as to any challenge(s) to the voluntariness of his statement are without merit. The Applicant claims that his statements claiming responsibility for the drugs found in his house were not voluntary and were coerced because law enforcement threatened him that if someone did not claim the drugs, D.S.S. (the South Carolina Department of Social Services) would be contacted. Initially this Court acknowledges that it is aware that a DSS threat could in theory be found to be an improper influence rendering the Applicant's statement involuntary. State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (S.C. App. 1992). However, this Court finds the Applicant's claims fail. The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury. First, the trial judge must conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was

voluntarily made by a *preponderance of the evidence*. Jackson v. Denno, 378 U.S. 368, 376, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964). If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 448 (S.C.App. 2007). Citing State v. Washington, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988).

Testimony of Applicant regarding Denno issues:

The Applicant complains that trial counsel was ineffective for failing to call witnesses at the Denno hearing. Specifically, the Applicant complains that trial counsel should have called himself, his sister, and one of the minor children who could have countered the testimony of law enforcement who claimed that no DSS threats were made and whether children were even present. The Applicant had a Denno hearing during his trial. (Trial transcript, p. 82 – 108, 112 – 113). At the Denno hearing the State presented testimony from law enforcement officers Poole, Lutz, Martin, and Linfert. All four testified that the Applicant's statements were spontaneous and/or voluntary; the officers explained that if there were children present they came after the initial execution of the warrant and no DSS threats were made – ever. Investigator Poole explained that he told the Applicant (and the others) that they were going to search the house and it would make things easier if someone wanted to cooperate and show them where the drugs were. Poole explained that the Applicant claimed the drugs from under the couch and directed him to the

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bedroom where some of the other drugs were found as well as a weapon.⁵ (Trial transcript, p. 76). The Applicant did not direct law enforcement to the box under the mattress that located the bulk of the drugs – that was found later in the Applicant's bedroom by law enforcement. (Trial transcript, p. 78 – 79).⁶ Investigator Poole testified that there may have been some children present at some point, but he did not specifically recall them and they were not listed on his manifest. (Trial transcript, p. 86). Investigator Poole testified that the Applicant spontaneously claimed the initial drugs. (Trial transcript, p. 89). Investigator Poole testified that no DSS threats were ever made by him nor anyone else. (Trial transcript, p. 86 – 87). Investigator Lutz confirmed that no DSS threats were ever made. (Trial transcript, p. 95). Investigator Martin also testified that the Applicant spontaneously claimed ownership of the drugs that were found. (Trial transcript, p. 97). Investigator Martin also confirmed that no DSS threats were ever made. (Trial transcript, p. 100). In addition, investigator Linfert also testified that no DSS threats were ever made. (Trial transcript, p. 104). Investigator Linfert explained that the Applicant claimed the drugs found in the phone box⁷ because the Applicant's wife was telling him "to do the right thing." (Trial transcript, p. 103).⁸

⁵ While the actual Denno hearing does not begin until page 82, investigator Poole testified as to the voluntariness of the Applicant's statements – which is what triggered the Denno hearing. (Trial transcript, p. 76).

⁶ The Applicant ultimately claimed all of the drugs including those from the box under the mattress. (Trial transcript, p. 84 – 85, 103, 479).

⁷ This Court notes that drugs were found in three places, the couch, in a bag under the bed, and in a phone box under the bed. Law enforcement found the couch drugs while securing the group, the Applicant led them to the bag under the bed, and the investigators found the phone box under the bed without the Applicant's assistance.

⁸ The Applicant's wife's testimony affirms her prodding. (Trial transcript, p. 479).

The trial judge need not find the statement voluntary beyond a reasonable doubt – that task is for the jury. Miller at 379.⁹ To pass through the Denno stage the trial judge need only find that the State established the voluntariness of the statement by a *preponderance of the evidence*. Id. In the case at hand, the four officers must have testified credibly at the Denno hearing, otherwise the trial court would not have found the statement(s) voluntary and admissible for the jury to ultimately review. (Trial transcript, p. 112 – 113). The Applicant's amended PCR allegation suggests that trial counsel was ineffective for failing to call witnesses on the Applicant's behalf during the Denno hearing. The issue for this Court then turns to whether trial counsel not calling any witnesses at the Denno hearing - to rebut the testimony of the four officers - was deficient and her performance fell below a standard of "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). The Applicant failed to satisfy his burden of proof and demonstrate that trial counsel's performance was deficient. This Court finds that it is not unreasonable for trial counsel not to elicit testimony (even if credible) from this Applicant and/or his sister and/or a minor child to rebut the credible testimony of the four law enforcement officers (of whom one or more was qualified as a narcotics expert) who did testify at the Denno hearing.¹⁰ Whether the Applicant, his sister, and/or the minor child testified would not have outweighed the credible testimony of the four law enforcement officers and the trial judge would

⁹ Similarly, Miller himself also did not testify at his Denno hearing – he was tried in absentia. Miller at 378.

¹⁰ Investigator Poole was qualified as an expert in narcotics. (Trial transcript, p. 69 L. 19 – 23).

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still have ruled that the statement was voluntary by a preponderance of the evidence and admitted the statement to the jury for their consideration. Trial counsel had an opportunity to view the credible testimony of the four law enforcement officers and not presenting the Applicant, his sister, and/or the minor child to rebut them was not deficient considering the preponderance of the evidence standard applied to a Denno hearing.

For the sake of argument, even if trial counsel was deficient, there is no prejudice. Trial counsel's (purported) deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. In the case at hand, this Court's credibility finding regarding the Applicant's testimony (and his sister's) do not support any finding of prejudice – the Applicant therefore failed to satisfy his burden of proof and demonstrate otherwise. The Applicant's PCR claim is (presumably) that he would have testified at the Denno hearing. This Court had an opportunity to evaluate the Applicant's testimony at the PCR hearing. It was self-serving and not credible that he claimed the drugs belonged to him because of an alleged threat to call DSS. Because his testimony lacks credibility, its absence cannot support any finding of prejudice even if he had testified to the same at the Denno hearing.

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Testimony of witness Williams regarding Denno issues:

Witness Williams (the Applicant's sister) testified at the PCR hearing that law enforcement made numerous DSS threats. The allegation is that trial counsel was ineffective for not calling her to testify at the Denno hearing and that if she had testified at the Denno hearing the result would have been different. Both claims fail. The Applicant failed to satisfy his burden of proof and demonstrate that trial counsel's performance was deficient. This Court finds that it is not unreasonable for trial counsel not to elicit testimony (even if credible) from this Applicant and/or his sister and/or a minor child to rebut the credible testimony of the four law enforcement officers (of whom one or more was qualified as a narcotics expert) who did testify at the Denno hearing.¹¹ Whether the Applicant, his sister, and/or the minor child testified would not have outweighed the credible testimony of the four law enforcement officers who adamantly denied making any DSS threats and the trial judge would still have ruled that the statement was voluntary by a preponderance of the evidence and admitted the statement to the jury for their consideration – the Applicant failed to demonstrate otherwise. Trial counsel had an opportunity to view the credible testimony of the four law enforcement officers and not presenting the Applicant, his sister, and/or the minor child to rebut them was not deficient considering the preponderance of the evidence standard applied to a Denno hearing.

¹¹ Investigator Poole was qualified as an expert in narcotics. (Trial transcript, p. 69 L. 19 – 23).

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For the sake of argument, even if trial counsel was deficient, there is no prejudice. Trial counsel's (purported) deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. In the case at hand, this Court's credibility finding regarding the Applicant's sister's testimony does not support any finding of prejudice – the Applicant therefore failed to satisfy his burden of proof and demonstrate otherwise. The Applicant's PCR claim is (presumably) that witness Williams would have testified at the Denno hearing. This Court had an opportunity to evaluate the witness Williams' testimony at the PCR hearing and it was without credibility regarding whether the Applicant may have claimed the drugs because of an alleged DSS threat. Because her testimony lacks credibility its absence cannot support any finding of prejudice if she had testified to the same at the Denno hearing. Unlike the Applicant, witness Williams testified at the trial. Her testimony at trial never revealed any observation of any DSS threat made by law enforcement to the Applicant. Witness Williams' testimony at the trial was only that investigator Poole told her that protective services may be called – witness Williams testified [at the trial] to nothing regarding what Poole may have told the Applicant. (Trial transcript, p. 405 – 406). In fact witness Williams testified at trial that she had already called her father to come get the kids and that law enforcement's DSS threat was only made to her regarding her kids. (Trial

transcript, p. 406 L. 3 - 7). Witness Williams' father testified [at trial] and was asked about any DSS threats, he explained that he was unaware of any DSS threats. (Trial transcript, p. 427). The testimony is conflicting regarding when witness Williams even arrived at the scene. At the trial, investigators Poole and Lutz both testified that witness Williams [and the kids] did not arrive until later, after the warrant was first executed. (Trial transcript, p. 129 - 130, 221). Investigator Linfert testified at the trial and explained how they noted the names of everyone who was initially present in the house and the details of what was found on whom - there is no mention of witness Williams or children; Linfert testified that Williams [and the kids] arrived later. (Trial transcript, p. 247 - 248, 251 - 252). When witness Williams' fiancé testified at the trial he never mentioned anything about any DSS threats - and he was present the entire time law enforcement was on the scene. (Trial transcript, p. 410 - 414).

Impact of minor child (R.T.) regarding Denno issues:

For the same reasons as explained above for witness Williams and the Applicant's testimony, there is nothing deficient or prejudicial about trial counsel not calling a minor child to testify at the Denno hearing. As explained in detail above, the Applicant failed to satisfy his burden of proof and demonstrate that trial counsel's performance was deficient. This Court finds that it is not unreasonable for trial counsel not to elicit testimony (even if credible) from this Applicant and/or his sister and/or a minor child to rebut the credible testimony of the four law

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enforcement officers (of whom one or more was qualified as a narcotics expert) who did testify at the Denno hearing.¹² Whether the Applicant, his sister, and/or the minor child testified would not have outweighed the credible testimony of the four law enforcement officers and the trial judge would still have ruled that the statement was voluntary by a preponderance of the evidence and admitted the statement to the jury for their consideration. Trial counsel had an opportunity to view the credible testimony of the four law enforcement officers; and not presenting the Applicant, his sister, and/or the minor child to rebut them was not deficient considering the nature of a Denno hearing. As this Court explains throughout, even assuming trial counsel called a minor child to testify at the Denno hearing and he did so credibly regarding his presence at the Applicant's residence during the execution of the warrant, the exact time of arrival of the children is conflicted and testimony exists that they did not arrive until *after* the Applicant's [voluntary] statements were made. (Trial transcript, p. 76, 78 - 79, 84 - 86, 89, 97, 103, 129 - 130, 221, 251 - 252). Accordingly, no prejudice exists because the preponderance of the evidence would still support the trial judge's Denno ruling.

Ample evidence exists in the record to support the conclusion that the Applicant's statement was voluntary. There is no claim that the Applicant was not advised of his rights. The Applicant spontaneously claimed the drugs that were found in the living room. (Trial transcript, p. 76, 89, 114 - 115, 217). The Applicant

¹² Investigator Poole was qualified as an expert in narcotics. (Trial transcript, p. 69 L. 19 - 23).

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claimed the drugs that were found in the bedroom, and the gun. (Trial transcript, p. 78 - 79, 116, 219). Testimony exists that the Applicant repeatedly, after all the drugs were found, claimed the drugs as his own. (Trial transcript, p. 84 - 85, 97, 122 - 123, 220, 253).

The Applicant does not allege that but for some sort of error by trial counsel that he would have testified at the trial itself - his allegations is that he should have been called to testify at the Denno hearing. The Applicant himself decided not to take the stand at trial. (Trial transcript, p. 344 - 346). The Applicant's wife testified, on cross examination, that the Applicant claimed the drugs because she told him he needed to do the right thing - investigator Linfert confirmed as much. (Trial transcript, p. 103, 479).

In the preceding analysis, this Court's conclusion is that it was not ineffective for trial counsel not to call the Applicant and/or his sister and/or the minor child to rebut the credible testimony of the four law enforcement officers who did testify at the Denno hearing. There may have been a suggestion at the hearing that at the minimum trial counsel had *nothing to lose* by putting up the witnesses at the Denno hearing. The United States Supreme Court has recently ruled that such an argument cannot satisfy a Strickland analysis. "This Court has never established anything akin to [a] "nothing to lose" standard for evaluating Strickland claims." Knowles v. Mirzayance, 129 S.Ct. 1411 at 1419 (2009).

Plea deal

In the Applicant's amended allegations he claims that trial counsel was ineffective for failing to better negotiate a plea offer. Trial counsel has a duty to relay any plea offers made by the State to the defendant. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009). The Applicant's claim is without merit. Trial counsel testified credibly that the Applicant rejected the offer she relayed and that it was his decision to not plea guilty and instead face trial.

Search Warrant

In the Applicant's amended allegations he claims that trial counsel was ineffective for failing to successfully move the court to force the State to reveal the identity of the confidential informant. As a corollary issue, the Applicant also alleged that trial counsel was ineffective for failing to challenge the search warrant. These issues were listed in the amended PCR application but were not the primary issue(s) addressed at the PCR hearing. Nonetheless, the issue(s) fail. The Applicant claimed that trial counsel was ineffective for failing to challenge the warrant because it was overbroad; trial counsel testified that while she did challenge to warrant on certain grounds, she saw nothing wrong with the "search is to include all persons at the premise" clause of the warrant.

Search of persons

S.C. Code § 17-13-140 requires a search warrant be issued "only upon affidavit sworn to before the magistrate [or other judicial officer]" and only if the

magistrate "is satisfied that the grounds for the application exist or that there is probable cause to believe that they exist...." The magistrate issuing the search warrant must "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit ... there is a fair probability that contraband or evidence of a crime will be found in a particular place." Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). State v. Thompson, 363 S.C. 192, 200, 609 S.E.2d 556, 560 (S.C. App. 2005).

The warrant and affidavit submitted clearly explains the reasoning for searching all persons at the residence where suspected drug dealing is taking place. The warrant and affidavit explain that:

Through the affiant's and other Richland County Sheriff's Department Narcotic officers experience in drug enforcement, it is known that subjects present at the scene of illegal drug distribution and/or possession commonly have drugs in their possession and also stored and/or transported in vehicles in their possession and control.

There is no basis to support the Applicant's bare assertion that the warrant was overbroad in its authorization to search those present at the scene of illegal drug distribution. The information provided to the magistrate related to seeing crack cocaine at the residence. There was a basis upon which the magistrate could conclude that probable cause existed to search the persons present at the scene of illegal drug distribution.

Severability

For the sake of argument, even if the warrant was overbroad in regards to the search of "all persons" at the residence, that portion is severable from the

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otherwise unchallenged and valid portion(s). State v. Thompson, 363 S.C. 192, 205, 609 S.E.2d 556, 563 (S.C. App. 2005). The Applicant does not allege, nor does the record reveal, that anything was discovered on his person. The Applicant cannot vicariously challenge a purported Fourth Amendment issue that may have occurred as to any of the other persons. Rakas v. Illinois, 439 U.S. 128 (1978). Accordingly, the "all persons at the premises" language is of no consequence to the Applicant.

This Court notes that trial counsel did challenge the warrant and also attempted to force the State to reveal the identity of the confidential informant. (Trial transcript, p. 11 - 16, 44 - 55). For a court to require the State to disclose the identity of a confidential informant, informer's potential testimony must significantly aid defendant, and mere conjecture or supposition about possible relevancy is insufficient. The defendant has the burden to prove that the informant's testimony is relevant. Essentially, the issue is whether or not the informant's testimony will make any element in the indictment more or less probable or whether the informant's testimony will help determine whether the search of the defendant was justified.

As a general rule, the State may withhold the names of informants. This privilege is necessary for protecting law enforcement. State v. Bernotas, 277 S.C. 106, 283 S.E.2d 580 (1981). However, disclosure may be required when the informant is a participant in, or a material witness to, a criminal transaction. State v. Burney, 294 S.C. 61, 362 S.E.2d 635 (1987); State v. Diamond, 280 S.C. 296, 312 S.E.2d 550 (1984). Where it has not been shown that the informants were participants in, or material witnesses to, the alleged criminal transaction, we have refused to compel disclosure. See e.g. State v. Bernotas, 277 S.C. 106, 283 S.E.2d 580 (1981).

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State v. Hayward, 302 S.C. 75, 393 S.E.2d 918 (1990).

Accordingly, the Applicant failed to satisfy his burden of proof and demonstrate that trial counsel was ineffective. In addition, the Applicant failed to satisfy his burden of proof and demonstrate that had trial counsel made the arguments he alleges she failed to make, the outcome would have been any different.

Danny Brown

The Applicant alleged that trial counsel was ineffective for failing to locate Danny Brown to testify; Danny Brown supposedly claimed ownership of the drugs. Danny Brown did not testify at the PCR hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Affidavits from Danny Brown were submitted at the trial and the PCR hearing.

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The Danny Brown issue is framed as a third party guilt concern. Instructive on this point is South Carolina's standard for admission of 3rd party guilt evidence – such evidence “must be limited to such facts as are inconsistent with [Applicant's] own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence”. Further, there must be “proof . . . as tends clearly to point out such other person as the guilty party”. State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941). Considering the fact that Danny Brown made at least three (3) separate and somewhat conflicting statements on June 2, 2003 there is nothing “clear” about Danny Brown's testimony that absolves the Applicant.

Danny Brown purportedly executed three (3) affidavits on June 2, 2003. (Applicant's # 3, 4, and 5). Applicant's # 3 is time stamped at 13:21 hours and states that the prior statement was false. Investigator Poole testified at the trial and explained the context. Applicant's #5 is another purported affidavit from Danny Brown, it has no time stamp. However, because it was executed at public defender's office, the other contextual testimony suggests it was the first statement. (Trial transcript, p. 366 L. 24 – p. 367 L. 11). Two statements from Danny Brown claim the drugs as his (Applicant's # 4 and 5) while another statement (Applicant's #3) says the prior statement was false. It is only logical to conclude that the final statement made was the recantation, i.e. Applicant's # 3, time stamped 13:21 hours. If the statement with no time stamp was to be a recantation of the prior recantation it would say so. Also, the testimony of investigator Poole explained that he first met

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with Danny Brown in front of the Richland County Public Defender's Office and they went upstairs to the Solicitor's Office to take his statement. (Trial transcript, p. 377 - 396). The version with no time stamp is clearly the earlier statement because it contains numerous inconsistencies such as reference to a "Nextel" phone box that investigator Poole explained was one of the facts that he challenged Danny Brown with that led to the recantation. (Trial transcript, p. 384 - 396). Accordingly, there can be no ineffectiveness regarding trial counsel's "investigation" into the sequence of Danny Brown's multiple statements because it is clear that the recantation is the final version and that is what was presented at trial. The Applicant failed to satisfy his burden of proof regarding what specifically was deficient about trial counsel's handling of the Danny Brown statement(s). The Applicant also failed to satisfy his burden of proof and demonstrate that had trial counsel investigated Danny Brown's statements that the results would have been any different.

Exclusion of Witnesses

The Applicant alleges that trial counsel was ineffective for failing to have the State's witnesses sequestered. Presumably the Applicant is referring to Rule 615, SCRE. The Applicant failed to satisfy his burden of proof and demonstrate that trial counsel was ineffective for not moving to sequester the State's witnesses. Our Supreme Court has held that it is not an abuse of discretion to allow law enforcement to remain and assist the Solicitor despite the sequestration of other

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witnesses. State v. Sharpe, 122 S.E.2d 622, 624 (1961) *overruled on other grounds* by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).¹³ Because case law supports excluding law enforcement from sequestration, it was probable that the main party to suffer from any sequestration request would be the defense. Accordingly, it was not ineffective for trial counsel to not request a sequestration for law enforcement who would likely be excluded from the request.

In addition, the Applicant failed to demonstrate, beyond mere speculation, that the results would have been any different had law enforcement been sequestered. The suggestion is that if law enforcement was sequestered then they would not have confirmed each other's testimony regarding the DSS threats during the Denno hearing. This argument fails for lack of proof. In addition, as explained above, when witness Williams' fiancé testified at the trial he never mentioned anything about any DSS threats – and he was present the entire time law enforcement was on the scene. (Trial transcript, p. 410 – 414).

Post Trial Motions

The amended application alleges that trial counsel was ineffective for failing to file any post-trial motions with the court. The Applicant failed to seriously pursue this issue at the PCR hearing. In any event, trial counsel testified that she failed to

¹³ The Federal Rule is substantially similar yet is applied in a stricter sense in that sequestration of witnesses is required upon request of either party. Whereas in South Carolina it is in the discretion of the trial judge. See State v. Jackson, 265 S.C. 278, 217 S.E.2d 794 (1975). However, even in the more restrictive Federal application, because a chief investigating agent may be of significant help to prosecution during course of a trial, trial court has discretion to make an exception to general rule of sequestration of witnesses in his case. U. S. v. Pellegrino, C.A.2 (Conn.) 1972, 470 F.2d 1205, certiorari denied 93 S.Ct. 1556, 411 U.S. 918, 36 L.Ed.2d 310.

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recognize any reason for any sort of post-trial motion. The Applicant failed to show this Court exactly what type of post-trial motion he complains trial counsel did not file. This Court notes that because he received concurrent sentences for his convictions there would be no point to any motion for reconsideration due to the mandatory minimum of his trafficking conviction. (Trial transcript, p. 560 – 561). Accordingly, the Applicant's claims on this issue are without merit.

Forfeiture

The amended application alleges that trial counsel was ineffective for failing to properly represent the Applicant in another action, i.e. forfeiture.¹⁴ This Court summarily dismissed any reference to any forfeiture proceedings as irrelevant to the legality of his conviction and sentence. See S.C. Code § 17-27-20.

Contemporaneous Objections

The amended application alleges that trial counsel was ineffective for failing to make contemporaneous objections to the introduction of the drug evidence, gun, and janitorial paperwork. Beyond mere commentary in his summary of the record, the Applicant failed to seriously pursue this issue at the PCR hearing. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50. Because no specific claim was made at the PCR hearing regarding this "issue," the claim is without merit.

¹⁴ An action for forfeiture of property is a civil action at law. Gowdy v. Gibson, 672 S.E.2d 794 (S.C. App. 2008) rehearing denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional

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relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5 day of February, 2010.


The Honorable G. Thomas Cooper, Jr.
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY

G. THOMAS COOPER, CIRCUIT COURT JUDGE

RAYMOND EDMONDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARI

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

Whether defense counsel was ineffective in failing to provide an adversarial challenge to the State's case?

STATEMENT

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 Hon. 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, Esq. was plea counsel.

Petitioner appealed his convictions and the appeal was dismissed by the Court of Appeals on April 25, 2006, after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Edmonds, Op. No. 2006-UP-158.

Petitioner filed an application for post-conviction relief on October 8, 2007. An evidentiary hearing was held on August 14, 2009, before the Hon. G. Thomas Cooper, Jr. Petitioner was present and was represented by Tricia Blanchette, Esq. Respondent was represented by Brian T. Petrano, Assistant Attorney General. Petitioner, trial counsel, Angela Williams, and Philana James testified at the hearing.

On February 5, 2010, Judge Cooper issued an order denying and dismissing petitioner's application for post-conviction relief. A subsequent Rule 59(e) motion was denied on July 29, 2010.

This petition follows.

ARGUMENT

Defense counsel was ineffective in failing to provide an adversarial challenge to the State's case.

Petitioner and his wife lived in a two bedroom home. They rented one bedroom to Danny Brown. A search warrant was executed at the home and drugs were found. Petitioner and his wife were arrested. At the time of the trial they could not locate Danny Brown who at one time admitted the drugs were his. Petitioner also admitted the drugs were his when the police threatened to call DSS to pick up the children.

At the evidentiary hearing, petitioner testified that he had a number of witnesses he wanted defense counsel to meet with but she never met with them. Counsel never conducted an independent investigation of the facts in his case. (App. p. 609, lines 14-21) He asked counsel to have the witnesses sequestered in his case, but she never asked the court for sequestration. (App. p. 610, line 9 – p. 611, line 9)

Petitioner said a motion was made to compel the identity of the confidential informant but counsel never got a ruling on the motion. (App. p. 612, lines 21-23) Counsel never explained the standard for having disclosure of a confidential informant. (App. p. 613, lines 11-15)

Counsel made a motion to suppress the search warrant in this case but she did not have petitioner testify. At trial Investigator Poole testified that the informant was a concerned citizen. But earlier he testified that he was a paid informant. Defense counsel did not raise any objection about this inconsistency or the wrong information in the search warrant. (App. p. 614, line 2 – p. 616, line 24) Counsel failed to object to the warrant not being specific enough when it asked to search "all persons." (App. p. 619, line 22 – p. 621, line 5)

The trial court ordered a hearing on the admissibility of petitioner's statement. Counsel did not request it and she did not have petitioner testify or call any of the witnesses who were at the scene. (App. p. 623, line 20 – p. 626, line 3)

Petitioner said defense counsel did not ask for a continuance when they could not find Danny Brown. (App. p. 633, lines 6-16) Counsel did not discuss third party guilt with him. (App. p. 634, lines 13-15) She did not object to the drugs, a weapon, and some paperwork coming into evidence. (App. p. 635, lines 23 – p. 636, line 24)

As can be seen from petitioner's testimony, defense counsel was deficient in many respects. In Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) this Court observed how prejudice may be presumed in the context of ineffective assistance of counsel:

The Supreme Court also recognized in both Strickland and Cronic that in certain circumstances "prejudice is presumed" because prejudice "is so likely that case-by-case inquiry... is not worth the cost." Strickland, 466 U.S. at 692, 104 S. Ct. 2052 (citing Cronic, 466 U.S. at 658, 104 S. Ct. 2039). In *552 Cronic, the Court identified three distinct situations in which a presumption of prejudice is appropriate. First, prejudice is presumed when the defendant is completely denied counsel "at a critical stage of his trial." Cronic, 466 U.S. at 659, 104 S.Ct. 2039. Second, per-se prejudice occurs if there has been a constructive denial of counsel. This happens when a lawyer "entirely fails to subject the prosecution's case to meaningful adversarial testing," thus making "the adversary process itself presumptively unreliable." *Id.* Third, the Court identified certain instances "when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." *Id.* (citing Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932). A finding of per-se prejudice under any of these three prongs is "an extremely high showing for a criminal defendant to make." Brown v. French, 147 F.3d 307, 313 (4th Cir. 1998).

367 S.C. at 551-552, 626 S.E.2d at 880.

Per se prejudice occurred in petitioner's case because defense counsel failed to subject the State's case "to meaningful adversarial testing."

CONCLUSION

Petitioner's writ should be granted and he should be given a new trial.

Respectfully submitted,

Robt M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of November, 2010.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
G. THOMAS COOPER, CIRCUIT COURT JUDGE

RAYMOND EDMONDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

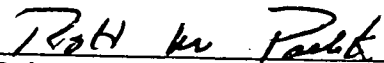
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Raymond Edmonds states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. He has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on August 14, 2009. In his opinion seeking certiorari from the order of dismissal is without merit.
3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Raymond Edmonds.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of November, 2010

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY
G. THOMAS COOPER, CIRCUIT COURT JUDGE

RAYMOND EDMONDS,

PETITIONER,

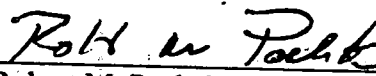
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Brian Petrano, Esquire, and Raymond Edmonds, 304228, Lee Correctional Institution, this 23rd day of November, 2010.


Robert M. Pachak
Appellate Defender
ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of November, 2010.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

1 member. You then called Angela Williams and Michael
2 Williams to establish that they were transferred to
3 another family member. My question is: Why wasn't
4 this issued raised at the Jackson vs. Denno hearing?

5 A The issue of what? The officer's statements?

6 Q The testimony of Angela Williams and Michael Williams
7 and the transfer of the children.

8 A You're suggesting that I should have raised the fact
9 that their statement is disputing the officers?

10 Q Correct. I think in my client's testimony he alleged
11 that these witnesses should have been called at the
12 Jackson vs. Denno hearing.

13 A I see.

14 Q And my question was: What was the reasoning in not
15 calling them for the Jackson vs. Denno hearing?

16 A It didn't occur to me to. Yes, ma'am.

17 Q Now, as far as the witnesses you did call, you called
18 Sabrina Edmonds to the stand?

19 A Yes, ma'am.

20 Q Okay. And had you discussed with Mr. Edmonds that
21 her three statements could be introduced when she
22 took the stand?

23 A Yes, ma'am, I did.

24 Q Okay. And were you concerned about the
25 characterization of Mr. Edmonds as a drug dealer and

1 Defendant, Mr. Edmonds?

2 A He is my older brother.

3 Q Okay. And were you called at trial as a witness?

4 A Yes.

5 Q Okay. And were you present in the home when the
6 search warrant was executed that day?

7 A Yes.

8 Q Okay. And at trial you testified about what occurred
9 with the kids. Could you just explain that to the
10 Court?

11 A When the bust was going down, they came in. And the
12 kids was kind of startled, so they put everybody
13 down. And I asked permission from one of the
14 officers: Can I take the kids outside? Because they
15 was crying and seeing what was going on. So I asked:
16 Can I take the kids out the door?

17 Q Okay. And then did you arrange for those kids to be
18 actually transferred to another family member?

19 A Yes. Once I got out there, I called my father and
20 told him to come get the boys.

21 Q Okay. And were you called as a witness at the
22 Jackson vs. Denno hearing that was held in the trial?

23 A No.

24 Q Okay. And would you have been willing to testify
25 about what occurred with the children and what you

1 saw?

2 **A** Yes.

3 **Q** Okay. Before you testified at trial, did you have
4 the opportunity to meet with Mr. Edmonds's attorney?

5 **A** I don't think I did.

6 **Q** Do you recall if she prepared you to testify or went
7 over what you'd be asked at trial?

8 **A** No.

9 **Q** Okay. And how did you know then to be there at
10 trial?

11 **A** I was told that my brother needed me to be there to
12 testify and I was going to be subpoenaed to come to
13 court.

14 **Q** Okay. Just one moment, Your Honor. Now, going back
15 to the day of the incident, did you specifically
16 recall any threats of DSS or that the children would
17 be taken?

18 **A** After they questioned him, they questioned him,
19 they -- they -- let me see. After a while they was
20 [sic] there questioning him and he didn't take
21 ownership. That's when they had a conversation where
22 that he was going to call Child Protective Services
23 if no one admitted up to the drugs and that everyone
24 was going to jail.

25 **Q** So the children -- you were present, the children

1 were present when Mr. Edmonds took ownership of the
2 drugs?

3 **A** Yes.

4 **Q** Okay.

5 **MS. BLANCHETTE:** Your Honor, I have no further
6 questions of this witness.

7 CROSS EXAMINATION

8 **BY MR. PETRANO**

9 **Q** Were they his drugs?

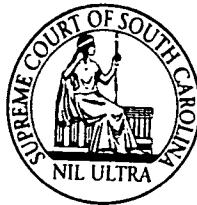
10 **A** No. I can't answer --

11 **MS. BLANCHETTE:** Your Honor, that's not
12 relevant. I didn't get into the actual drugs and
13 this isn't the trial.

14 **MR. PETRANO:** Your Honor, we're going down to
15 the statement as to it being reliable compared to law
16 enforcement, purported Jackson v. Denno hearing if
17 this witness had been called. I'm going down to the
18 credibility between the two witnesses which is what
19 she is being offered for. The Applicant testified
20 already that he lied when he said that the drugs were
21 his. I think it's a relevant issue and--

22 **THE COURT:** All right. I'll allow it. Go
23 ahead.

24 **Q** And I think you did answer. And I'm sorry. I'll
25 just ask again. Were the drugs his?



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 24, 2010

Raymond Edmonds #304228
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Edmonds, Raymond v. The State

Dear Mr. Edmonds:

Your counsel has submitted a Petition for Writ of Certiorari indicating that this appeal is without merit and moves to be relieved as your counsel. Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988). The records of this Court reflect that counsel served you with a copy of the Petition & Appendix on November 23, 2010.

You may, within forty-five (45) days of the date of this letter, file with this Court a pro se response to the Petition filed by your counsel. In this response, you may raise and argue any issues you believe the Court should consider in this appeal. Upon receipt of your pro se response or the expiration of forty-five (45) days, the matter will be submitted to the Court for its consideration.

If you do decide to file a pro se response, the response must be either typewritten or legibly hand printed, and must have at least a one inch margin on all sides. Further, you will need to only submit one copy of your response, and this copy should not be stapled or bound in any manner.

Very truly yours,

CLERK

DES/jj

cc: Appellate Defender Robert M. Pachak
Assistant Attorney General Brian T. Petrano

The South Carolina Court of Appeals

Raymond Edmonds, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2010-168749

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

Paul E. Short, Jr.

J.

U. Ke

J.

James E. ...

J.

Columbia, South Carolina

cc:

Brian T. Petrano

Robert M. Pachak

FILED

Jan. 14, 2013

JAN 16 2013



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Exhibit # 2

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 17, 2013

Raymond Edmonds, 304228
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your case

Dear Mr. Edmonds:

Enclosed please find a copy of the Court of Appeals's order granting your petition for writ of certiorari. In essence, this means a detailed brief of the issues raised in the petition for writ of certiorari will be presented for the Court's consideration. This document, brief of petitioner, is due to be filed with the Court on by February 13, 2013. A copy will be forwarded to you at that time.

Sincerely,

Robert M. Pachak
Appellate Defender

RMP/pcm

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

RAYMOND EDMONDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2010-168749

BRIEF OF PETITIONER

ROBERT M. PACHAK

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

PO Box 11589

Columbia, S.C. 29211-1589

(803) 734-1343

ATTORNEY FOR PETITIONER

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ISSUE PRESENTED

Whether defense counsel was ineffective in failing to provide an adversarial challenge to the State's case?

STATEMENT

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, Esq. was trial counsel.

Petitioner appealed his convictions and the appeal was dismissed by the Court of Appeals on April 25, 2006, after a review pursuant to Anders v. California, 386 U.S. 738 (1967). State v. Edmonds, Op. No. 2006-UP-158.

Petitioner filed an application for post-conviction relief on October 8, 2007. An evidentiary hearing was held on August 14, 2009, before the Hon. G. Thomas Cooper, Jr. Petitioner was present and was represented by Tricia Blanchette, Esq. Respondent was represented by Brian T. Petrano, Assistant Attorney General. Petitioner, trial counsel, Angela Williams, and Philana James testified at the hearing.

On February 5, 2010, Judge Cooper issued an order denying and dismissing petitioner's application for post-conviction relief. A subsequent Rule 59(e) motion was denied on July 29, 2010.

On November 23, 2010, a Johnson petition was submitted to the court. On January 14, 2013, this court granted the petition.

This brief of petitioner follows.

ARGUMENT

Defense counsel was ineffective in failing to provide an adversarial challenge to the State's case.

In post-conviction, a petitioner may be granted relief based on ineffective assistance of counsel under the Sixth Amendment to the United States Constitution if he shows: (1) that trial counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984). To prove prejudice, petitioner must show that there was a reasonable probability that but for counsel's errors, the result of proceeding would be different. Cherry v. State, 300 S.C. 386 S.E.2d 624 (1989). A "reasonable probability" is simply a probability sufficient to undermine confidence in the outcome of the trial.

In Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) this Court observed how prejudice may be presumed in the context of ineffective assistance of counsel:

The Supreme Court also recognized in both Strickland and Cronic that in certain circumstances "prejudice is presumed" because prejudice "is so likely that case-by-case inquiry... is not worth the cost." Strickland, 466 U.S. at 692, 104 S. Ct. 2052 (citing Cronic, 466 U.S. at 658, 104 S. Ct. 2039). In *552 Cronic, the Court identified three distinct situations in which a presumption of prejudice is appropriate. First, prejudice is presumed when the defendant is completely denied counsel "at a critical stage of his trial." Cronic, 466 U.S. at 659, 104 S.Ct. 2039. Second, per-se prejudice occurs if there has been a constructive denial of counsel. This happens when a lawyer "entirely fails to subject the prosecution's case to meaningful adversarial testing," thus making "the adversary process itself presumptively unreliable." *Id.* Third, the Court identified certain instances "when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." *Id.* (citing Powell v. Alabama, 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932).

A finding of per-se prejudice under any of these three prongs is "an extremely high showing for a criminal defendant to make." Brown v. French, 147 F.3d 307, 313 (4th Cir. 1998).

367 S.C. at 551-552, 626 S.E.2d at 880.

In this case, Petitioner and his wife lived in a two bedroom home. They rented one bedroom to Danny Brown. A search warrant was executed at the home and drugs were found. Petitioner and his wife were arrested. At the time of the trial they could not locate Danny Brown who at one time admitted the drugs were his. Petitioner also admitted the drugs were his when the police threatened to call DSS to pick up the children.

At the evidentiary hearing, petitioner testified that he had a number of witnesses he wanted defense counsel to meet with but she never met with them. Counsel never conducted an independent investigation of the facts in his case. (App. p. 609, lines 14-21) He asked counsel to have the witnesses sequestered in his case, but she never asked the court for sequestration. (App. p. 610, line 9 – p. 611, line 9)

Petitioner said a motion was made to compel the identity of the confidential informant but counsel never got a ruling on the motion. (App. p. 612, lines 21-23) Counsel never explained the standard for having disclosure of a confidential informant. (App. p. 613, lines 11-15)

Counsel made a motion to suppress the search warrant in this case but she did not have petitioner testify. At trial Investigator Poole testified that the informant was a concerned citizen. But earlier he testified that he was a paid informant. Defense counsel did not raise any objection about this inconsistency or the wrong information in the search warrant. (App. p. 614, line 2 – p. 616, line 24) Counsel failed to object to the warrant not being specific enough when it asked to search "all persons." (App. p. 619, line 22 – p. 621, line 5)

The trial court ordered a hearing on the admissibility of petitioner's statement. Counsel did not request it and she did not have petitioner testify or call any of the witnesses who were at the scene. (App. p. 623, line 20 – p. 626, line 3)

Petitioner said defense counsel did not ask for a continuance when they could not find Danny Brown. (App. p. 633, lines 6-16) Counsel did not discuss third party guilt with him. (App. p. 634, lines 13-15) She did not object to the drugs, a weapon, and some paperwork coming into evidence. (App. p. 635, lines 23 – p. 636, line 24)

As can be seen from petitioner's testimony, defense counsel was deficient in many respects. Per se prejudice occurred in this case because defense counsel failed to subject the State's case "to meaningful adversarial testing."

CONCLUSION

Petitioner's convictions should be reversed.

Respectfully submitted,

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER.

This 13th day of February, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Richland County

G. Thomas Cooper, Circuit Court Judge

RAYMOND EDMONDS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2010-168749

CERTIFICATE OF SERVICE

I certify that a true copy of the brief of petitioner, in this case has been served on Robert D. Corney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of February, 2013.

Robert M. Pachak

Robert M. Pachak
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 13th day
of February, 2013.

Robert M. Pachak (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

Brief of Respondent
Start

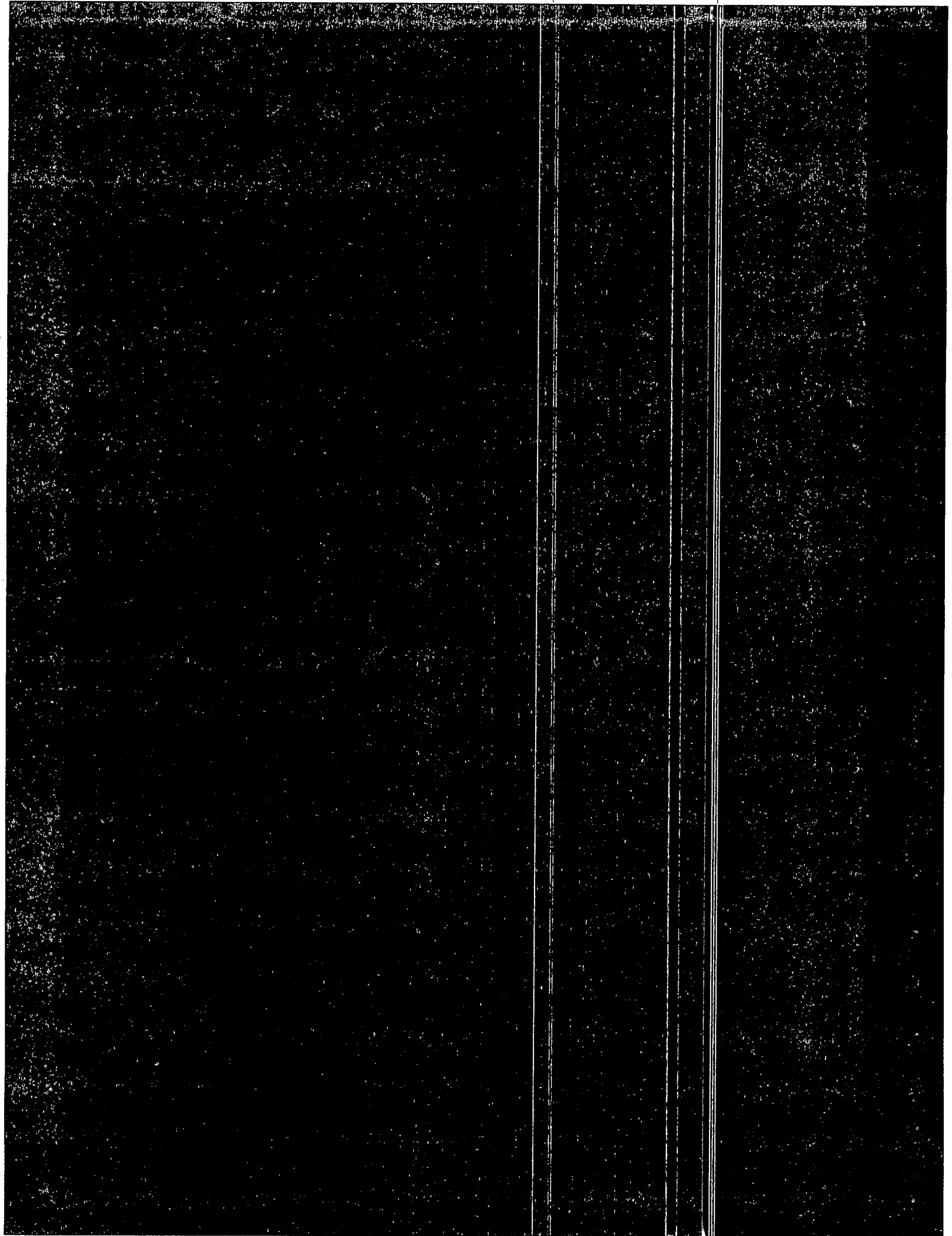


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ISSUE ON APPEAL

The PCR court did not err in holding Trial Counsel was not ineffective where, Counsel met with Petitioner over a dozen times, investigated and reviewed Petitioner's case, challenged the State's case through various motions, and presented both witnesses and testimony throughout Petitioner's trial.

STATEMENT OF THE CASE

Petitioner was indicted at the July 2003 term of the Richland County Grand Jury for Trafficking Crack Cocaine 100 to 200 grams—First Offense, Possession With Intent to Distribute Cocaine—First Offense, Possession With Intent to Distribute Marijuana, and Possession of Unlawful Weapon by a Convicted Felon. He was represented by Kana Johnson, Esquire. On August 5, 2004, after a jury trial with the Honorable Clifton Newman, Petitioner was convicted and sentenced to twenty five year's imprisonment for Trafficking in Crack Cocaine, ten years for Possession With Intent to Distribute Marijuana, and five year's for possession of a stolen pistol; with all charges to run concurrently.

A timely Notice of Appeal was filed on Petitioner's behalf, the South Carolina Court of Appeals affirmed Applicants conviction and sentence. State v. Edmonds, Op. No. 2006-UP-158 (S.C. Ct. App. Filed April 25, 2007).

Petitioner subsequently filed an application for post-conviction relief on October 8, 2007. The State made its Return on October 9, 2008. An evidentiary hearing as convened on August 14, 2009, at the Richland County Courthouse. By Order dated February 5, 2010 and filed February 5, 2010, The Honorable G. Thomas Cooper, Jr., denied and dismissed Petitioner's post-conviction relief application with prejudice.

Thereafter, Petitioner filed a Rule 59(a) motion for rehearing and Rule 59(c) motion to alter and amend the Order. Petitioner filed two documents, each titled "Petition for Reconsideration." On July 29, 2010, Judge Cooper, Jr., denied Petitioner's Motion for Rehearing and/or Motion to Alter or Amend.

Subsequently, Petitioner filed a Johnson Petition for Writ of Certiorari on November 23, 2010. The Court of Appeals granted certiorari on January 14, 2013. Petitioner filed for petition for writ of certiorari to this Court. The State's Brief of Respondent follows.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether "any evidence" of probative value exists to sustain the PCR judge's findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989).

In a post-conviction relief action, the Petitioner bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland. The Petitioner must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Petitioner must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Petitioner such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

ARGUMENT

Probative evidence supports the PCR courts finding that Counsel was not ineffective where, Counsel met with Petitioner over a dozen times, investigated and reviewed Petitioner's case, challenged the State's case through various motions, and presented witnesses and evidence throughout Petitioner's trial.

Petitioner argues the post-conviction relief (PCR) court erred in finding that Counsel was not ineffective in failing to provide an adversarial challenge to the State's case. However, this argument is without merit, as the record provides ample evidence to support the PCR court's finding that Counsel was not ineffective.

This Court in Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006) held the manner in which defense counsel "investigated, planned, and conducted his defense constituted a classic example of a complete breakdown in the adversarial process." Id. at 548. In Nance, defense counsel was suffering from "pneumonia, gout, ulcers, diabetes, alcoholism, and congestive heart failure" at the time of his appointment. Id. During the trial, defense counsel was taking various medications which greatly impaired his memory, caused lack of sleep, and sedation. Id. Counsel stated at defendants PCR hearing that defendants "mother was the only family member interviewed prior to trial; that he did not recall that anyone investigated Petitioner's background; and that no one had requested [defendants] records from the department of corrections." Id. Defense counsel stated to the jury in his opening statement that he did not ask to represent the defendant. Id. Defense counsel presented only three witnesses to testify on behalf of defendant's case: "a corrections officer, an unqualified expert, and [defendant's] sister." Id. at 554. All three of the witnesses testimony included damaging statements regarding the defendant's character and propensity to commit violence. Id. This Court found defense counsel failed to act as an adversary to the prosecution. Id. at 557. In addition, the United States

Supreme Court found in Florida v. Nixon, "the Florida Supreme Court erred in applying, instead, a presumption of deficient performance, as well as a presumption of prejudice; the latter presumption, we have instructed is reserved for cases in which counsel fails meaningfully to oppose the prosecution's case." Florida v. Nixon, 125 S.Ct. 551, 555 (2004). (Holding defense counsel's failure to obtain defendants express consent to a defense strategy of conceding guilt did not automatically render counsel's performance deficient.)

In the instant case, Petitioner failed to raise any claim of per se prejudice in his post-conviction relief application, at his evidentiary hearing, or in his Rule 59(e) motion. An order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]. Issues not raised and ruled upon in the trial court will not be considered on appeal. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003). Therefore, any allegation regarding per se prejudice was not properly preserved for appellate review.

However, even if this Court determines the allegation of per se prejudice was preserved for appellate review; there is evidence of probative value to support the PCR court findings that Counsel was not ineffective. Petitioner first alleges Counsel failed to interview several witness and conduct an independent investigation of the case. However, at the PCR hearing Counsel testified she met with Petitioner at least a dozen times. (App. pp. 649 line 23- pp. 650 line 2.) Counsel further testified she reviewed discovery with Petitioner and used a private investigator throughout the case. (App. pp. 650 lines 3-9.) Furthermore, the PCR court found Counsel's testimony to be credible and Petitioner's testimony not credible. (App. pp. 707.)

Petitioner asserts Counsel failed to sequester the witnesses in his case, despite his request. In its Order of Dismissal, the PCR court found Petitioner "failed to satisfy his burden of proof and demonstrate that trial counsel was ineffective for not moving to sequester the State's

witnesses.” (App. pp. 722.) Petitioner asserted law enforcement should have been sequestered prior to the Denno hearing thereby preventing them from confirming each other’s testimony. However, the PCR court found this argument failed for lack of proof. (App. pp. 723.) Specifically, the PCR court stated Petitioner “failed to demonstrate, beyond mere speculation, that the results would have been any different had law enforcement been sequestered.” (App. pp. 723).

Petitioner alleges Counsel failed to get a ruling on a motion to compel the identity of the confidential informant. At the PCR hearing, Counsel testified she did move to compel the disclosure of the confidential informant. (App. pp. 651 lines 18-20.) Counsel further stated she knew the standard regarding the State’s requirement to disclose the identity of the confidential informant and she ultimately prevailed “on that argument because Solicitor Spears ultimately *nol prossed* the indictment relevant to the CI’s participation in the transaction.” (App. pp. 652 lines 2-9.) Counsel further testified “despite that *nol pros’ing*, I still maintained that the CI’s identity was important, and so I attempted to get the State to reveal it in trial. I obviously lost that motion.” (App. pp. 652 lines 10-13.)

Petitioner further alleges Counsel never explained the standard for having disclosure for a confidential informant. However Petitioner testified at the PCR hearing that Counsel did discuss the standard necessary to get disclosure of the confidential informant. (App. pp. 612 line 24-pp. 613 line 2.) Furthermore, Solicitor Spears *nol prossed* one of the indictments against Petitioner as a result of the Counsel successfully arguing the standard for disclosing a confidential informant. (App. pp. 652 lines 2-9.)

Petitioner asserts Counsel was ineffective for failing to have him testify during the / hearing to suppress the search warrant and for failing to challenge the inconsistency or the wrong

information in the search warrant. However, Counsel testified she went over the search warrant with Petitioner and she was unaware of any witness to call during the suppression hearing. (App. Pp. 652 line 20- pp. 653 line 17.) Furthermore, Counsel did challenge the search warrant at trial. (App. pp. 45 line 24- pp. 46 line 12.) The PCR court noted in its Order that Counsel did challenge the warrant. (App. pp. 719.) The PCR court found Petitioner "failed to meet his burden of proof and demonstrate that had trial counsel made the arguments he alleges she failed to make, the outcome would have been any different." (App. pp. 720.) Additionally, the PCR court determined Petitioner's testimony was not credible. (App. pp. 707.) Therefore any testimony provided by Petitioner during the suppression hearing would not have affected the outcome of the hearing.

Petitioner asserts Counsel was ineffective for failing to object to the warrant not being specific enough when it asked to search "all persons." (App. pp. 619 lines 22-25.) Counsel testified she recalled discussing the "all persons" language with Petitioner. (App. pp. 654 Ln. 5-17.) Counsel further testified she believed "they put down 'all persons'...so that they can prove both a constructive possession case alongside with the actual possession case." (App. pp. 654 lines 15-17.) The PCR court found the warrant "clearly explains the reasoning for searching all persons and the residence where suspected drug dealing is taking place." (App. pp. 718.) The PCR court further found "the information provided to the magistrate related to seeing crack cocaine at the residence." (App. pp. 718.) The PCR court found "no basis to support the [Petitioner's] bare assertion that the warrant was overbroad." (App. pp. 718.) The PCR court further noted even if for argument sake the warrant was found to be overbroad then that portion relating to "all persons" was "severable from otherwise unchallenged and valid portion(s)." (App.

pp. 718.) Furthermore, Petitioner would not be able to challenge a "purported Fourth Amendment issue that may have occurred as to any of the other persons." (App. pp. 719.)

Petitioner alleges counsel was ineffective for failing to call Petitioner or any other witness to testify at the Denno hearing regarding Petitioner's oral statement. In support of his claim, Petitioner provided testimony from two witnesses.¹ The PCR court found "it is not unreasonable for trial counsel not to elicit testimony (even if credible) from this [Petitioner] and/or his sister and/or a minor child to rebut the credible testimony of the four law enforcement officers...who did testify at the Denno hearing. (App. pp. 710.) The PCR court found,

whether the [Petitioner], his sister, and/or the minor child testified would not have outweighed the credible testimony of the four law enforcement officers and the trial judge would have still ruled that the statement was voluntary by a preponderance of the evidence and admitted the statement to the jury for their consideration.

The PCR court stated "trial counsel had an opportunity to view the credible testimony of the four law enforcement officers" and Counsel electing not to present the witnesses was not deficient considering the nature of the Denno hearing. The PCR court found:

even assuming trial counsel called a minor child to testify at the Denno hearing and he did so credibly regarding his presence that at the [Petitioner's] residence during the execution of the warrant, the exact time of arrival of the children is conflicted and testimony exists that they did not arrive until *after* the [Petitioner's] [voluntary] statements were made.

(App. pp. 715.) The PCR court found no prejudice existed "because the preponderance of the evidence would still support the trial judge's Denno ruling. (App. pp. 715.)

Petitioner asserts Counsel was ineffective for failing to move for a continuance when a witness, Danny Brown ("Brown"), could not be located. However at trial, Counsel stated she "would like this witness (Brown) to be provided for the court in order to assist in our defense..."

¹ Petitioner provided testimony from his sister, Angela Williams, and a minor child, Rahim Taylor. The State stipulated to the testimony that Rahim Taylor was at the house the day Petitioner gave his oral statement.

(App. pp. 17 lines 3-4.) Counsel further stated she had an investigator attempt to locate Brown. (App. pp. 18 lines. 19-23.) At the PCR hearing, Counsel testified she contacted Brown personally and arranged for a meeting at the Solicitor's office, where Brown gave a statement taking responsibility for the drugs. (App. pp. 650 lines 10-22.) The PCR court found Brown gave three conflicting statements and "it is clear that the recantation is the final version." (App. pp. 722.) Further, Brown's recantation was presented at trial. (App. pp. 722.) The PCR court concluded Petitioner "failed to satisfy his burden of proof regarding what specifically was deficient about trial counsel's handling of Danny Brown statement(s)." (App. pp. 722.)

Petitioner alleges Counsel was ineffective for failing to discuss third party guilt with him. Counsel testified she argued third party guilt because Brown previously gave a statement claiming responsibility for the drugs. (App. pp. 655 line 23- pp. 656 line 9.) Counsel felt the statement would "cast reasonable doubt" as to Petitioner's guilt. (App. pp. 656 line 5.) Counsel further testified Brown's recantation was made outside of her presence and without her knowledge. (App. pp. 656 lines 8-11.) Counsel testified she was unable to locate Mr. Brown during the trial despite using an investigator. (App. p. 650 lines 10-15; App. p. 656 lines 12-14.) However, Counsel called Investigator Poole to testify as a witness in order to bring in Brown's previous statements. (App. pp. 656 lines 15-19.) The PCR court found Danny Brown testimony was unclear because he gave "three separate and somewhat conflicting statements." (App. pp. 721.) The PCR court concluded Petitioner "failed to satisfy his burden of proof regarding what specifically was deficient about trial counsel's handling of Danny Brown statement(s)." (App. pp. 722.) The PCR court further concluded Petitioner "failed to satisfy his burden of proof and demonstrate that had trial counsel investigated Danny Brown's statements that the result would have been any different." (App. pp. 722.)

Petitioner further alleges Counsel was ineffective for failing to object to drugs, a weapon, and various paperwork being entered into evidence. Counsel testified she did not have any concerns regarding the drugs being introduced to the jury as narcotics. (App. pp. 657 lines 5-11.) Counsel further testified she did not feel the need to make an objection concerning the gun. (App. pp. 657 lines 12-22.) Counsel testified the Officer identified the paperwork as forms similar to those "he found in the dresser" and therefore she did not feel an objection was proper. (App. pp. 658 lines 9-19.) Furthermore, Counsel disputed whether the Officer actually identified the particular forms. (App. pp. 658 lines 12-14.) The PCR court found Petitioner did not specifically pursue these particular issues at the PCR hearing and therefore found the claims to be meritless. (App. pp. 724.)

There was clear evidence of probative value in the record to support the PCR court's findings. Petitioner has failed to meet his burden of proof as to this argument. Therefore, the PCR court's Order of Dismissal should be affirmed.

CONCLUSION

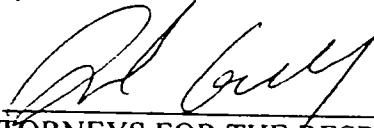
For the reasons stated above, this Court should affirm the post-conviction relief court's denial of post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

DANIEL GOURLEY
Assistant Attorney General
Bar No. 100934

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

By: 
ATTORNEYS FOR THE RESPONDENT

May 17, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Richland County
The Honorable G. Thomas Cooper, Circuit Court Judge
Case No. 2007-CP-40-6691
Appellate Case No. 2010-168749

RAYMOND EDMONDS,

PETITIONER,

v.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PROOF OF SERVICE

I, Lauren Meara, certify that I have served the within **Brief of Respondent** on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 17th day of MAY, 2013.

Lauren Meara
LAUREN MEARA
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Exhibit # 3

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

August 22, 2013

Mr Raymond Edmonds 304228
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Raymond Edmonds v. State of South Carolina

Dear Mr. Edmonds:

The Court of Appeals has scheduled oral argument in your case for Wednesday, September 11, 2013 at 12:00 PM. If you are incarcerated on the date of the oral argument, there are, unfortunately, no provisions for you to be present in the Court of Appeals for this oral presentation of your case. Members of your family and friends may attend, however, inasmuch as the Court of Appeals' proceedings are open to the public. **Please have family and friends call me in advance if at all possible so that I can explain the workings of the Court in advance.** The Court is located at 1015 Sumter Street, Columbia, South Carolina and the argument will be held in Courtroom 2.

It is impossible to predict how the Court will rule or how long it will be before they issue a decision. I will, however, let you know as soon as I hear something. Please notify me if your address changes.

Thank you,

RMP

Robert M. Pachak
Appellate Defender

RMP/pcm

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Raymond Edmonds, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2010-168749

Appeal From Richland County
Clifton Newman, Trial Judge
G. Thomas Cooper, Jr., Post-Conviction Relief Judge

Unpublished Opinion No. 2014-UP-260
Heard September 11, 2013 – Filed June 25, 2014

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia, for
Petitioner.

Attorney General Alan McCrory Wilson, Assistant
Deputy Attorney General David Spencer, and Assistant
Attorney General Daniel Gourley, all of Columbia, for
Respondent.

STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

Raymond Edmonds,

Petitioner

vs.

State of South Carolina,

Respondent

PETITION FOR REHEARING AND REMITTUR PURSUANT TO RULE, 221 SCACR

Petitioner filed an application for post-conviction relief on October 8, 2007. An evidentiary hearing was held on August 14, 2009, before the Honorable G. Thomas Cooper, Jr. Petitioner was present and was represented by Tricia Blanchette, Esq. Respondent was represented by Brian T. Petrano, Assistant Attorney General. Petitioner, trial counsel, Angela Williams, and Philana James testified at the hearing.

On February 5, 2010, Judge Cooper issued an order denying and dismissing petitioner's application for post conviction relief. A subsequent rule 59(e) motion was denied on July 29, 2010.

On November 23, 2010, a Johnson petition was submitted to the court. On January 14, 2013, this court granted the petition. Now at this time, petitioner is now petitioning for rehearing and remittitur pursuant to Rule 221 SCACR.

RELEVANT FACTS

As the record states, On November 24, 2010 the court granted a Johnson Petition leaving petitioner with 45 days to file a pro se brief on his behalf. See: EXHIBIT #1

Following the court's order, petitioner filed his pro se petition on January 10, 2011 raising only two (2) issues:

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.

Trial counsel was ineffective and prejudicial, for failing to request a Jackson vs. Deno 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. See: (pro se brief)

Although petitioner timely filed a pro se brief in a timely fashion manner, this court ordered the Attorney on record Robert M. Pachak to fully brief his issue in the form of a initial brief.

QUESTION

Did the South Carolina Court of Appeals Court was in error for not considering petitioner's pro se brief on the merits, after petitioner been ordered by the court to submit a pro se brief on his behalf?

ARGUMENT

Petitioner contention is that although this Honorable Court ordered Attorney Pachak to file an initial brief, his pro se brief

his pro se brief should still be relevant.

To support petitioner argument, petitioner contends that his Johnson petition and his Initial petition are identical.

Petitioner understands that when a counsel of record files any material documents, he can not file anything on his own behalf unless he goes through counsel, or its pro se filing would be deemed hybrid.

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 courts to do so. See: See: **EXHIBIT #1**

Petitioner further argues that its unclear if it was in petitioner best interest for the court to allow Attorney Pachak to re file a initial brief which is identical to petitioner Johnson petition, in all; leaving petitioner meritorious pro se issues out to dry.

Petitioner ask this Honorable Court to correct unjust because if justice is not serve to petitioner, this court would be allowing petitioner to pursue his next course which would be Federal Habeas Corpus with no issues preserve for federal review because this court has rule in the ~~highest~~ state court that petitioner claim is not preserve for appellate review. See: O'Sullivan v. Boerckel, 119 S.Ct. 1728 (1999)

Finally, petitioner suggest that it was no fault of his own that his pro se brief was not ruled on the merits. Its obvious

that petitioner pro se brief had merits in order for the court to grant writ of certiorari following from petitioner's pro se brief and its also obvious that it rendered petitioner for appellate counsel to not honor and fully litigate petitioner petition as instructed by the court. See: Exhibit #2

QUESTION

On June 25, 2014 The South Carolina Court of Appeals ruled on Raymond Edmonds v. State, No. 2010-168749, writ of certiorari stating:

In this appeal from the circuit court's denial of post conviction relief (PCR), Petitioner argues defense counsel was ineffective in failing to provide an adversarial challenge to the state's case. Petitioner did not raise an argument of per se prejudice at the pcr hearing and this issue was not ruled on by the pcr court. Thus, this issue is not preserved. See: kolle v. State, 690 Se.E.2d 73, 79 (2010) (noting an issue that was neither raised to nor ruled upon by the pcr court is not preserve for appellate review). Petitioner was required to demonstrate "he was prejudice by counsel's performance in such a manner that but for counsel's error, there is a reasonable probability the result of the proceeding would have been different." Taylor v. State, 745 S.E. 2d 97, 102 (2013). However, petitioner failed to challenge the pcr court's determination that he was not prejudiced by the defense counsel's representation. Accordingly, this determination is the law of the case. See: Caprood v. State, 525 S.E.2d 514, 518 (2000) (Stating an unappealed ruling is the law of the case and will not be considered by the courts).

ARGUMENT

Petitioner contentions is 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 outline in petitioner's initial brief on pg. 6 and pg. 7, The appellate Counsel pointed to many arguments that supported, "The defense counsel was ineffective in failing to provide an adversarial challenge to the state's case". In other-words, petitioner claims were preserve for appellate review. See: pg. 6 of 7 of initial brief.

To support petitioner argument, petitioner points to Glover v. Miro, 262 F.3d 268 (4th Cir. 2001) and Graves v. Padula, 73 F. Supp.2d (D.S.C. 2010)

In Glover v. Miro, supra, Glover made rigourous arguments that his trial counsel was ineffective for failing to contact any of his albi witness prior to trial, citing United States v. Cronic, 104 S.Ct. (1984) analysis.

The point of the matter, in Glover v. State, 458 S.E.2d 538 (1995), Glover never argued the Cronic analysis, however; the merits of the issue was all the same and preserve for appellate and federal review.

Even in Graves v. Padula, Supra, Graves main objection was both the pcr court and the magistrate judge improperly analyzed his claim under the test announced in Strickland v. Washington, 104 S.Ct. 2052 (1984), when the claim should have been analyzed under United States v. Cronic, 104 S.Ct. 2039.

However, under an opinion issued the same day as Strickland,

United States v. Cronic --- in rare instances, a court may forgo an individual inquiry into whether but for counsel's deficient performance, the result of the proceeding 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 reviewed under Cronic in the appellate Court.

Conclusion

The point of the matter is, if petitioner would have never filed a pro se brief as instructed by the courts, this court would have not remanded counsel to do an initial brief following from Attorney Pachek Johnson petition, and as stated in Graves v. Padula, supra, a cronic claim is only a analysis that the court has the option to forgo, as in strickland.

Therefore, for the following reason petitioner has stated, petitioner ask this case to be readdressed.

Sincerely,

Raymond Edmonds

July 7, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

Raymond Edmonds,

Petitioner,

VS.

State of South Carolina,

Respondent.

Appellate Case No. 2010-168749

CERTIFICATE OF SERVICE

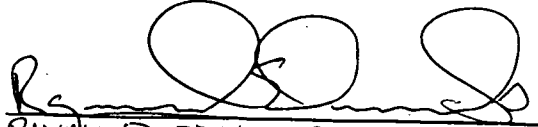
The undersigned Petitioner hereby certifies that he has served the below listed parties to the Appeal, by depositing a true copy of the attached PETITION FOR REHEARING AND REMITTUR PURSUANT TO RULE, 221 SCACR in the U.S. Mail, postage prepaid, addressed as follows:

The Honorable, Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Mr. Alan Wilson
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

Robert M. Pachak, Esq.
South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29211-1589

This 07 day of July, 2014.


RAYMOND EDMONDS 304228
Florence-North-1128
Lee Correctional Institution
990 Wiscacky Highway
Bishopville, South Carolina 29010.
pro se Petitioner.

The South Carolina Court of Appeals

Raymond Edmonds, Petitioner,

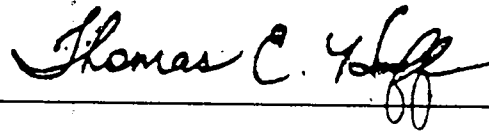
v.

State of South Carolina, Respondent.

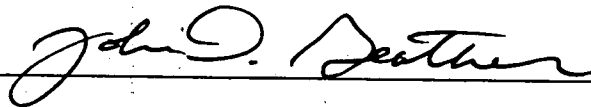
Appellate Case No. 2010-168749

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Robert M. Pachak, Esquire

David A. Spencer, Esquire

Daniel Francis Gourley, II, Esquire

Raymond Edmonds. 00304228

FILED

August 25, 2014

The Supreme Court of South Carolina

Raymond Edmonds, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-001866

Lower Court Case No. 2007CP4006691

ORDER

Petitioner has filed a *pro se* notice of appeal seeking review of the decision of the South Carolina Court of Appeals in this matter.¹ He has failed to serve and file a petition for a writ of certiorari that has the content specified by Rule 242(d) of the South Carolina Appellate Court Rules (SCACR). Further, petitioner has failed to file the appendix required by Rule 242(e), SCACR. Accordingly, this matter is dismissed.

FOR THE COURT

BY



CLERK

Columbia, South Carolina
September 4, 2014

cc: Robert M. Pachak, Esquire
David A. Spencer, Esquire
Daniel Francis Gourley, II, Esquire
Mr. Raymond Edmonds, 00304228
The Honorable Jenny Abbott Kitchings

¹ Before the South Carolina Court of Appeals, the Appellate Case Number was 2010-168749.