STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Robin B. Stilwell, Circuit court Judge

TRAVIS NAPOLEON DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE No. 2018-000077

PETITION FOR WRIT OF CERTIORARI

Travis N. Davis
Petitioner

Lee Correctional Institute
990 Wisacky Hwy.
Bishopville, S.C. 29010

INDEX

ISSUES PRESENTED

Did trial counsel provide ineffective assistance of counsel by depriving petitioner of his Fourteenth Amendment right by allowing the admittance of evidence that derived from an illegal search (fruit of the poisonous tree)?

Did trial counsel provide ineffective assistance in derogation of petitioner's Sixth Amendment right to counsel by allowing him to plead guilty to double jeopardy and trafficking in cocaine base when the State could only reach the minimum 10gram threshold amount by combining powder cocaine with crack cocaine?

Did trial counsel provide ineffective assistance in failing to object to the State's breach of petitioner's plea agreement (contract)?

STATEMENT

On August 22, 2013, a Spartanburg County grand jury indicted petitioner for possession of marijuana, possession with the intent to distribute cocaine, trafficking in cocaine base, and possession with intent to distribute heroin. App. 77-89. On July 17, 2014, the grand jury indicted petitioner for failing to stop for a blue light, manufacturing cocaine base, two counts of possession of a firearm by a person convicted of a violent crime, and possession with the intent to distribute heroin. App. 91-104. On June 16, 2015, petitioner pled guilty pursuant to a negotiated sentence before the Honorable Roger L. Couch. App. 1. App. 3, 11. 7-14. On the drug offenses, petitioner pled guilty to second offenses. App. 3, 11. 7-14. Sam Bass represented the State. App. 1. Candace Lapham represented petitioner. App. 1. Petitioner received consecutive sentences totaling fifteen years imprisonment. App. 22, 1. 19-24, 1. 7.

On March 7, 2016, petitioner filed a PCR application. App. 26. On June 28, 2017, the Honorable Robin B. Stilwell held a hearing. App. 40. Rodney Richey represented petitioner. App. 40. Valerie G. Giovanoli represented the State. App. 40. On October 4, 2017, Judge Stilwell denied petitioner's application. App. 69. This petition follows.

STANDARD OF REVIEW

The standard of review in PCR cases depends on the specific issue before the Court. A PCR court's findings of fact will be upheld if there is evidence in the record to support them. Sellner v. State, 416, S.C. 606, 610, 787 S.E. 2d 525, 527 (2016) (citing Jordan v. State, 406 S.C. 443, 448, 752 S.E. 2d 538, 540 (2013)). Questions of law are reviewed de novo, with no deference to trial courts. Sellner, 416 S.C. at 610, 787 S.E. 2d at 527 (citing Jamison v. State, 410 S.C. 456, 465, 765 S.E. 2d 123, 127 (2014)). See also Smalls v. State, 422 S.C. 174, 810 S.E. 2d 836-40 (2018).

Did trial counsel provide ineffective assistance of counsel by depriving petitioner of his Fourteenth Amendment right by allowing the admittance of evidence that derived from an illegal search (fruit of the poisonous tree)?

Petitioner argues trial counsel provided ineffective assistance in derogation of petitioner's Sixth Amendment right to counsel by allowing him to plea to evidence that derived from an illegal search (fruit of the poisonous tree).

On the advice of counsel, petitioner pled guilty to possession of marijuana, possession with intent to distribute cocaine, trafficking in cocaine base, two counts of possession with the intent to distribute heroin, manufacturing cocaine base, two counts of possession of a firearm by a person convicted of a violent crime, and failure to stop for a blue light. App. p.77-105. Petitioner argues that counsel performed incompetently by allowing him to plea to those offenses.

The Fourth Amendment guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. Amend. IV. The Fourth Amendment is applicable to the States through the Due Process Clause of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961). A person has been "seized" within the meaning of the Fourth Amendment "whenever a police officer accosts the individual and restraining his freedom to walk away." Terry v. Ohio, 392 U.S. 1, 16, 88 S. Ct. 1868, 1877, 20 L. Ed. 2d 889, 903 (1968). See also Sikes v. State, 323 S.C. 28, 30, 448 S.E. 2d 560, 562 (1994). ("An individual is "seized" when an officer restrains his freedom even if the detention is brief and falls short of the arrest"). "Only when the officer, by means of physical force or show of authority, has in some

way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.' Terry, 392 U.S. at 19 n. 16, 88 S. Ct. at 1879 n. 16, 20 L. Ed. 2d at 905 n. 16. The Supreme Court has often observed that searches and seizures "conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well delineated exceptions". Thompson v. Louisiana, 469 U.S. 17, 20, 105 S. Ct. 409, 410, 83 L. Ed. 2d 246, 250 (1984) (per curiam) (quoting Kats v. United States, 389 U.S. 347, 357, 88 S. Ct. 507, 514, 19 L. Ed. 2d 576, 585 (1967). See also Mincey v. Arizona, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed. 2d 290 (1978). Fourth Amendment proscribes all unreasonable searches and seizures, and it is a cardinal principle that searches conducted outside judicial process, without prior approval by magistrate or judge, are per se unreasonable, subject only to specifically established exceptions). (quoting State v. Woodruff, 344 S.C. 537, 544 S.E. 2d 290 (2001). Before the police may frisk a defendant, they must have a reasonable belief the defendant is armed and dangerous. Sibron v. New York 392 U.S. 40, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968). (an officer is not entitled to seize and search every person on the street; mere knowledge of the suspect being a known narcotics dealer who put his or her hand into a pocket as the police approached does not provide justification); cf. United States v. Moore, 817 F. 2d 1105 (4th Cir. 1987) justification found where suspect was observed in the vicinity of a building late at night shortly after the alarm sounds, and the street is dark, the officer is alone, and the suspected crime is burglary), cert. denied, 484 U.S. 965, 108 S. Ct. 456, 98 L. Ed. 2d 396 (1987). State v. Fowler, 322 S.C. 263, 267, 471 S.E. 2d 706, 708 (Ct. App. 1996); See also State v. Burton 349 S.C. 430, 439, 562 S.E. 2d 668, 673 (Ct. App. 2002) (once a basis for a lawful investigatory stop exists, an officer may protect himself during

the stop by conducting a frisk for weapons if he has reason to believe the suspect is armed and dangerous; in justifying the intrusion, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion). See State v. Copeland, 321 S.C. 318, 323, 468 S.E. 2d 620, 624 (1996). ("The 'fruit of the poisonous tree' doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by the exploitation of that illegality".) (quoting State v. Butler, 353 S.C. 383, 577 S.E. 2d 498 (2003). Whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure, see, e.g. Kats v. United States 389 U.S. (1967); Beck v. Ohio, 379 U.S. 89, 96 (1964). Chapman v. United States, 365 U.S. 610 (1961), or that in most instances failure to comply with the warrant requirement can only be excused by exigent circumstances, see, e.g. Warden v. Hayden, 387 U.S. 294 (1967)(hot pursuit); cf. Preston v. United States, 376 U.S. 364, 367-368 (1964). (quoting Terry v. Ohio, 392 U.S. 1 (1968)). To establish a claim of ineffective assistance of counsel, petitioner must show counsel's representation fell below an objective standard of reasonableness and that defendant was prejudiced by such deficient performance. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); Gallman v. State 307 S.C. 273, 414 S.E. 2d 780 (1992). When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that should have been excluded. Kimmelman v. Morrison, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986). To prove counsel ineffective when a guilty plea is challenged, petitioner must show that counsel's performance was deficient and that, but for counsel's errors, there is a reasonable probability a guilty plea would not have been entered. Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88

L. Ed. 2d 203 (1985); Jordan v. State, 297 S.C. 52, 374 S.E. 2d 683 (1988). A defendant who pleads guilty upon the advice of counsel may attack the voluntary and intelligent character of the guilty plea only by showing the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases. Carter v. State, 329 S.C. 355, 495 S.E. 2d 773 (1998). (ineffective assistance of counsel following guilty plea, where there would have been "insufficient evidence to sustain a conviction" if a suppression motion had been filed) United States v. Alvarez - Tautimez, 160 F. 3rd 573, 577. In determining whether a criminal defendant received ineffective assistance of counsel, courts generally consider several factors: (1) Whether the lawyer had previously handled criminal cases; (2) Whether strategic trial tactics were involved in the allegedly incompetent action; (3) Whether and to what extent, the defendant was prejudiced as a result of the lawyer's alleged ineffectiveness; and (4) Whether the ineffectiveness was due to matter beyond the lawyer's control. (Citing Black's Law Dictionary 10th Edition)

On Dec. 21st, 2012, drugs was seized due to an illegal search, which lead to the convictions of trafficking in crack in an amount greater than ten grams, possession with intent to distribute heroin, possession of marijuana, and possession with intent to distribute cocaine. App. p.77-90. Petitioner claims that the officer went beyond the scope of Terry when he searched his person for a second time, however, that the officers had overstepped the bounds allowed by Terry in seizing the drugs, in doing so the Court of Appeals "declined to adopt the plain feel exception" to the warrant requirement. 469 N.W. 2d 462, 466 (1991). App. p.54, lines 3-25, p.55, lines 1-3. Petitioner claims that even though the issuance of a warrant by a judicial officer was reasonably predictable, a line must be drawn when no exigency is shown

to support the need for an immediate search, the Warrant Clause places the line at the point where the person to be searched comes under exclusive protection of police authority. Petitioner was therefore entitled to the protect- of the Warrant Clause with the evaluation of a neutral magistrate, before his privacy interest in the contents of his private areas were invaded. Under the exclusive control of the police there is not the slightest danger that the petitioner or his contents could be removed before a valid search warrant could be obtained with the petitioner safely immobilized. It is unreasonable to undertake the additional and greater intrusion of a search without a warrant. Warrants are generally required to search a person's home or his person unless "exigencies of the situation" make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.

On Nov. 1st, 2013, the Spartanburg County Sheriff's Office Narcotics Unit executed a search warrant at 122 Ebel Ct. for one Steven L. Hoey. Exhibit A. On Nov. 5th, 2013, affiant Travis McJunkin swore before the magistrate that on or about Nov. 1st, 2013, petitioner violated the criminal laws of the State of South Carolina (Drugs/Manufacturing, distribution, etc. cocaine base, 2nd offense). Exhibit B. Petitioner claims officer used a null and void arrest warrant that caused the failure to stop for blue lights on April 9th, 2014, which in turn lead to the seizure of a firearm, heroin, and cocaine base. App. p.17, lines 5-25, p.18, lines 1-11. Which concluded with the convictions of Traffic/ failure to stop for a blue light, no injury or death - 1st offense, Drugs/Manufacturing, distribution, etc. cocaine base, 2nd offense, two counts of possession of firearm or ammunition by person convicted of violent felony, 2nd possession with the intent to distribute heroin - 2nd offense. App. p.91-105

As a result, plea counsel performed deficiently by allowing petitioner to plead guilty. Petitioner's guilty plea was unknowingly and unintelligent because he relied on the erroneous advice of his attorney. "The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant". Hill v. Lockhart, 474 U.S. 52, 56 (1985). "Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargining process". Lafler v. Cooper 566 U.S. 156, 162 (2012). "Before deciding whether to plead guilty a defendant is entitled to the effective assistance of competent counsel". Padilla v. Kentucky 559 U.S. 356, 364 (2010). The PCR court also erred in showing that petitioner could not prove prejudice because he got "the deal of a lifetime". App. p.74. In finding ineffective assistance of counsel from failure to file suppression motion where the unlawfully - obtained evidence was the only evidence that the state could provide, petitioner claims counsel's ineffective assistance fell below an objective standard of reasonableness that prejudiced him, and if it wasn't for counsel's deficient performance, the state wouldn't have the evidence to prosecute.

Did trial counsel provide ineffective assistance in derogation of petitioner's Sixth Amendment right to counsel by allowing him to plead guilty to double jeopardy and trafficking in cocaine base when the State could only reach the minimum 10 gram threshold amount by combining powder cocaine with crack cocaine?

Petitioner argues that he has been prosecuted twice for substantially the same offense ("possession with intent to distribute cocaine" and 'trafficking in cocaine base and/or crack"). Petitioner argues that he was charged twice with the "possession with the intent to distribute cocaine" in order for the State to reach the threshold amount for trafficking in cocaine base.

On the advice of counsel, petitioner pled guilty to "trafficking in cocaine base/crack" and "possession with the intent to distribute cocaine". App. p.8, lines 19-25, p.9, lines 1-4, p.80-87. Petitioner argues that trial counsel performed deficiently in allowing him to plead guilty to those offenses.

Petitioner was sentenced for drugs/manufacturing, distributing, etc. cocaine base, 2nd offense and trafficking in ice, crank or crack - 10g or more but less than 28g - 2nd. App. p.82,86. Petitioner argues that the "trafficking in cocaine base" supersedes the "drugs/manufacturing, distribution, etc. cocaine base and in getting sentenced under both crimes is a violation of the double jeopardy clause.

"The Double Jeopardy Clause of the Fifth Amendment provides that no person shall be subject for the same offense to be twice put in jeopardy of life or limb". Goodine, 400 F. 3d at 206 (quoting U.S. Const. amend. V.). The

Double Jeopardy Clause of both the United States and South Carolina Constitutions protect against multiple punishments for the same offense. United States v. Dixon, 113 S. Ct 2849, 125 L.Ed. 2d 556 (1993). When there are multiple punishments imposed in the same trial, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended. Wilson, 429 S.E. 2d at 457 (citing Missouri v. Hunter, 459 U.S. 359, 103 S. Ct. 673, 74 L.Ed. 2d 535 (1983)).

The defendant bears "the initial burden of raising and pleading the double jeopardy claim". Ragins, 840 F.2d at 1191. To meet this burden, the defendant must point to "substantial overlaps in the two charged offenses". United States v. McHan, 996 F.2d. 134, 138 (4th Cir. 1992). If the defendant has demonstrated the double jeopardy argument is non-frivilous the burden then shifts to the government. If the burden shifts, the government "must prove by a preponderance of evidence that the indictments refer to two seperate criminal agreements". Ragins, 840 F.2d at 1184. The double jeopardy clause cannot be avoided through artful pleading or "the simple expedient of dividing a single crime into a series of temporal or spatial units". Brown v. Ohio, 432 U.S. 161, 169, 97 S. Ct. 2221, 53 L.Ed 2d 187 (1977).

Petitioner claims that the State aggregated two possession with the intent to distribute charges to yield a trafficking in cocaine base. Petitioner claims that there was only 2.4 grams of powder cocaine and 9.0 grams of cocaine base. App. p.55, lines 16-21, p.62, lines 6-7. Petitioner argues that the aggregation of the two "possession with the intent to distribute" charges along with the trafficking in cocaine base and/or crack, violates the Double Jeopardy Clause.

Did trial counsel provide ineffective assistance in failing to object to the State's breach of petitioner's plea agreement (contract)?

Petitioner argues that the State violated its contractual obligation by failing to perform as promise. Petitioner argues that counsel failed to object to the State's breach of plea agreement.

On the advice of counsel, petitioner pled guilty to possession of marijuana, possession with intent to distribute cocaine, trafficking in cocaine base, two counts of possession with the intent to distribute heroin, two counts of possession of a firearm by a person convicted of a violent crime, and failure to stop for blue lights, this was pursuant to a negotiated sentence. Petitioner argues, due to the State's breach of plea agreement (contract), that vitiates the contract. Petitioner argues that the State failed to honor the plea agreement (contract) they made with him in regards to his co-defendants charge. Petitioner argues that this failure and the ineffective assistance of counsel in failing to ensure that the State upheld their end of the agreement, rendered his plea involuntary.

In Santobello v. New York, the United States Supreme Court established that state prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to plead guilty. 404 U.S. 257, 92 S.Ct. 495, 30 L.Ed. 2d 427 (1971). ("[Santobello] stands for the proposition that when an accused pleads guilty upon the promise of a prosecutor, the agreement must be fulfilled."). Recognizing the "interests of justice" and the "duties of the prosecution in relation to promises made in the negotiation of pleas" would be best served by remanding the case to the State courts for one of two dispositions: (1) require specific

performance of the plea agreement or (2) allow petitioner to withdraw his guilty plea altogether and start over. quoting Sprouse v. State 355 S.C. 335, 585 S.E. 2d 278 (2003). Enforcement of an agreement is subject to two conditions: (1) agent must be authorized to make the promise; and (2) the defendant must rely to his detriment on the promise. Even if the agreement has not been finalized by the Court, a defendant's detrimental reliance on a prosecutorial promise in plea bargining may make a plea agreement binding. Reed, 333 S.C. at 688, 511 S.E. 2d at 402 - 403. The appropriate remedy is the specific performance of the plea agreement. See Sprouse v. State, 355 S.C. 335, 585 S.E. 2d 278 (2003) (specific performance of plea agreement is the most efficient option because it eliminated need for new trial or plea hearings and granted parties nothing more and nothing less than the benefit for which they had bargined.); Jordan v. State, supra, counsel was ineffective for failing to withdraw guilty plea once prosecution reneged on plea bargin; remanded for either specific performance of the plea agreement and resentencing or for a new trial, citing Custodio v. State 373 S.C. 4, 644 S.E. 2d 36 (2007). When interpreting plea agreements, "we draw upon contract law as a guide to ensure that each party receives the benefit of the bargin," and to that end we "enforce a plea agreement's plain language in it's ordinary sense." United States v. Jordan, 509 F.3d 191, 195 (4th Cir. (2007). Although we employ traditional principles of contract law as a guide, we nonetheless give plea agreements "greater scrutiny than we would apply to a commercial contract" "because a defendant's fundamental and Constitutional rights are implicated when he is induced to plead guilty by reason of a plea agreement." "Central to the determination of the materiality of a breach is the extent to which the injured party will be deprived of the benefit which he reasonably expected." United States v. Scruggs, 356 F.3d 539, 543 - 44 (4th Cir. 2004) (quoting Restatement (Second) of Contracts

§ 241 (1981)). (quoting United States v. Warner, 820 F.3d 678 (2016)). When a claim of breach of plea agreement has been preserved, we review the district court's factual findings for clear error and its application of principles of contract interpretation de novo. United States v. Bowe, 257 F.3d 336, 342 (4th Cir. 2001). Plain error requires the existence of (1) an error, (2) that is plain, (3) that affects the defendant's substantial rights, and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings. The defendant bears the burden of satisfying each of the elements of the plain error standard. United States v. Vonn, 535 U.S. 55, 59, 122 S.Ct. 1043, 152 L.Ed. 2d 90 (2002). "It is well - established that the interpretation of plea agreements is rooted in contract law, and that each party should receive the benefit of its bargin." United States v. Peglera, 33 F.3d 412, 413 (4th Cir. 1994). A defendant's substantial rights are affected if the error "affected the outcome of the district court proceedings". Puckett, 129 S.Ct. at 1429. Where the affected rights relate to sentencing the outcome the defendant must show to have been affected is his sentence. Id. at 1433 n. 4. "The defendant whose plea agreement has been broken by the Government will not always be able to show prejudice, either because he obtained the benefits contemplated by the deal anyway... or because he likely would not have obtained those benefits in any event." Id. at 1432 - 33. When the record does not so reflect, we are free to conclude that the defendant has shown a "reasonable probability, based on the appellate record as a whole, that but for the error he would have received a more favorable sentence." United States v. Lovelace, 565 F.3d 1080, 1088 (8th Cir. 2009). "A government that lives up to its commitments is the essence of liberty under law, and the harm generated by allowing the government to forego its plea bargin obligations is one which cannot be tolerated." Peglera, 33 F.3d at 414. (quoting United States v. Dawson, 587 F.3d 640 (2009)).

Petitioner claims he had a 7-10 year window for the crimes he was indicted for and that the agreement was for him to receive 15 years if he received his co-defendant's charge. Petitioner claims the State insisted that he proceed with his plea hearing to ensure he doesn't breach the plea agreement (contract). App. p.49, lines 3-19. Petitioner claims that the State breached the plea agreement (contract) by convicting his co-defendant, while accepting his plea admitting to his co-defendant's innocence. App. p.47, lines 3-19, p. 49 lines 15-18. Petitioner claims that the intentional disregard of the plea agreement (contract), constitutes breach of plea agreement (contract), thus rendering petitioner with a conviction of 15 years instead of the initial 7-10 years.

CONCLUSION

Through due diligence and fact findings of law, petitioner asserts trial counsel violated the Due Process Clause of the Fourteenth Amendment which in turn violates petitioner's Sixth Amendment to competent assistance of counsel. Counsel's decision to ultimately undermine the proceedings of Petitioner's due process right to a fair and impartial trial and/or plea amounted to a miscarriage of justice on counsel's behalf.

The damage and detriment of petitioner's legal rights, vitiates petitioner's assurance in the justice system, and one cannot view counsel's actions as a mere harmless error, when petitioner is entitled to the provisions that prohibits the government from unfairly and arbitrarily depriving a person of life, liberty, or property. Therefore, for the foregoing reasons, this Court should grant petition and reverse petitioner's conviction.

Exhibit A

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF SPARTANBURG, SC}

Personally appeared before me, one T. McJunkin
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 [illegible] premises in this county:

DESCRIPTION OF PROPERTY SOUGHT

Cocaine Base, a Schedule II Controlled Substance, US Currency, Digital Scales, baggies, ledgers, diaries, digital/electronic media, or any other items related to the sale of drugs items that indicate residency, domain and/or control of a residence/premise/motor vehicles.

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

From Spartanburg, travel on Union St (Hwy 56) in the direction of Cedar Springs until Nebo St and turn left. Travel Nebo St until Ebel Ct and turn right. Travel Ebel Ct and the premise to be searched is located on the left "122" Ebel Ct. The premise is further described as a single story premise with tan siding and a red front door. The numbers "122" are clearly visible the front of the residence to the left of the front door. The search is to include the residence, any and all outbuildings, the curtilege area, and any motor vehicle linked by investigation at the time of search.

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

In the summer of 2013, Investigators with the Spartanburg County Sheriff's Office received information that male subject indentified as Steven L Hoey (DOB 07/19/84) was selling cocaine and cocaine base in the County of Spartanburg at an address on Ebel Ct. Per NCIC, Mr. Hoey has been arrested for the following drug related offenses: POSSESSION OF DRUG PARAPHERNALIA and POSS 28G OR LESS MARIJUANA OR LESSHASH 1ST by the Spartanburg Public Safety Department in 2007, and TRAFFICKING ICE,CRANK,CRACK, >10G BUT <28G-1ST by the Spartanburg County Sheriff's [illegible]

Additionally, Mr. Hoey has the following listed per NCIC: LYNCHING [illegible] Spartanburg Public Safety Department in 2003; ASSAULT AND BATTERY WITH INTENT TO KILL 2004 by the Spartanburg Public Safety Department in 2004; CRIMINAL DOMESTIC VIOLENCE 1ST OFFENSE by the Spartanburg Public Safety Department in 2005; UNLAWFUL CARRYING OF A WEAPON in 2006 by the South Carolina Highway Department; MURDER in 2007 by the Spartanburg Public Safety Department; and POSSESSION OF A WEAPON DURING A VIOLENT CRIME, WEAPON [illegible] CERTAIN PERSON/STOLEN GUN, and FAILURE TO STOP FOR BLUE LIGHT in February of 2013 by the Spartanburg County Sheriff's Office.

Within the past 72 hrs of today's date (10/28/13), a confidential, reliable, informant (CRI) observed a quantity of cocaine base being stored at the above described premise to be searched. The CRI knows cocaine by sight, odor, texture, packaging, and has dealt with the drug in the past. This CRI is reliable based upon the following facts: This CRI has provided information to the Spartanburg County Sheriff's Office that has been independently investigated and discovered to be true; this CRI has provided information to the Spartanburg County Sheriff's Office that has led to the recovery of evidence related to the sale of illegal drugs; and this CRI has provided information that has led to the recovery of contraband relate to the sale of illegal drugs.

Tim 10-28-13

I have learned from my training and experience that subjects in involved in the illegal drug trade will often secrete illegal drugs and items related to the sale of illegal drugs in residences, outbuildings, motor vehicles, and curtilege areas in an effort to avoid detection by Law Enforcement. Based upon the aforementioned facts, it is believed that cocaine base is being stored at the above location and a search warrant is requested. Furthermore, based upon Mr. Hoey's NCIC history, it is requested that this search warrant be of the "No Knock" sort for the purposes of officer safety and preservation of evidence.

This 28 day of Oct., 2013

Signature of Judge

Affiant

Address 8045 Howard St
Spartanburg, SC 29303

Phone 8645034500

EX 6 + 15

ARREST WARRANT

2013A4210104334

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Spartanburg

THE STATE 13110015

against

Travis Napolean Davis

Address: 122 Ebel St

Spartanburg, SC 29302-

Phone: SSN: 251-51-8057

Sex: M Race: B Height: 5 9 Weight: 200

DL State: DL #:

DOB: 7/27/1982 Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Travis McJunkin - 0805

Offense: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense

Offense Code: 3015

Code/Ordinance Sec: 44-53-0375(B)(2)

This warrant is CERTIFIED FOR SERVICE in the

[ ] County/ [ ] Municipality of

. The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P O Box 3483
Spartanburg, SC 29304

AUDIT COPY AUDIT COPY AUDIT COPY AUDIT COPY

STATE OF SOUTH CAROLINA 2014 20 of 45

[X] County/ [ ] Municipality of

Spartanburg

AFFIDAVIT

AUDIT COPY

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant Travis McJunkin who being duly sworn deposes and says that defendant Travis Napolean Davis did within this county and state on or about 11/ 1/2013 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Spartanburg) in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on November 1, 2013 in the county of Spartanburg, one Travis Napolean Davis did knowingly and without authorization manufacture cocaine base, a Schedule II Controlled Substance. Defendant has prior convictions for this offense.

Signature of Affiant

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone (864)503-4500

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 11/ 1/2013 defendant Travis Napolean Davis did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Spartanburg) as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. cocaine base, 2nd offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 11/ 5/2013

(L.S.)

Signature of Issuing Judge

John P Moore

Judge Code: 7239

Judge's Address 180 Magnolia Street, Rm 105
Spartamburg, SC 29306-

Judge's Telephone (864)596-2564

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

AUDIT COPY AUDIT COPY AUDIT COPY AUDIT COPY

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County
Honorable Robin B. Stilwell, Circuit Court Judge

TRAVIS NAPOLEON DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

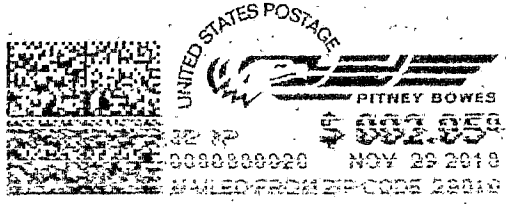
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Petition for Writ of Certiorari in the above referenced case has been served upon Jordan Cox, Esquire, at the Rembert Dennis Builing, 1000 Assembly Street, Room 519, Columbia, S.C. 29201.

w/o prejudice

Travis N. Davis
Petitioner

:/F2-A 1157
isacky Hwy.
ille, S.C. 29010



The Supreme Court of South Carolina