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April 30, 2018

Dear Supreme Court of South Carolina:

This is a pro se response to the Petition filed by my appellate counsel. I have raised and argued several issues in this brief for the Court to consider in this appeal. Can you please send a clocked stamped copy back to me. Thank you for your time and consideration in regards to this matter.

My return address:

Henry L. Kinlaw #271267
Charleston B-room 68
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The Supreme Court of South Carolina

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March 30, 2018

Mr. Henry L. Kinlaw, 271267
Lieber Correctional Institution
P. O. Box 205
Ridgeville SC 29472

Re: Henry L. Kinlaw v. State
Appellate Case No. 2017-001825

Dear Petitioner:

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 and Appendix.

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

cc:
Johnny Ellis James, Jr., Esquire
Robert M. Pachak, Esquire

RECEIVED
MAY 03 2018
S.C. SUPREME COURT

HENRY LEE KINLAW, JR

APPELLATE CASE NO. 2017-001825

PRO SE RESPONSE TO The PETITION FILED BY MY APPELLATE COUNSEL

INDEX

ISSUE PRESENTED

1. Whether plea counsel was ineffective in failing to investigate, failing to discover and failing to raise on a motion to suppress at the suppression hearing that petitioner arrest was an illegal arrest in violation of the 4th amendment of the U.S. CONST. because arrest warrant M-971717 "Distribution of Crack Cocaine" and underlying affidavit in support of arrest warrant lacked probable cause?

2. Whether plea counsel was ineffective in failing to inform petitioner that he had a valid legal challenge to the arrest warrant

M-971717 "Distribution of Crack Cocaine" because his arrest was an illegal arrest in violation of the 4th amendment of the U.S. Constitution because arrest warrant and underlying affidavit in support of arrest warrant lacked probable cause?

3. Whether plea counsel was ineffective in failing to adequately prepare, thoroughly argue the suppression of the drug evidence discovered as a result of the search warrant because plea counsel failed to discover and raise on a motion to suppress at the suppression hearing that the search warrant was invalid under the 4th amendment of the

U.S. Constitution for a lack of probable cause specifically because the search warrant underlying affidavit set forth no facts as to why D.E.U officers believed Petitioner committed the crime alleged in the search warrant affidavit Distribution of Crack Cocaine on Feb. 28, 2012, the crime Petitioner was arrested for on Feb. 29, 2012?

4. Whether plea counsel was ineffective in failing to inform petitioner that he had a valid legal challenge to the search warrant because the search warrant was

invalid under the 4th amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant is defective on its face because the search warrant underlying affidavit set forth no facts as to why D.E.U officers believed petitioner committed the crime alleged in the search warrant affidavit "Distribution of Crack Cocaine" on Feb. 28, 2012 the crime petitioner was arrested for on Feb 29, 2012?

5. Whether plea counsel was ineffective in failing to adequately

prepare, thoroughly argue the suppression of the drug evidence discovered as a result of the search warrant because plea counsel failed to discover and raise on a Motion to suppress at the suppression hearing that the search warrant was invalid under the 4th amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant is defective on its face because the search warrant underlying affidavit does not contain any information to allow the Magistrate to make an

independent determination of the K-9 Jari's reliability to establish probable cause based on the alert?

6. Whether plea counsel was ineffective in failing to inform petitioner that he had a valid legal challenge to the search warrant because the search warrant was invalid under the 4th amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant is defective on its face because the search warrant underlying affidavit does not contain any

information to allow the Magistrate to make an independent determination of the K-9 Dari's reliability to establish probable cause based on the alert?

7. Whether plea counsel was ineffective in failing to adequately prepare, thoroughly argue the suppression of the drug evidence discovered as a result of the search warrant because plea counsel failed to discover and raise on a Motion to suppress at the suppression hearing that the search warrant was invalid under the 4th

amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant is defective on its face because in the search warrant underlying affidavit there was no independent verification of what transpired within the hotel on Feb 28, 2012 during the officers surveillance and the day the unreliable confidential informant was arrested with .9 grams of crack-cocaine some miles away from the hotel?

ARGUMENT #1

Plea counsel was ineffective in failing to inestigate, failing to discover and failing to raise on a Motion to suppress at the suppression hearing that petitioner arrest was an illegal arrest in violation of the 4th amendment of the U.S. Constitution because arrest warrant M-971717 "Distribution of Crack Cocaine" and underlying affidavit in support of arrest warrant lacked probable cause.

The post-conviction relief attorney asked petitioner to articulate to the P.C.R. court in regards to his plea counsel being ineffective in regards to the arrest

warrant as follows:

Q. Okay. One of those issues you brought up to my attention and is in the application is the invalid arrest warrant; is that correct.

A. Yes, sir.

Q. Okay. Tell me a little bit about, now, you earlier stated that your testimony is under Strickland, and everything kind of points to Strickland in terms of this case; correct.

A. Yes, sir.

Q. Okay. Tell me a little bit about the invalid arrest warrant, and what

are some issues you feel like your attorney was lacking in that arrest warrant.

A. Okay, I have some--

Q. Okay. And this relates to your case how exactly.

A. Because it's to going to show that my issue has merit, and it will show that my attorney failed to discover each defect that I have that I would like to point out to the Court that's in this arrest warrant.

Q. Well, can you articulate that from the stand in terms of how he allegedly was faulty in his performance you know, in conjunction with that case law.

A. Yes, Sir.

Q. Can you do that for us, please.

A. Yes, okay. This arrest warrant right here states that within the past 72 hours the Defendant, Henry Lee Kinlaw, did sell or distribute a quantity of crack cocaine for exchange of cash money within a days in the hotel located at 3650 Waccamaw Boulevard in Myrtle Beach, South Carolina, Horry county.

Given the above stated facts, there is probable cause to believe that the Defendant did violate the South Carolina Statute 45-53-375, Distribution of crack cocaine.

Now, this warrant right here is invalid for a lack of probable cause because

the underlying affidavit lacked probable cause. The defect number one, the warrant does not set--.

Q. Okay, hold on just a second, let me clarify. Based on your last sentence there, I think you stated that that warrant lacks probable cause; right.

A. Yeah, based on numerous defects, six defects, six facial defects.

Q. Okay. Can you name those defects to the court.

A. Yeah. Defect number one, the warrant does not set forth any information to allow the magistrate to make an independent determination that there is probable cause to believe a crime has been

committed. And oral testimony could not cure this. Oral testimony was provided because this warrant is solely based on information provided by an unreliable confidential informant which is in our investigative report that was pulled over after he left the hotel. And he alleged that drugs were bought from someone at the hotel.

But officers had no independent verification of these allegations because they did not search the informant prior to the informant going back to the hotel or nor was he had any surveillance within the hotel during this time. The officers did not send the informant back to do a controlled buy to independently

verify that the informant actually did bought drugs from someone at the hotel, okay.

Defect number two, this warrant does not set forth any facts to allow a Magistrate to make an independent determination that there's probable cause to believe the person to be arrested committed a crime, that they say alleged in the affidavit. Oral testimony could not cure this defect because the officers did not have any independent verification that the person to be arrested committed a crime because they did not see the confidential informant interact with anyone at the hotel, did

not have surveillance within the hotel on February the 20th, 2012. The officer did not send the confidential informant back to make a controlled buy to verify this person bought drugs from a specific person at the hotel on February 20th, 2012.

Defect number three, this warrant, the warrant does not set forth any source of the allegations in it, Defect number four, this warrant does not set forth any information that the source of the information is reliable. Oral testimony could not cure this defect because the source of the information in it is the unreliable

confidential informant that was caught with drugs in his possession some miles away from the hotel which is clearly in the investigative report.

And the officers did not have any verification of this. The officers did not witness any hand-to-hand transaction or did not have any surveillance within the hotel. The officers did not send this unreliable confidential informant back to the hotel to independently verify that he purchased drugs from someone at the hotel.

Defect number five is there is no independent verification of what

transpired, the allegations alleged in this affidavit. Oral testimony cannot cure this because the officers did not have independent verification that drugs were bought from a hotel from Henry Lee Kinlaw, Jr., on February the 20th, 2012.

Defect number six is this warrant is solely based on information based on an unreliable confidential informant and the driver of the car that was arrested February the 28th, 2012. And officers did not have any independent verification of the informant's allegation because the officers did not

go back to the hotel to independently verify this person bought drugs from a specific person. The officers did not witness any hand-to-hand transactions, the officers' surveillance of the hotel did not witness me in any criminal activity or anything that looked like any criminal activity.

The only thing officers surveillance did was witness me enter the hotel after getting out of my car to exit the hotel, to leave the hotel property. And based on all these defects in this search warrant--I mean, this arrest, this warrant is invalid for a

lack of probable cause under the Fourth Amendment of the U.S. Constitution, invalid under 17-13 of the South Carolina Code of laws, invalid under Article 1, Section 10 of the South Carolina Constitution for a lack of probable cause.

And based on the fact that this warrant is invalid and my arrest was illegal, any evidence that was obtained after this illegal arrest must be suppressed from fruits of the poisonous tree. And based on the fact this warrant is invalid, they cannot prosecute me for distribution of crack cocaine. And based on the fact that the evidence must be suppressed as

fruits from the poisonous tree, that means any evidence that they discovered after my arrest that was from the search warrant that was issued must be suppressed -- was trafficking crack cocaine and trafficking cocaine.

Q. Very good. So you've listed six things that you feel like, and am I correct in saying that your attorney did not represent you correctly on that.

A. Yes, he did not discover or inform me of.

Q. Okay, all right. Is there any -- and you've mentioned the case law, and

you mentioned the statutes here in your testimony -- is there anything else about the invalid arrest warrant that you feel like needs to be brought up in terms of your attorney not representing you completely on that.

A. Yes. If my attorney would have properly prepared for trial, do all the research the facts of the case, and he would have discovered that the arrest warrant was invalid for lack of probable cause, under the Fourth Amendment of the United States Constitution and invalid under Article 1, Section 10 of

the South Carolina Constitution.

He would have discovered that based on the fact that this warrant is invalid and my arrest was illegal, that they could not have prosecuted me for distribution of crack cocaine. And he also would have discovered that based on the fact that my arrest was illegal and evidence that was discovered after my illegal arrest--.

(App.p. 280, line 10-p. 289, line 4)

Q. All right. But it's your contention that these issues that we raised today also should have had motion.

A. Yes.

Q. Is that correct:

A. He should have raised them, and he should have informed me of them. If he had raised them, then like I said, the outcome of this proceeding would be different because the evidence would have got suppressed. If he would have informed me of them, I would have still went to trial, if I was found guilty. And if he would have informed me I could have challenged them on direct appeal, I would have went to trial.

(App. p. 321, line 13 - p. 322, line 1)

In Sikes v. State, 448 S.E.2d 560 (S.C. 1994) a defense attorney was held ineffective for failing to raise Fourth Amendment claim. The Court explained:

> Having found in this record that Sike's Fourth Amendment claim is Meritorious, we must determine if he has satisfied the performance and prejudice prongs of Strickland. At the PCR hearing, Sikes trial counsel testified that he did not question Sikes' seizure because it didn't appear to him that "they [the officers] were asking him to do

anything out of the ordinary." Because counsel's failure to motion to suppress evidence was based on the fact that he thought the officer's action were justified, we find counsel's decision fell below an objective standard of reasonableness. Additionally, because the unlawfully-obtained evidence was the only evidence of Sikes' possession of cocaine, we find that counsel's performance prejudiced Sikes such that it rendered the proceeding fundamentally unfair.

448 S.E.2d at 563

Plea counsel in this case did not challenge the illegal arrest at the suppression hearing in regards to the arrest warrant lacking probable cause. Plea counsel was asked at the PCR hearing did he challenge the arrest warrant. His response was simply no. Plea counsel did not provide the PCR court with a valid trial strategy for not challenging the arrest warrant at the suppression hearing. This error by Plea counsel clearly prejudiced Petitioner because if Plea counsel would have challenged the arrest warrant all evidence siezed after Petitioner's illegal arrest would

have been suppressed, leaving the state with no evidence to prosecute Petitioner for distribution of crack cocaine, trafficking cocaine, trafficking crack-cocaine.

CONLUSION

Plea counsel should be held ineffective and Petitioner should be granted a new trial.

ARGUMENT #2

Plea counsel was ineffective in failing to inform Petitioner that he had a valid legal challenge to the arrest warrant M-971717 "Distribution of Crack Cocaine" because his arrest was an illegal arrest in violation of the 4th amendment of the U.S. Constitution because arrest warrant and underlying affidavit in support of arrest warrant lacked probable cause.

The post-conviction relief attorney asked Petitioner about the arrest warrant as follows:

Q. Okay. So as to the invalid

search warrant or an unreliable canine, is there anything else that you failed to mention about your attorney's performance or--

A. Yeah. It deal with the arrest warrant and the invalid search warrant, My counsel would have informed me, specifically informed me of those defects and informed me that I could have raised this issue with a valid arrest warrant on a Motion to suppress, and there's possibility that the judge might deny my motion. But I can still go to trial and if found guilty, I

could challenge these issues on direct appeal, I would not pled guilty. Because based on the fact the arrest warrant is invalid, if the arrest warrant was filed--

(App. p. 294, line 8-22)

In Berry v. State, 381 S.C. 630 (2009) a defense attorney was held ineffective in failing to inform a client of the potential challenge to the use of the drug paraphernalia conviction for enhancement. The court explained:

We find plea counsel's failure

to inform Berry of the potential challenge of the use of the paraphernalia conviction for enhancement purposes amounts to deficient representation. The difference in a valid guilty plea and an invalid guilty pleas lies in the knowing and voluntary nature of the plea. Here counsel never informed Berry of the potential challenge to the use of the drug paraphernalia conviction for enhancement. As this was a guilty plea, Berry cc must show that there is a reasonable probability that, but for counsel's errors, he would not

have pleaded guilty and would have insisted on going to trial." During the PCR hearing, Berry repeatedly said that he would have gone to trial had he known that his paraphernalia conviction did not qualify as a prior offense for enhancement purposes. We find Berry has established the prejudice prong of Strickland v. Washington and we grant him the relief he requests. We grant Berry post-conviction relief and return him to his pre-guilty plea position.

Plea counsel in this case did not inform Petitioner that he could challenge the arrest warrant for his arrest because the arrest warrant for his arrest underlying affidavit lacked probable cause. Plea counsel did not offer any testimony at the PCR hearing in regards to him informing petitioner of a potential challenge to the arrest warrant. Petitioner clearly testified at the PCR hearing that he would not have pled guilty had Plea counsel informed him of the arrest warrant being invalid for a lack of probable cause. Plea counsel's error clearly prejudiced petitioner.

CONCLUSION

Plea counsel should be held ineffective and Petitioner should be granted a new trial.

ARGUMENT #3

Plea counsel was ineffective in failing to adequately prepare, thoroughly argue the suppression of the drug evidence discovered as a result of the search warrant because plea counsel failed to discover and failed to raise on a motion to suppress at the suppression hearing that the search warrant was invalid under the 4th amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant is defective on its face because the search warrant underlying affidavit set forth no facts as to why D.E.U.

officers believed petitioner committed the crime alleged in the search warrant affidavit "Distribution of Crack Cocaine" on Feb. 28, 2012 the crime petitioner was arrested for on Feb 29, 2012.

The post-conviction relief attorney asked petitioner about Plea counsel's errors in regards to the search as follows:

> Q. Okay. Well, all right. Just what you said, other than that one issue he brought up on the invalid search warrant, what are some of the other issues that you say he did not defend you properly

on with the invalid search warrant.

A. Okay. The search warrant had numerous defects, like number one, the search warrant--

Q. How many defects are there.

A. Well there are three, and there is another one that I will get to on-- an unreliable canine, he failed to discover.

Q. Okay. Well, let's go over the three that you Mentioned on the invalid search warrant.

A. Okay.

Q. What was the first one.

A. The first one, it does not set forth any information as to why the DEU officer believed I committed a crime alleging that the distribution of crack cocaine on February the 20th, 2012.

(App.p. 290, line 25-p. 291, line 18)

In Sikes v. State, 448 S.E.2d 560(S.C.1994) a defense attorney was held ineffective for failing to raise Fourth Amendment claim. The Court explained:

> Having found in this record that Sike's Fourth Amendment claim is meritorious, we must determine

if he has satisfied the performance and prejudice prongs of Strickland. At the PCR hearing, Sikes trial counsel testified that he did not question Sikes' seizure because it didn't appear to him that "they (the officers) were asking him to do anything out of the ordinary." Because counsel's failure to motion to suppress evidence was based on the fact that he thought the officer's action were justified, we find counsel's decision fell below an objective standard of reasonableness. Additionally, because the unlawfully-obtained

evidence was the only evidence of Sikes' possession of cocaine, we find that counsel's performance prejudiced Sikes such that it rendered the proceeding fundamentally unfair.

448 S.E.2d at 563

Plea counsel in this case failed to raise on a motion at the suppression hearing to have the evidence suppressed that was discovered from the search warrant specifically because the search warrant was invalid for a lack of probable cause under the 4th amendment of the U.S. const. because the search warrant underlying affidavit

set forth no facts as to why D.E.U. officers believed Petitioner committed the crime alleged in the search warrant affidavit "Distribution of Crack Cocaine" on Feb 28, 2012 the crime Petitioner was arrested for on Feb 29, 2012. Plea counsel said he did not raise this issue at the suppression hearing because he could see where we was going with the judge so in his opionion the judge was not going to grant the motion if he did raise it at the suppression hearing. This response by Plea counsel can not be considered a valid trial stragedy when there are numerous case laws decided by South Carolina

appeallate courts establishing that search warrants were found to be invalid for a lack of probable cause based on this specific facial defect that Plea counsel failed to raise on a Motion to suppress. This error by Plea counsel clearly prejudiced Petitioner because if Plea counsel would have Motion to have the evidence discovered from this search warrant suppress based on this specific facial defect in the search warrant, the state would not have had any evidence to prosecute Petitioner for trafficking cocaine, trafficking crack-cocaine, which was the bulk of the evidence against Petitioner.

CONCLUSION

Plea counsel should be held ineffective and Petitioner should be granted a new trial.

ARGUMENT #4

Plea counsel was ineffective in failing to inform Petitioner that he had a valid legal challenge to the search warrant because the search warrant was invalid under the 4th amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant is defective on its face because the search warrant underlying affidavit set forth no facts as to why D.E.U. officers believed Petitioner committed the crime alleged in the search warrant affidavit "Distribution of Crack Cocaine" on Feb. 28, 2012 the crime Petitioner was arrested for on Feb. 29, 2012.

The Attorney General asked Petitioner about the defenses Petitioner was giving up when Petitioner pled guilty as follows:

Q. And that you are giving up any defense that you might have to these charges.

A. Yeah, any defense that I was aware of at the time. The defenses, I was not aware of the defenses. If I was aware of the defenses, I would have brought it to the Court there, I would not have pled guilty, Sir.

Q. Mr. Kinlaw, isn't it true that you specifically asked the Court whether you were giving up all of your rights from the Motion hearing, and the Court affirmed as much. And you decided that you wanted to plead guilty anyway.

A. Yeah, the Court affirmed I was only giving up two motions at the time because I was only aware of only two motions. I was not aware of the other motions that I presented to the Court today, the other nine issues, that I was not aware that I had a right to go to

trial to specifically challenge each one of those issues. If I did, I would not have pled guilty, sir.

(App.p. 312, line 24-p. 313, line 16)

In Berry v. State, 381 S.C. 630 (2009) a defense attorney was held ineffective in failing to inform a client of the potential challenge to the use of the drug paraphernalia conviction for enhancement. The Court explained:

We find plea counsel's failure to inform Berry of the potential challenge of the use of the paraphernalia

conviction for enhancement purposes amounts to deficient representation. The difference in a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea. Here counsel never informed Berry of the potential challenge to the use of the drug paraphernalia conviction for enhancement. As this was a guilty plea, Berry "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." During the PCR hearing, Berry

repeatedly said that he would have gone to trial had he known that his paraphernalia conviction did not qualify as a prior offense for enhancement purposes. We find Berry has established the prejudice prong of Strickland v. Washington, and We grant him the relief he requests. We grant Berry post-conviction relief and return him to his pre-guilty plea position.

Plea counsel in this case did not inform Petitioner that the search warrant was potentionally invalid under the 4th amendment of the U.S. Constitution specifically because the underlying affidavit set forth no facts

as to why D.E.U officers believed Petitioner committed the crime alleged in the search warrant affidavit "Distribution of Crack Cocaine" on Feb. 28, 2012 the crime Petitioner was arrested for on Feb. 29, 2012. Petitioner repeatedly said on direct and cross examination at the PCR hearing that he would not have pled guilty if he was aware of this defense. Plea counsel's error clearly prejudiced petitioner.

CONCLUSION

Plea counsel should be held ineffective and Petitioner should be granted a new trial.

ARGUMENT #5

Plea counsel was ineffective in failing to adequately prepare, thoroughly argue the suppression of the drug evidence discovered as a result of the search warrant because plea counsel failed to discover and raise on a Motion to suppress at the suppression hearing that the search warrant was invalid under the 4th amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant is defective on its face because the search warrant underlying affidavit does not contain any information to allow the

Magistrate to make an independent determination of the K-9 Jari's reliability to establish probable cause based on the alert.

The post-conviction relief attorney asked Petitioner about the search warrant failing to set forth information to allow the Magistrate to make an independent determination of the canine's reliability to establish probable cause based on the alert as follows:

> Q. Okay. Moving on, you mentioned earlier briefly about the unreliable canine. That's another issue that you've raised in the application. Can you tell me a little bit about how your

attorney did not represent you properly in terms of the canine search, apparently, of the -- was it the hotel room; is that correct.

A. No. The canine search, I mean, there was a statement in the search warrant that they're using a canine to sniff out the door, which based on that statement, that statement did not set forth any information to allow the managment to make independent determination of the canine's reliability to establish probable cause based on alert.

Q. So did--

A. That was--

Q. -- was the canine brought to the alleged scene after a search warrant was issued, or was it brought without a search warrant.

A. The canine was brought prior to the search warrant. They used that in the search warrant as information to get -- part of the information to get the search warrant. But the search warrant did not set forth any information as to the reliability of the canine sarring to establish probable cause based

on alert to allow--let the magistrate make an independent determination.

Q. Okay.

A. That's one of the defects, too.

Q. So basically you're saying that there was no--your attorney made no issue to suppress that canine search.

A. He did not raise that issue, he did not inform me of that issue. He did raise that issue at the suppression hearing and pointed out the facts that I pointed out in the brief. The warrant was found to be invalid at the

suppression hearing in which once he finds him invalid for lack of probable cause under the Fourth Amendment of the United States Constitution, and invalid under Article 1, section 10 of South Carolina Constitution, the judge would have suppressed the evidence, And the state would have had no evidence to try me for trafficking crack cocaine or trafficking cocaine.

(App.p. 292, line 15-p 294, line 7)

In Sikes v. State, 448 S.E.2d 560 (S.C. 1994) a defense attorney was held ineffective for failing to raise Fourth Amendment claim. The

Court explained:

> Having found in this record that Sike's Fourth Amendment claim is meritorious, we must determine if he has satisfied the performance and prejudice prongs of Strickland. At the PCR hearing, Sikes trial counsel testified that he did not question Sikes' seizure because it didn't appear to him that "they the officers were asking him to do anything out of the ordinary." Because counsel's failure to motion to suppress evidence was based on the fact that he thought the officer's action were justified, we find counsel's decision fell below an objective standard of reasonableness.

Additionally, because the unlawfully-obtained evidence was the only evidence of Sikes' possession of cocaine, we find that counsel's performance prejudiced Sikes such that it rendered the proceeding fundamentally unfair.

448 S.E.2d at 563

Plea counsel in this case failed to raise on a motoin at the suppression hearing to have the evidence suppressed that was discovered from the search warrant specifically because the search warrant was invalid for a lack of probable cause under the 4th

amendment of the U.S. Constitution because the search warrant underlying affidavit does not contain any information to allow the Magistrate to make an independent determination of the K-9 Jari's reliability to establish probable cause based on the alert. At the PCR hearing, Petitioner's counsel testified that he did not challenge the search warrant failing to set forth any information to allow the magistrate to make an independent determination of the K-9 Jari's reliability to establish probable cause based on the alert, "because he knew the officer would have said the canine was reliable."

This statement by Petitioner's counsel can not be considered a valid trial stragedy because the specific issue is not if the officer would have said the canine was reliabe or if the canine is reliable. The specific issue is the search warrant underlying affidavit does not contain any information to allow the magistrate to make his own independent determination of the K-9 Jari's reliability to establish probable caused based on the alert. The law is clear a search warrant based on a positive alert by a drug dog is sufficient on its face to establish probable cause "only if" the affidavit

supporting the warrant states that the dog is "trained and certified" to detect controlled substances. The alleged oral testimony the affiant said he gave to supplement the search warrant clearly did provide the magistrate with any information in regards to the canine's reliability. This error by Plea counsel clearly prejudiced Petitioner because if Plea counsel would have challenged this specific issue on a Motion to suppress the search warrant would have been found to be invalid for a lack of probable cause and all evidence discovered from the search warrant would have been

suppressed, leaving the state with no evidence to prosecute Petitioner for trafficking cocaine and trafficking crack cocaine which was the bulk of the evidence against Petitioner.

CONCLUSION

Plea counsel should be held ineffective and Petitioner should be granted a new trial.

ARGUMENT #6

Plea counsel was ineffective in failing to inform petitioner that he had a valid legal challenge to the search warrant because the search warrant was invalid under the 4th amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant is defective on its face because the search warrant underlying affidavit does not contain any information to allow the Magistrate to make an independent determination of the K-9 Jari's reliability to establish probable cause based on the alert.

The post-conviction relief attorney asked petitioner to explain the details of his decision to plead guilty as follows:

> Q. But it's your contention that you were not aware of all of these potential defenses at the time you pled guilty.
>
> A. Yes, sir. If I was aware, I would not have pled guilty, sir.
>
> Q. Okay, very good. And your contention is that there were only two motions that your attorney made on this; is that correct.

A. He only filed -- he only informed me of the out-of-court identification which he challenged and the arrest search warrant being invalid because of one defect, like I said with the --

Q. So what are the two motions he filed, just briefly for the Court.

A. The search warrant issue and the Neil versus Biggers -- I mean, he filed a Neil versus Biggers, and I think he did a Batson, a Batson at the live testimony, I guess, at that time he challenged the jury selection.

Q. All right. But it's your contention

that these issues that we raised today also should have had motions.

A. Yes.

Q. Is that correct.

A. He should have raised them, and he should have informed me of them. If he had raised them, than like I said, the outcome of this proceeding would be different because the evidence would have got suppressed. If he would have informed me of them, I would have still went to trial, if I was found guilty. And if he would have informed me I could have challenged them on direct appeal, I would have went trial.

(App. p. 320, line 19 - p 322, line 1)

In Berry v. State, 381 S.C. 630 (2009) a defense attorney was held ineffective in failing to inform a client of the potential challenge to the use of the drug paraphernalia conviction for enhancement. The Court explained:

> We find plea counsel's failure to inform Berry of the potential challenge of the use of the paraphernalia conviction for enhancement purposes amounts to deficient representation. The difference in a valid guilty plea and invalid guilty plea lies in the knowing and voluntary nature of the plea. Here counsel never informed Berry of the potential

challenge to the use of the drug paraphernalia conviction for enhancement. As this was a guilty plea, Berry "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." During the PCR hearing, Berry repeatedly said that he would have gone to trial had he known that his paraphernalia conviction did not qualify as a prior offense for enhancement purposes. We find Berry has established the prejudice prong of Strickland v. Washington, and we grant him the relief he requests. We grant Berry post-

conviction relief and return him to his pre-guilty plea position.

Plea counsel in this case did not inform petitioner that he had a potential valid legal challenge to the search warrant because the search warrant was invalid under the 4th amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant i's defective on its face because the search warrant underlying affidavit does not contain any information to allow the Magistrate to make an independent determination of the K-9 Jari's reliability to establish probable cause based on the alert. Plea counsel did not offer any

testimony at the PCR hearing in regards to him informing petitioner of this specific defect in the search warrant. Petitioner repeatedly said that he would not have pled guilty, he said he would have went to trial if Plea Counsel would have informed him of this challenge to the search warrant. Plea Counsel's error clearly prejudiced Petitioner.

CONCLUSION

Plea counsel should be held ineffective and Petitioner should be granted a new trial.

ARGUMENT #7

Plea counsel was ineffective in failing to adequately prepare, thoroughly argue the suppression of the drug evidence discovered as a result of the search warrant because plea counsel failed to discover and raise on a motion to suppress at the suppression hearing that the search warrant was invalid under the Fourth amendment of the U.S. Constitution for a lack of probable cause specifically because the search warrant is defective on its face because there was no independent verification of what transpired within the hotel on Feb. 28, 2012 during the officers allege surveillance of the hotel the

day the unreliable confidential informant was arrested with .9 grams of crack cocaine some Miles away from the hotel.

The post-conviction relief attorney asked Petitioner about his plea counsel failing to discover and raise issues with the search warrant as follows:

Q. Okay. So that's -- is that your contention about the invalid search warrant.

A. Yes. And it does not contain any statement of independent verification of what transpired on Febebruary the 20th, 2012, the day the officer was

doing the surveillance and they allege that someone bought drugs from the hotel. (App.p. 292, line 8-14)

In Sikes v. State, 448 S.E.2d 560 (S.C. 1994) a defense attorney was held ineffective for failing to raise Fourth Amendment claim. The Court explained:

> Having found in this record that Sike's 4th claim is meritorious, we must determine if he has satisfied the performance and prejudice prongs of Strickland. At the PCR, Sikes trial counsel testified that he did not question Sikes' seizure because it didn't appear to him that "they [the

officers] were asking him to do anything out of the ordinary." Because counsel's failure to motion to suppress evidence was based on the fact that he thought the officer's action were justified, we find counsel's decision fell below an objective standard of reasonableness. Additionally, because the unlawfully-obtained evidence was the only evidence of Sikes' possession of cocaine, we find that counsel's performance prejudiced Sikes such that it rendered the proceeding fundamentally unfair.

448 S.E.2d at 563

Plea counsel in this case failed to raise on a Motion at the suppression hearing to have the

evidence suppressed that was discovered from the search warrant specifically because the search warrant was invalid for a lack of probable cause under the 4th amendment of the U.S. Constitution because the search warrant is defective on its face because there was no independent verification of what transpired within the hotel on Feb. 28, 2012 during the officers allege surveillance of the hotel the day the unreliable confidential informant was arrested with .9 grams of crack cocaine some miles away from the hotel. Plea counsel said at the PCR hearing that he did not raise this issue on a motion at the suppression hearing because he could see where we was going with the judge so in

his opinion the judge was not going to grant the motion if he did raise it at the suppression hearing. This response by Plea Counsel can not be considered a valid trial stragedy when there are numerous cases laws decided by South Carolina appellate Courts establishing that search warrants were found to be invalid for a lack of probable cause based on this specific facial defect that Plea Counsel failed to raise on a motion to suppress. This error by Plea Counsel clearly prejudiced Petitioner because if Plea Counsel would have motion to have the evidence discovered from this search warrant suppress based on this

specific facial defect in the search warrant, the evidence would have been suppressed and then the state would not have had any evidence to prosecute Petitioner for trafficking cocaine, trafficking crack-cocaine, which was the bulk of the evidence against Petitioner.

CONCLUSION

Plea Counsel should be held ineffective and Petitioner should be granted a new trial.

Pro se brief in regards to Plea Counsel being ineffective in regards to the invalid arrest warrant M-971717 "Distribution of Crack Cocaine"

ILLEGAL ARREST

Kinlaw asserts his arrest was illegal because the underlying affidavits of arrest warrant M-971717 "Distribution of Crack Cocaine" lacked probable cause.

The affiant Officer P. Phillips put the following information in the underlying affidavit of arrest warrant M-971717 as his basis of probable cause:

> " Within the past 72 hours, the defendant (Henry Lee Kinlaw Jr.) did sell and /or distribute a quantity of crack cocaine for the exchange of cash money from within the Days Inn Hotel located at 3650 Waccamaw Blvd in the Myrtle Beach section of Horry County. Given the above stated facts, there is probable cause to believe the defendant did violate the S.C. State Statute 44-53-375 "Distribution of Crack Cocaine"

The decision of the U.S. Supreme Court concerning Fourth Amendment probable-cause requirements before a warrant for either arrest or search can issue require that the Judicial Officer issuing such a warrant be supplied with sufficient information to support and independent judgment that probable cause exists for the warrant. *Spinelli v. United States,* 393 U.S. 410 (1969); *United States v. Ventresca,* 380 U.S. 102 (1965); *Aguilar v. Texans,* U.S. 108 (1964); *Rugendorf v. United States,* 376 U.S. 528 (1964); *Jones v. United States* 362 U.S. 257 (1960); *Giordenello v. United States* 357 U.S. 480 (1958); The U. S. Supreme Court adopted the totality of the circumstances analysis set forth in *Illinois v. Gates,* 462 U.S. 213 (1983) stating:

The task of issuing Magistrate is simply to make a practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. Although the *Illinois v. Gates* language involved the determination of probable cause for the issuance of a search warrant, the same totality of the circumstances test applies as well in determining probable cause for the issuance of an arrest warrant. The General Assembly of South Carolina has imposed stricter requirements than Federal Law for issuing warrants. Both the Fourth Amendment of the United States Constitution require an oath or affirmation before probable cause can be found by an Officer of the Court, and a arrest warrant issued. U.S. Const. Amend. IV; S.C. Const. Article I, §10. Additionally, the South Carolina Code mandates that a warrant "shall be issued only upon affidavit sworn to before the Magistrate, Municipal judicial Officer, or Judge of a Court of record...." S. C. Code Ann. § 17-13-140 (1985). Oral testimony may also be used in this state to supplement search/arrest warrants affidavits, which are facially insufficient to establish probable cause. *See State v. Weston,* 329 S.C. 287, 494 S.E.2d 801 (1997). However, "sworn oral

testimony, standing alone does not satisfy the statute." *State v. McKnight,* 291 S.C. 110, 352 S.E.2d 471 (1987).

The Standard for the issuance of an arrest warrant is slightly different than that of a search warrant. For an arrest warrant to establish probable cause the arrest warrant must; (1) The arrest warrant must set forth facts to allow the issuing judge to make an independent determination that there is probable cause to believe that a crime has been committed. (2) The arrest warrant must set forth facts to allow the issuing judge to make an independent determination that there is probable cause to believe the person to be arrested committed the crime.

Reviewing the underlying affidavit of arrest warrant M-971717 in my case within the above-outlined parameters, it is undisputed the underlying affidavit is insufficient to provide the Magistrate with a substantial basis for which to find probable cause to issue the arrest warrant for my arrest based on the following facial defects:

1. The warrant is defective on it's face because it does not set forth any facts to allow a Magistrate to make an independent determination that there is probable cause to believe that a crime has been committed. Supplemented oral testimony by the affiant Officer Phillips could not cure this defect because the reason to believe a crime has been committed is solely based on the bare bones statement from the unreliable confidential informant the driver of the car that was arrested on Feb 28, 2012 with .9 grams of crack-cocaine some miles away from the hotel, oral testimony could not cure

this defect because the affiant Officer Phillips had no independent knowledge as to whether the unreliable confidential informant purchased crack-cocaine from the hotel because: (1) The C.I. nor his car was searched prior to going to the hotel, (2). The Officer did not witness the unreliable confidential informant interact with anyone at the hotel on Feb 28,2012, (3). The Officer did not get the informant to go back to the hotel to conduct a controlled buy to verify the C.I. bare bones statements that he/she purchased crack-cocaine from the hotel on Feb 28, 2012.

2. The warrant is defective on it's face because it does not set forth any facts to allow a Magistrate to make an independent determination that there is probable cause to believe the person to be arrested committed the crime. Supplemented oral testimony by affiant Officer Phillips could not cure this defect because the reason to believe the person to be arrested committed the crime is solely based on the bare bones statement from the unreliable confidential informant the driver of the car that was arrested on Feb 28, 2012, with .9 grams of crack- cocaine some miles away from the hotel, oral testimony could not cure this defect because the affiant Officer Phillips had no independent knowledge as to whether the unreliable confidential informant purchased crack-cocaine from a "specific person" at the hotel on Feb 28, 2012. (1). The C.I. nor his car was searched prior to going to the hotel, (2). The Officer did not witness the unreliable confidential informant interact with anyone at the hotel on Feb 28, 2012. (3) The

Officer did not have surveillance within the hotel on Feb 28, 2012. (4) The Officer did not get the informant to go back to the hotel to conduct a controlled buy to verify the C.I. bare bones statement that he/she purchased crack-cocaine from a "specific person" at the hotel.

3. The warrant is defective on it's face because it does not set forth the source of the allegations in it.

4. The warrant is defective on it's face because it does not set forth facts to establish that the source of the information in the affidavit is reliable.

Defect # 3 no source of information set forth in the affidavit to establish the source of information is reliable can not be cured by oral testimony because the source of the allegations in the affidavit is the unreliable confidential informant that was arrested on Feb 28, 2012 with .9 grams of crack-cocaine, the facts of the case clearly establish that this source is unreliable because: (1) The source was arrested with crack-cocaine in his/her possession some miles away from the hotel, (2) There is no conclusive evidence that this unreliable confidential informant made no stops from the time he/she left the hotel and until the time he/she was pulled over for the traffic violation. (3) The C.I. was not searched nor his car was searched prior to him going to the hotel. (4). The Officers did not see the confidential informant interact with anyone at the hotel on Feb 28, 2012. (5) The Officers did not have surveillance within the hotel on Feb 28, 2012. (6) The unreliable

confidential informant was not know to Officers prior to Feb 28, 2012. (7) The Officers did not use the confidential informant to set up a controlled buy to verify that he/she did in fact purchased crack-cocaine from a specific person at the hotel on Feb 28,2012.

5. The warrant is defective on it's face because it does not set forth facts that the allegations in the affidavit was in dependently verified by D.E.U. Officers or by the affiant Mr. Phillips. This defect could not cured by oral testimony specifically because no officer independently verified that I Henry Kinlaw distributed .9 grams of crack-cocaine from within the Days Inn hotel on Feb 28, 2012 for example: (1) The Officers did not have surveillance within the hotel on Feb 28, 2012. (2) The Officers did not witness any "hand-to hand" transactions at the hotel. (3) The Officers did not witness the unreliable informant interact with anyone at the hotel on Feb 28, 2012. (4) The Officers never conducted any controlled buys at this hotel to verify that crack-cocaine could be purchased from this hotel from a "specific hotel room" or "specific person" (5) Most importantly the Officers surveillance never revealed me involved in anything that would even look like criminal behavior.

The U.S. Supreme Court, the South Carolina Courts, and Courts in other circuits have unanimously held warrants that contain the above listed facial defects are invalid for a lack of probable cause because the underlying affidavit does not contain sufficient information to support an independent

judgment that probable cause exists for the warrant. *See, e.g. Whiteley v. Warden* 401 U.S. 560 ("held Petitioner's arrest violated his rights under the Fourth and Fourteenth Amendments and the evidence secured incident thereto should have been excluded from his trial because the complaint, which did not mention that the sheriff acted on an informer's tip, and which consisted of no more than the Sheriff's conclusion that the individuals named committed the offense, could not support the independent judgment of a disinterested Magistrate.); *State v. York* 156 S.E.2d 326 (held that search warrant which was issued on basis of a affidavit based on information and belief which stated affiant had good reason to believe that defendant had concealed on her premises certain contraband but set forth no facts or circumstances which engendered the affiant's belief that contraband would be found other than naming affiant's informers was nullity); *State v. Philpot* 454 S.E.2d 905 (S.C. App. 1995) (held that search warrant affidavit was insufficient to establish probable cause for search of defendant's residence.); *State v. Schroeder* 450 N.W. 2d 423 (N.D. 1990) (held that insufficient evidence was presented to county judge to establish probable cause for issuance of arrest warrant); *Chatham v. State* 746 S.E.2d 605 (GA 2013) (held that uncorroborated statements of a confidential informant (C.I.) whose reliability, credibility, and source of information were unknown were not sufficiently reliable for purposes of establishing probable cause necessary for issuance of warrant to search defendants residence.)

Defect # 6 The arrest warrant is defective on it's face because it is totally based on information provided by the unreliable confidential informant the driver of the car that was arrested on Feb 28, 2012, with .9 grams of crack-cocaine some miles away from the hotel and his bare bones statements was not independently verified by Officers.

The Law is clear a warrant based solely on information provided by a confidential informant must be based on a reliable informant to establish probable cause or significant parts of the informant's information must be independently verified by Police Officers to establish probable cause.

The facts of my case clearly establish that the informant is a confidential informant, for example the informant's name is not revealed in any of the documented evidence: (1) The informant's name is not revealed in the arrest warrant M971717 underlying affidavit, (2) The informant's name is not revealed in the search warrant affidavit (3). The informant's name is not revealed in the investigative report (4). The informant's name is not revealed in the written statement, (5). The informant's name is not revealed in the crime report.

In my case the confidential informant is clearly unreliable for example; (1) The informant is not an identified victim or an identified witness. (2) The informant is not known to the Officers to have provided correct information in the past. (3) The informant is not searched nor his car is searched prior to him going to the hotel. (4) The Officers does not witness the informant interact with anyone at the hotel on Feb 28, 2012. (5) The Officers did not have

surveillance within the hotel on Feb 28, 2012 to verify that this unreliable informant did go inside the hotel to meet someone to purchase drugs. (6) The Officers did not witness this informant enter a specific hotel room, the officers only seen the informant enter a public hotel once inside the Officers had no independent knowledge of what took place or where the informant went. (7) The informant does not provide any hard to gain details like a cell phone number, a specific hotel room number, a legal name of the person he allegedly bought the drugs from, something unique that officers could verify to confirm this informant was not just passing on a casual rumor or lie. (8) The Officers does not allow the informant to make a recorded phone call to establish a possible connection between the informant and a supplier. (9) The Officers did not attempt to do the basic method of independent verification in a narcotics investigation, which would be getting the confidential informant to go back to the hotel to conduct a controlled purchase from the hotel to confirm the informant did in fact purchased crack-cocaine from a specific person or a specific hotel room.

The sequence of events in my case transpired in the following manner: (1). The unreliable confidential informant was arrested with .9 grams of crack-cocaine in his possession some miles away from the hotel on Feb 28,2012. (2). Then the informant was interviewed by the affiant Officer Phillips at the MBPD. (3) The informant says he bought the drugs from a black male named "gunner or gutter" at the hotel, but the informant does not provide any specific prior description of this black male, like height, weight,

facial feature, complexions, Hair style. (4) But the "affiant Officer Phillips" suspected it was Henry Kinlaw." (5) So he provides the informant with a "single highly suggestive" photo of "Henry Kinlaw" "not an array of photos" for the informant to chose from. (6). Then the informant allegedly says yeah that's "gunner or gutter." *See transcript* pg. 46 lines 4-14. (7) Then the affiant Officer Phillips excepted the unreliable confidential informants bare bones statements "that he bought drugs from a black male named gunner or gutter at the hotel Feb 28, 2012, from inside the hotel stairwell" as the truth without attempting to go back to the hotel to independently verify the informants statements.

Even if the above listed events was orally provided to the Magistrate it would not be enough for the Magistrate to make an independent determination that the confidential informant was reliable to establish probable cause to issue an arrest warrant for my arrest for "distribution of crack-cocaine" on Feb 28, 2012. *See e.g. State v. Adolphe* 441 S.E.2d 832 (S.C. App. 1994) (held that issuance of a search warrant was not supported by probable cause, as a affidavit coupled with hearing testimony of Officer/Affiant failed to establish confidential informant's reliability and informant's allegations were never corroborated by any identifiable individuals).

Based on a individual view of each defect in this arrest warrant it makes this arrest warrant invalid for a lack of probable cause under the 4th Amend of the United States Constitution and invalid under the South Carolina Constitution Article I §10, and invalid under §17-13-140 of S.C. Code of

Laws for a lack of probable cause, because this warrant is invalid all evidence discovered from my Illegal arrest must be suppressed as fruits of the poisonous tree, this includes the hotel keycard, all U.S. Currency , all evidence discovered from the search warrant that issued after my Illegal arrest for my hotel room 205 must be suppressed. After this evidence is suppressed the state would not have any evidence to charge me of distribution of crack-cocaine, trafficking cocaine, and trafficking crack-cocaine.

Based on the totality of each defect in this arrest warrant affidavits, this renders the arrest warrant invalid for a lack of probable cause under the 4th Amendment of the U.S. Constitution and invalid under the S.C. Constitution Article I §10 and invalid under § 17-13-140 of S.C. Code of Laws for a lack of probable cause, because this arrest warrant is invalid based on the totality of the defects in the affidavit all the evidence discovered from illegal arrest must be suppressed as fruits of the poisonous tree, this includes the hotel keycard, and all evidence discovered from the search warrant that was issued after my illegal arrest for my hotel room 205.

THE GOOD FAITH EXCEPTION TO THE EXCLUSIONARY RULE:

In *United States v. Leon,* 468 U.S. 897, 919-20, 104 S. ct 3405, 3419, 82 L. ed 2d 677, 696-97 (1984) The Supreme Court established a good faith exception to the exclusionary rule, hold "that when an Officer acting in objective good faith has obtained a warrant from a judge or magistrate and acted within its scope, a reviewing court should not order a suppression of the evidence based on a lack of probable cause. "*State v. Weston* 329 S.C. 287,

292, 494 S.E.2d 801, 803-04 (1997) (Summarizing Leon). The Leon court listed three situations in which the good faith exception cannot apply, one of which is courts will not defer to a warrant based on an affidavit "that does not provide the magistrate with a substantial basis for determining the existence of probable cause." 468 U.S. at 914-15, 104 S. ct. at 3416, 82 L. ed. 2d at 693.

> In *State v. Johnson,* 302 S.C. 243, 248, 395 S.E.2d 167, 170 (1990), The South Carolina Supreme Court ruled "Leon specifically precludes the application of good faith exception" in a situation indistinguishable from "my case." In Johnson, "the informant told South Carolina Law Enforcement agents that he had seen a large quantity of cocaine, cash, and a gun in Johnson's home" "within the past seventy-two (72) hours." 302 S.C. at 245, 395 S.E.2d at 168. This information, if accurate, would have provided a substantial basis on which the issuing judge could find the existence of probable cause. However, the affidavit "did not set forth ant information as to the reliability of the informant." 302 S.C. at 247, 395 S.E.2d at 169. The South Carolina Supreme Court stated:

Without any information concerning the reliability of the informant, the inferences from the facts which lead to the complaint will be drawn not by a neutral and detached Magistrate, as the Constitution requires, but instead, by a police officer engage in the often competitive

enterprise of ferreting out crime, or, as in this case, by an unidentified informant.

302 S.C. at 248, 395 S.E. 2d at 169 (internal quotations marks omitted.)

After concluding "the affidavit... did not provide the Magistrate with sufficient information concerning the informant's reliability upon which he could base a probable cause determination," the court considered whether the good faith exception applied. 302 S.C. at 249-49, 395 S.E.2d at 169-70. Quoting Leon, 468 U.S. at 915, 104 S. ct. at 3416, 82 Led 2d at 693, the South Carolina Supreme Court found the good faith exception inapplicable:

> Reviewing courts will not defer to a warrant based on an affidavit that does not provide the Magistrate with a substantial basis for determing the existence of probable cause. Sufficient information must be presented to the Magistrate to allow that official to determine probable cause; his action cannot be a mere ratification of the bare conclusions of others.

302 S.C. at 248-49, 395 S.E.2d at 170 (internal quotations marks omitted).

As in Johnson, Officer Phillips affidavit in arrest warrant M-971717 "distribution of crack cocaine" gave the issuing judge no information to assess the reliability of the information on which probable cause could exist. Without such information, the issuing judge was forced to guess whether the events describe in the affidavit actually occurred. Under these circumstances,

the courts cannot defer to the arrest warrant because the affidavit "does not provide the Magistrate with a substantial basis for determining the existence of probable cause." *Johnson,* 302 S.C. at 248, 395 S.E.2d at 170 (quoting Leon, 468 U.S. at 914-15, 104 S. ct at 3416, 82 Led 2d at 693.) Given the lack of any basis on which the issuing judge could find the information in the affidavit reliable, the "affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable." *Weston,* 329 S.C. at 293, 494 S.E.2d at 804 (quoting Leon, 468 U.S. at 923, 104 S. ct at 3421, 82 L. ed 2d at 699.)

Consequently, Leon, Weston, and Johnson require South Carolina Courts to find the good faith exception inapplicable to "my case." Based on this fact then arrest warrant must be found to be invalid for a lack of probable cause and all evidence discovered from this invalid arrest warrant must be suppressed as fruits of the poisonous.

INEFFECTIVE ASSISTANCE OF COUNSEL

If my lawyer would have thoroughly researched the documented evidence and properly prepared for trial, (1) he would have discovered the arrest warrant M-971717 was in valid because the underlying affidavit lacked probable cause (2) he would have discovered each defect I previously discussed (3) he would have discovered this arrest warrant is invalid based on an individual view of each facial defect, (4) he would have discovered this arrest warrant is invalid based on the totality of each facial defect (5) he would have discovered oral testimony by the affiant Officer Phillip could not cure these facial defects (6) he would have discovered the good faith to the exclusionary rule is inapplicable in my case because the affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable (7) he would have discovered this arrest warrant is invalid under the 4th Amendment of the U.S. Const. and invalid under Article I § 10 of the S.C. Const and invalid under § 17-13-140 of the S.C. Code of Laws. (8) He would have discovered that based on this fact all evidence discovered after my illegal arrest would have to be suppressed as fruits of the poisonous tree, (9) he would have discovered after the evidence is suppressed the state would not have any evidence to try me for distribution of crack-cocaine, trafficking cocaine, and trafficking crack-cocaine.

If my lawyer would have raised each defect in this arrest warrant on a motion to suppress and pointed out each defect to the trial judge at the

suppression hearing and pointed out to the trial judge that the facts of the case clearly establish that oral testimony by the affiant Officer Phillips could not cure these defects. If my lawyer would have used the documented evidence, the investigative report, grand jury case summary, arrest warrant M-971717 affidavit, search warrant affidavit and pointed out to the trial judge that the facts of the case clearly establish that the informant the driver of the car that was arrested on Feb 28, 2012 with .9 grams of crack-cocaine is a "confidential informant" because his/her identity is not revealed in any of the documented evidence. If my lawyer would have used the documented evidence, the investigative report, grand jury case summary, arrest warrant M-971717 affidavit, search warrant affidavit to effectively cross examine the affiant Officer Phillips at the suppression hearing as to why all of the documented evidence lacked any specific date prior to Feb 28, 2012, even though Officer Phillips claimed to have conducted multiple surveillance prior to Feb 28, 2012. this would have attacked the affiant's Officer Phillips credibility and proved the allegations of multiple surveillance was more than likely false. This would have clearly establish that the affiant officer Phillips only did one surveillance which was on the day of Feb 28, 2012, and on this day only "one car" was seen coming to the hotel, not "numerous cars" as the affiant Officer Phillips alleges.

See, Investigative report pg. 2. Under 02/28/2012.

This set of facts would have establish that this entire case is solely based on the bare bones statements of the unreliable confidential informant that

was arrested with .9 grams of crack-cocaine on Feb 28, 2012, some miles away from the hotel and his/her bare bones statement was the "sole" basis of arrest warrant M-971717 See, 15th Circuit Drug Enforcement Unit Grand Jury case Summary:

"M-971717- Distribution of Crack-Cocaine- 02/28/2012, the defendant Henry Lee Kinlaw Jr. did distribute approximately 0.9 grams of an off-white in color rocklike substance for the exchange of cash money while within the County of Horry. The substance did field test positive for the presence of Cocaine.

If my lawyer would have specifically pointed out each above listed facts to the trial judge, the trial judge would have found the arrest warrant is invalid for alack of probable cause (1) based on a individual view of each facial defect. (2) the trial judge would have found the warrant was invalid based on the totality of the facial defects, (3) the trial judge would have found the arrest warrant is invalid because it is solely based on the bare bones statements of the reliable confidential informant the driver of the car that was arrested with .9 grams of crack-cocaine some miles away from the hotel on Feb 28, 2012 and the trial judge would have found no significant parts of the unreliable confidential's informant allegations were independently verified by D.E.U. Officers, (4) the trial judge would have found based on the facts of the case oral testimony by the affiant Officer Phillips could not cure these facial defects,(5) the trial judge would have found the arrest warrant is invalid for a lack of probable cause under the 4th

amendment of the U.S. Const. , invalid under article. I § 10 of the S.C. Const. and invalid under § 17-13-140 of the S.C. Code of Laws, (6) the trial judge would have found the good faith exception to the exclusionary rule does not apply in my case because the arrest warrant affidavit is so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable, (7) the trial judge would have found that all evidence discovered from my illegal arrest must be suppressed as fruits of the poisonous tree, this includes the hotel keycard that was discovered during my illegal arrest, this includes all evidence that was discovered from the search warrant that was issued for my hotel room 205 after my illegal arrest, (the trial judge would have found once the evidence is suppressed the state would not have any evidence to charge or try me for distribution of crack-cocaine, trafficking crack-cocaine, trafficking cocaine.

(See, e.g. *Sikes v. State* 448 S.E.2d 560 (S.C. 1994) (holding counsel was ineffective for failing to raise Fourth Amendment claim).

If my lawyer would have sat down with me and specifically explained to me that the arrest warrant was invalid because it contained each facial defects I listed above, if my lawyer would have specifically informed me that because this arrest warrant is invalid for a lack of probable cause and all evidence that was discovered from this invalid arrest warrant would have to be suppressed, if my lawyer would have specifically informed me based on the fact all evidence discovered would have to be suppressed so this would result in the state not having any evidence to try me for distribution of

trafficking crack-cocaine, trafficking cocaine, if my lawyer would have informed me that I could challenge the defects in the arrest warrant on a motion but the trial judge could deny the motion but I could go to trial and if was found guilty, I could challenge these specific issues in regards to the arrest warrant on direct appeal, I would not have pled guilty, I would have went to trial. See. e.g. *Berry v. State,* 381 S.C. 630 (2009) (held plea counsel was deficient, as element of claim of ineffective assistance, in failing to inform defendant who pled guilty to a drug charge of a potential challenge to use of his prior conviction for possession of drug paraphernalia for sentencing enhancement purposes.).

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