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S.C. SUPREME COURT

Applicant alleges ineffectiveness based on trial counsel's failure to object to the State's failure to field test and weigh the substance found inside the package addressed to 1162 Shenandoah Circle at the UPS facility on Mt. Gallant Rd, Rock Hill, SC.

In *State v. Williams* (1996) 117 Ohio App.3d 488, 494, the First Appellate District held that:

... when law enforcement has intercepted a package and proves the original contents, and then substitutes a benign material, the relevant amount of contraband is that amount in the original package, and if the defendant possesses the package thereafter, a jury is entitled to conclude that the defendant constructively possessed the original contents of the package, not the substituted material.

The issue here is that the original contents were not proven to be anything prior to being substituted out. According to ^{the} General Session Case File Summary filed by Agent Marvin Brown in Incident Report # 201200036814, there was never a field test of the substance or weighing removed from the package. If it is not proven to be cocaine prior to the controlled delivery, then it would not be reasonable to conduct a controlled delivery, much less for a jury to conclude constructive possession of cocaine.

This ^{issue} also leads to Applicant's allegation of ineffectiveness based on counsel's failure to object to the ^{lack of} chain of custody of the original contents of the package ~~and~~ as well as the impossible chain of custody ^{presented} of the imitation drugs that somehow ~~arrived at the~~ tested positive for cocaine some 2½ months later.

According to Agent Brown's report the original contents of the package were taken to the DEU East Office at Rock Hill Police

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Department by SLED Agent, Rawls and DEA Task Force Agent Frank Finch. There the contents were photographed ~~and~~, removed, ^{and replaced with an imitation kilogram of cocaine.} There is no mention of the original contents of the package from this moment forward, no paperwork, no testimony, nothing.

dated 10/30/12

Instead what is presented is a York County Sheriff's Office Evidence / Inventory Sheet, detailing what was found at 1162 Stenandabah Circle, Rock Hill, SC. The first item listed as seized is a box with tracking # 1Z3X2F661301728514 containing cocaine and misc. items. The location found for this item is listed as in trunk of Underwood's vehicle. The second item listed as seized is Cocaine wrapped in plastic with the location found being listed as From Item #1.

So, despite the fact that Law enforcement themselves claim to have removed the original, ~~an~~ untested contents of the package and replaced it with imitation cocaine prior to the initiation of the controlled delivery, they now claim that cocaine was found inside the package that was inside Underwood's trunk. Item #2, by law enforcements account, is actually imitation cocaine. Further complicating this issue is the fact that Item #2, which was removed from the box inside Underwood's trunk, is eventually, through the chain of custody form, the ~~substance~~ item that lab technician C. Mitchum receives from the RHPD and tests positive for cocaine. The original substance in the seized package remains unaccounted for and the imitation drugs provided by Law Enforcement test positive for cocaine. Failure to object to this absurd, ~~and~~ illegal, and unreasonable chain of custody is undeniably deficient.

Trial Counsel was ineffective for not challenging fabricated Search Warrant Affidavit for cell-phones.

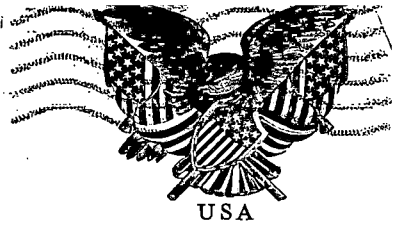
Trial Lawyer was ineffective for not challenging the affidavit for search warrant for cell-phones recovered when he was arrested were defective and should be challenged. Nevertheless, trial counsel failed to discuss a motion to suppress any evidence recovered with him and failed to prepare a written motion and memorandum to support the motion requested. Trial counsel was ineffective when he failed to argue on the record or challenge fabricated information in the arrest warrant which was not supported by the state evidence. When trial counsel abandon the applicant's suppression motion, he waived applicant right to challenge the arrest warrant and to challenge the veracity

adequacy of applicant's claim and make a proffer of misrepresentation in the warrant affidavit. In Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), the Supreme court held that in certain defined circumstance a defendant can attack a facially sufficient affidavit. The Franks court recognized a "presumption of validity with respect to the affidavit supporting the search warrant, and thus created a rule of "limited scope". The rule created by the Franks decision requires that a dual showing be made before a court will hold an evidentiary hearing on the affidavit's integrity. The showing incorporates both a subjective and objective threshold component. To mandate an evidentiary hearing, the challenger's attack must be more than conclusory and must be supported by more than a mere desire to cross-examine. The allegation of deliberate falsehood or of reckless

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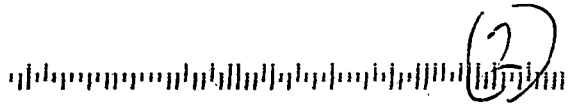
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