State of South Carolina
In The Supreme Court

Appeal From Spartanburg County
Court of Common Pleas
The Honorable J. Mark Hayes, II

Case No. 2017-CP-42-1250

Michael F. Wiggleton

Appellant,

vs.

State of South Carolina

Respondent

BRIEF OF PETITIONER (PRO SE)

Michael F. Wiggleton, #167168
Tyger River Corr. Inst.
200 Prison Road
Enoree, South Carolina, 29335

ATTORNEY (PRO SE)
FOR PETITIONER

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STATEMENT OF ISSUES ON APPEAL

1. Was the Petitioner afforded an entire PCR circumstance where his defense counsel refused to either his (Pet.) Amended Application (APCR) or the (59(e)) Motion To Reconsider being submitted as part of the Appellate record?

2. Did the PCR court err in its assessments and rulings rendered in its Final order of Dismissal?

STATEMENT OF THE CASE

In December 2013, the Spartanburg County Grand Jury indicted the Petitioner for possession with intent to distribute ("PWID") cocaine within one half-mile of a school (2013-GS-42-5669). Petitioner was subsequently indicted in January 2014 for trafficking cocaine, 10-28 grams (2014-GS-42-0249), trafficking cocaine, 400 grams or more, and possession of a weapon during the commission of a violent crime (2014-GS-42-02 48 count I and II). John B. White, Jr. and Ryan F. McCarty, Esquires, represented the Petitioner. Deputy Assistant Solicitor Derrick B. Bulsa of the Seventh Circuit Solicitor's office represented

STATEMENT OF THE CASE-(CONT'D)

the State.

On October 21, 2016, Petitioner pleaded guilty as indicted to PWID and trafficking, 10-28 grams, before the Honorable J. Derham Cole. Pursuant to a negotiated sentence, Judge Cole sentenced the Petitioner to imprisonment for consecutive terms of twelve years for trafficking cocaine and thirty months' home detention for possession with intent to distribute cocaine. The state dismissed the remaining charges. Petitioner did not appeal his guilty plea or sentence.

STANDARD OF REVIEW

The proper standard for review of a post-conviction relief (PCR) evidentiary hearing is whether "any evidence of probative value exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

I. The Petitioner was not afforded an entire PCR circumstance where defense counsel refused to either his (Pet.) Amended Application (APCR) or the (59(e)) Motion To Reconsider being submitted as part of the Appellate record.

At the end of the State's cross-examination of the Petitioner's plea counsel PCR defense counsel informed the Court of the Petitioner's desire (request) to file his Amended Petition. App. 93, l. 5-12. Petitioner's defense counsel then stated that "he would not file it" but that he covered (went) through each issue in it, that was raised. App. 93, l. 13-23. Referring to the documentation as "stuff" at this juncture compels the Petitioner to direct the court to that "stuff" through his supplemented appendage - document-1, and document-2.

Document-1- is a copy of the "actual letter" submitted to PCR defense counsel along with the Amended Application (APCR). The letter was dated October 22, 2018, and notarized and forwarded on October 23, 2018, to PCR counsel. The significance of this letter's presentation to the court is to point out three relevant factors:

1. As evidenced, its accompaniment to the Amended Application was to emphasize to counsel the importance of the application's capability of rectifying the original application's inadequacies, in actually raising grounds, rather than making inarticulate statements and phrases.
2. That the Petitioner was well within his rights, and the PCR rules of court to do so. I.E.....sub-stantive documents (pro se) are not accepted unless submitted by counsel. Served on the State by counsel.

or risk loss, (preclusion) of raising the issues found in the pro se document." State v. Stucky, 333 S.C. 56, 508 S.E.2d 564 (1998) ①. And ... in fact ...

3. Inform PCR counsel - as a second notification - of his (Pet.) both intent and desire, of filing a 59(e) Motion to Alter or Amend the Final PCR Order ① as well. I.E. ..., Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), ... in relevant part states, that a major argument of the State in a PCR matter is, that any complaint regarding the sufficiency of the Order is not preserved for review, because the applicant (Marlar) did not file a 59(e), SCRCP Motion." See Marlar v. State, 653 S.E.2d at 266, 267 (S.C. 2007).

Document-2- is a copy of the Amended Petition itself. As explained in the above "Factors 1 and 2, its submission was considered by the Petitioner to be of the utmost importance and in his best interests, at that point in the PCR process.

* Notably, these documents were forwarded to PCR defense counsel within a suitable time for compliance and service upon the Court and opposing counsel, as the hearing was held on November 7, 2018. And while the Amended Application was still in its preparatory stages when counsel visited the Petitioner - even earlier still - than the hearing and the letter (Doc-

① As cited in the letter - Document-1.

ument-I), it was during that visit that counsel was first informed by the Petitioner of his knowledges of the usage and importance of the 59(e) in this, his PCR circumstance. Counsel informed the Petitioner that when the time came the (or rather) a 59(e) would be filed, though obviously not one prepared or containing any material from the Amended Application. And now, as the certiorari Appendix denotes, not only no material from any established source, but rather no 59(e), whatsoever.

And as such, placing this his certiorari circumstance in a precarious position - even with his granted (pro-se) status. In that:

1. While it is the Petitioner's position-(intention)-to acquiesce, and in fact, adopt appellate counsel's issue and arguments contained within his Johnson Petition circumstances-(aforementioned, thus far)-necessitate a greater elaboration on the issue.
2. This self-same greater elaboration is (and has been) in existance since the preparation and submittance of his proposed Amended Application / 59(e), document to PCR defense counsel. And contained therein.
3. This self-same greater elaboration (arguable) may be contested, as never being made a part of the appeal record officially, due to no filing of the A-

mended (APCR).

In the Johnson Petition counsel submitted the following issue (argument):

"Plea counsel provided ineffective assistance of counsel when he failed to inform Petitioner, prior to pleading guilty, that he could have challenged the legality of the pat down search during the traffic stop, where the police officers who conducted the search gave contradictory reasons as to why reasonable suspicion existed to search Petitioner's person, and where the fruit of the evidence against Petitioner stemmed from that illegal search.

Appellate counsel further submitted:

"Plea counsel failed to explain to petitioner that the police needed to articulate a "reasonable suspicion that [Petitioner] was armed and dangerous" before patting him down. App. 57, ll. 12-15; App. 59, ll. 2-4. State v. Banda, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006). ("a police officer must have a reasonable suspicion that a person is armed and dangerous before conducting a pat down or frisk of that person. And...

"Moreover, plea counsel failed to explain that the U.S. Supreme Court extended that standard to "valid automotive stops for traffic violations." App. 59, ll. 2-4;

Pennsylvania v. Mimms, 434 U.S. 106, 111-112 (1977). "Thus, Petitioner would likely have been successful if he challenged the legality of the traffic stop pat down for lacking reasonable suspicion that Petitioner was armed and dangerous. App. 53, l. 25-56, l. 16. "The search warrant for the Petitioner's home was obtained and executed because of the drugs found on the Petitioner during the traffic stop search." App. 52, l. 18-53, l. 6. Plea counsel never discussed with Petitioner that he could challenge the admissability of the evidence found from both of the aforementioned searches as fruit of the poisonous tree. App. 53, ll. 7-24; Wong Sun v. United States, 371 U.S. 471, 485 (1963)("The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion.") See also, Johnson, Petition, Pages 7 and 8.

During direct examination-(PCR)- the Petitioner testified:

"They said, we going to get out -- they asked me out the car and searched me. They didn't have probable cause to search me." App. 55, l. 4-6. And... "One of them said he thought I reached for a weapon, but when he checked me, I had no weapons. The other one said he thought I placed something in the car. So the interest was instead of searching me, they should have searched the car, you know? So instead they searched me."

"They patted me down, they determined I didn't have no weapons on me. So what he did, he stuck his hands in my pockets." App. 55, ll. 9-16. And lastly.... in this vein ....

"When I went to prison I looked up a said case Terry v. Ohio,[1] Minnesota v. Dickerson[2] it states "if a police pulls you over, he have the right to search you, but it's limited to only weapons that can -- to harm the officers and others." Once he determines he has no weapons on you, everything else is fruit of the poisonous tree. App. 55, ll. 19-24.

Discussion

Even a cursory scrutinization of the Petitioner's Amended APCR 159(c) Motion To Reconsider will reveal that its predominate argument was to expose the fact that when asked (assumed) for consent to search his person, he replied, No! And as such....

"Consent to search is generally invalid if an illegal search or seizure occurred before the consent was given."
40 Geo. L.J. Ann. Rev. Crim. Proc.; And....

Search pockets exceeded scope of Terry because no reason to believe suspect was armed after pat-

1. 392 U.S. 88 S. Ct. 1868, 20 L. Ed 2d 889 (1968).
2. 508 U.S. 366, 374 (1993).

search. U.S. v. Sanders, 424 F.3d 768, 776 (8th Cir 2005). "Further, Consent to search not voluntary when officers did not tell defendant about right to refuse consent because officer did not read Miranda rights, ..., and cooperated only because he thought (was under arrest." U.S. v. Jones, 846 F.2d 358, 360-361 (6th Cir. 1998).

"Consent to search not voluntary because officers conveyed message that compliance by defendant was required. U.S. v. Stuckey, 206 F.3d 914, 917-18 (9th Cir. 2000).

"A court may find consent to be involuntary if the failure to inform of the right to refuse consent is combined with other factors." See, e.g., Knobile v. Pellegrino, 284 F.3d 104, 121-22 (2nd Cir. 2001). Lastly....
("Use of crush technique" to search opaque plastic bag invalid because police not legally authorized to touch container when suspect not detained and police did fear for safety)." U.S. v. Most, 876 F.2d 191, 194, 197-98 (D.C. Cir. 1989).
("consent withdrawn because suspect shouted "no wait" when officer reached in to grab object from defendant's pocket and defendant tried to free himself from restraint"); U.S. v. Fuentes, 105 F.3d 932, 934 (5th Cir. 1997).

Essentially, each one of the aforementioned caselaw arguments are the Petitioner's attempt to impress upon the Court the significances of the circumstances as they

actually occurred, and rather, how they actually enter his situation. However again, with one exceptional distinction. The consent was not a circumstance of directly being involuntary. The consent was not a circumstance of directly being withdrawn. Although both became the end result, they were both born from the circumstance of consent being refused.

Each aforementioned circumstance can be attested to from the supplemental reports of the officers (2) involved. Most notably, both narratives indicate, quite specifically, that the Petitioner denied consent when asked to be searched. It is, (and will always remain) the Petitioner's position that the break between the casual chain of the investigatory stop and his subsequent arrest did indeed occur, both at the wrong place and for the wrong reasons. The Petitioner's denial of consent should have changed the parameters and protocols of the situation and the officers actions with it to make the search and seizure legitimate, and clearly did not do so.

Argument - II

The PCR Court erred in its assessments and rulings rendered in its Final Order of Dismissal.

Discussion

On November 7, 2018, an evidentiary hearing was held in the Spartanburg County Court of Common Pleas. Present were the Petitioner, PCR defense counsel- Mr. Rodney W. Richie- Esquire, Mr. Ryan McCarty- Esquire- Petitioner's co-counsel from his General Sessions Court appearance, and Mr. Jordan A. Cox- Esquire- PCR State prosecutor. The hearing was presided over by the Hon. J. Mark Hayes, III. On January 25, 2019, Judge Hayes issued his final Order of Dismissal denying PCR relief, with prejudice.

In accordance with the Order (as prepared) the following allegations of Ineffective Assistance of Counsel were cited:

"A. Counsel did not impart the Applicant an understanding of the law on the relation of the facts,
B. Counsel failed to articulate 4th Amendment violation
C. Counsel did not familiarize himself with the facts of the case,
D. Coerced into pleading guilty
E. Counsel failed to take me to trial
F. Failed to inform Applicant of his right to appeal"

From the onset of this argument necessitates the establishment of two highly crucial facts:

A. As argued herein already, since the Petitioner was unable to persuade PCR defense counsel to assist in filing his Amended APCR- prior to his appearance at

the hearing, or his 59(e) Motion To Reconsider afterwards- it must be wholeheartedly, said and established, that the Court was not presented with full agenda of the petitioner's case.①

B. As it is well known and established that Final Orders are prepared and submitted by opposing counsels, reviewed and decided upon by the Court in accordance with its initial leanings and directives, absence of crucial documents such as the above-named only hamstring the court's ruling process before it has a chance to even begin.

However, during the closing moments of the hearing when the Petitioner, again, attempted to submit his Amended APCR....

The Court: Well, I think the Supreme Court has made it clear that when a is represented by an attorney, the attorney makes those decisions--

Mr. Richie: Yes. Sir.

The Court:--- the state would have a chance to review it.

The Court:--- as to what will be evidence, who's going to testify, what type of documents will come in. So I could not accept it unless you wanted to. App. 94, ll. 2-12.

But again, the opportunity was lost.① However....., remedies remain...?

"No procedural default where counsel refused to include all claims in appellate court brief (Johnson?)

1. Page one, this memorandum.(14.)

and... Petitioner Filed (granted?) motion to proceed pro se; circuit court held that the Petitioner's motion (Memorandum?) placed issues before State's highest court. Clemmons v. Delo, 124 F.3d 944, 953-55 (8th Cir. 1997). Or, as a worst case scenario.... "The Supreme Court ruled in Odom v. State, 337, S.C. 256, 523 S.E 2d 753 (1999), that the one-year statute of limitations required by S.C. Code Ann. § 17-27-45 (A) does not apply to Austin appeals because they are belated appeals intended to correct unjust procedural defects." Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991).

In both the Petitioner's Amended APCR and on "redirect examination" at the hearing the grounds of Due Process violation and prosecutorial misconduct were intended to be established in the record and he made attempts to do so. Although, regretably, not with any notable success. However....

"Q: Okay. And the due process violation that you were referring to is that you did not have a suppression hearing for these drugs, correct? That you had the right to have a hearing and because you were not properly advised you did not have a hearing, correct?

A: Correct. App. 73, l. 17-74, l. 9. And as such...

"In Gerstein v. Pugh, the Supreme Court held that the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest, "within 48 hrs."

which, the Petitioner contends, goes towards his arguments and testimonies concerning probable cause, and the illegal search and seizure of his person. App. 53, l. 4 - 61, l. 2. In the Order this portion comes under ground 1.b. - 4th Amendment violation.....

"Applicant testified that the search of his person by law enforcement following his traffic stop was a violation of 4th Amendment rights, but failed to show why it was a violation." And...."Assuming, arguendo, Applicant was unaware that he could have challenged the Terry search after the traffic stop and his lack of said knowledge was the fault of his lawyers, no showing has been made that such a challenge would have been successful in excluding the evidence." Order - Pg. 7.

First, clearly the Petitioner's contentions and arguments were based on, not the concept of being searched, per se, but rather, on, what type, of search that was conducted. App. 58, l. 13 - 59, l. 20; 62, l. 25 - 64, l. 11; and 51, l. 14 - 54, l. 17. Next, the concept of showing a successful challenge, would not be possible in the Petitioner's case without the actual convening of the trial, and securing the Jury verdict, at best, or, securing an evidentiary hearing, after his arrest. Neither of which were secured in the Petitioner's behalf.

What the Petitioner did show was cases where his exact circumstances took place, and the confiscated evidence was rendered inadmissible as fruit of the

poisoned tree. I.E., Terry v. Ohio, Minnesota v. Dickerson. App. 55, l. 14-56, l. 11.; App. 57, l. 8-59, l. 21. . See also, the Petitioner's Johnson Brief, and again this Memorandum. Lastly however, again, though not per se, within the Petitioner's hearing testimony, comes the critical issue(s) of the Petitioner's consent NOT BEING GIVEN TO BE SEARCHED AT ALL! Not to mention, the ensuing repercussions thereafter, as argued herein.

Under grounds 1.-c., and d.-"familiarization and coerced guilty plea.... The Order states: "Furthermore, the documents provided by Counsel detailed the facts surrounding Applicant's case and Counsel's detailed analysis of his legal advice for his charges. On which the Petitioner is compelled to agree - to a certain extent. However, a close scrutinization of the documentation in question will reveal (or rather, will not reveal) any assessment pertaining to the issues (grounds) or arguments discovered and presented by the Petitioner, thus far. One crucial comparison and contrast if you will. Or, maybe two, three:

1. Counsel's narrative speaks of one officer's statement. Counsel's narrative does not speak of the other officer's contrasting statement.
2. Counsel's narrative speaks of the pat-down frisk Counsel's narrative does not speak of the Petitioner's denial of consent.
3. Counsel's narrative speaks of reasonable suspicion. Counsel's narrative does not speak of probable cause,

nor, the significance and distinction between the two. Nor, how all aforementioned applies to Due Process violation(s).

Next, the Order imparts, "Applicant failed to provide testimony as to how he was coerced into his guilty plea. And yet, the Petitioner did, in fact testify as to his definition(s) of being coerced. App. 59, l. 22 - 61, l. 7.

Through and throughout, the Order repeatedly assesses that the Petitioner entered his guilty plea with freely and voluntary convictions. Despite all his protestations to the contrary, also throughout, thus far. App. 70, l. 5 - 71, l. 16. Also, through and throughout the foreseeable past, present, and future, the Courts have (and will have) countless appellate cases placed before them, where guilty pleas and their formalities are petitioned to be withdrawn. As are in place many lawful contingencies by which one may do so. I.E. ..... "If officers use false evidence, including false testimony, to secure a conviction, the defendant's due process rights are violated."

Phillips v. Woodford, 267 F.3d 966 (9th Cir. 2001).

Wilson v. Lawrence Co., 260 F.3d 946 (8th Cir. 2001) "Due process requires that a convicted person not be sentenced on materially untrue assumptions or misinformation.

U.S. v. Miller, 263 F.3d 1 (2nd Cir. 2001). Lastly, ... "Any errors in a guilty plea hearing are reversible unless shown to be harmless."

U.S. v. King, 257 F.3d 1013 (9th Cir. 2001).

The Supreme Court stated that "the applicable rule long ago was that a prosecutor may strike hard blows [but] he is not at liberty to strike foul ones." U.S. v. Easley, 994 F.2d 1241 (7th Cir. 1993).

Again, counsel's narrative almost unequivocally asserts that the search warrants for the residence were assimilated under less than sustainable circumstance. And yet, executed they were, with prosecution's awareness and sanction. Additionally, the Petitioner attested to his position on the use of the warrant, and what it garnered as poisoned. As did appellate counsel. App. 55, l. 19-56, l. 3. Not to mention, the traffic stop issues. Contrary to the Order's assertions (brief as they were) and assessments. "Harmless plain error does not exist, all plain errors are harmful. Chapman v. California, 386 U.S. 18, 23-24, 17 L. Ed 705 87 S.Ct. 824 (1967). U.S. v. Innamorati, 996 F.2d 456 (1st Cir. 1993). And lastly, overall, ...

Under ground I-e, "Failed to inform applicant of his right to appeal"..., the Order imparts "During the hearing, Applicant alleged he was unaware of his right to appeal his guilty plea." and ... "Counsel provided the Court with "Advisement of Rights Prior to Entering a Guilty Plea," a document signed and acknowledged by the Applicant on the date of his guilty plea." App. 105, ll. 9-17.

Very simply stated, the Petitioner testified:
A: "Yeah. My understanding is when I went to trial, okay, the judge supposed to told me I had ten days to appeal, but my counsel failed to notify the court to tell me that I had ten days to appeal." App. 61, ll. 12-15. Then.
Very simply stated: "plea invalid because judge did not inquire if defendant understood he was giving up right to appeal." U.S. v. Arellano-Gallegos, 387 F.3d 794, 797 (9th Cir. 2004); "plea invalid because court failed to probe defendant's knowledge of appellate waiver provision." U.S. v. Almany, 598 F.3d 238, 240-41 (6th Cir.)
All of which, the Petitioner contends could be a moot point as argued herein, with the issue of the Amended application 154(c) submittance at this juncture, and this memorandum. Or the State's possible argument(s) that.... "Therefore, PCR is not a substitute for an appeal and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974), is also rendered moot, as this was a guilty plea agenda.

State of South Carolina
In The Supreme Court

Appeal From Spartanburg County
Court of Common Pleas
The Honorable J. Mark Hayes II

Case No. 2017-CP-42-1250

Michael F. Wiggleton

Appellant,

vs.

State of South Carolina

Respondent.

CERTIFICATE OF SERVICE

I, Michael F. Wiggleton certify that I have today served the within Brief of Petitioner (Pro Se) upon the Court by depositing the same in the U.S. Mail, postage prepaid, addressed as follows:

Hon. Daniel E. Shearouse
Clerk, S.C. Supreme Court
P.O Box 11330
Columbia, S.C. 29211

Sworn To and Before Me,
this 2nd day of Oct. 2019
[signature] L.S.
Notary Public of South Carolina
My commission expires: Dec. 10 2024

s/ Michael Wiggleton
Mr. Michael F. Wiggleton
Petitioner (Pro Se)

CONCLUSION

Based on the foregoing arguments, Petitioner respectfully requests that this Court grant certiorari to allow for full briefing on this issue. Or any other relief within this court's jurisdiction.

S/ Michael Wiggleton
Michael F. Wiggleton
Petitioner Pro Se

This 8th day of October, 2019.

Sworn To and Before Me,
This 7th day of Oct, 2019.
Paul Devon Craig S.
Notary Public of South Carolina
My commission expires: Dec. 10, 2024

Mr. Michael Wiggleton, #167168
Tyger River Corr. Inst.
200 Prison Road
Enoree, S.C. 29335

Mr. Rodney W. Richie, ESQ. (P.A.)
Post Office Box 10916
Greenville, S.C. 29603

Re: Case No: 2017-CP-42-1250 - Amended (APCR)

Mr. Richie,

Please find enclosed my Amended (APCR)/ Memorandum of Law In Support of (APCR), for transfiguration (optional) into typed form and submission to the Court. Had I access to a typewriter I would have gladly done so. It was a most unfortunate circumstance for many with the weather, however, in my case it turned out to be a blessing in disguise.

Since we have been afforded this unexpected continuance I have been able to study, research, and prepare the enclosed document, which is intended to assure myself that my PCR will entail ALL that I deem relevant, as well as, pre-

sent and preserve (in document form) my issues for appeal. As, I do not anticipate actually recieving PCR relief. However, there's only One! who knows better than we ever could!

In any event.... "PCR hearings should be as broad as possible, entertaining all facts needed to dispose of the claims raised."
Rule 227 (H.)(3.)

My "original application" was not properly prepared! This document is much more suitable to both my needs and the court's requirements. And low and behold, the time has been allotted to put it to use! In fact, I find that not only will the document suffice for the hearing, but-as likely- as a 59(e) Motion to Reconsider tool, as well.
* With undoubtedly, little alteration more than the changing of the Cover Page!

Your letter of December 31, 2017, "Thanked me for my help." Please allow me to now do so- although, I did not then. "Hindsight is 20/20!" Please do not consider the enclosed documentation and requests Hybrid. Please do not consider me the "Tail" trying to wag the "Dog". I AM THE DOG!

"Once counsel is appointed, all filings must be submitted by counsel and not the Applicant ... substantive documents (pro se) are not accepted unless submitted by counsel. Served on the State by counsel. Or risk loss (preclusion) of raising the issues found in the pro se document."

State v. Stucker, 333 S.C. 56, 508 S.E.2d 564 (1998); Jones v. State.

You Know law! I am coming to Know the law!

This document has not been forwarded to the Court pro se (YET!). Nor, the State. I have - as we speak - no desire to proceed pro se. Nothing would comfort me more than to be able to have you chaperone me through this Amended Application when I appear.

It's what I've studied! It's how I am prepared to proceed - under both direct and cross-examination! It's what (again) I wish to preserve! One way or the other. I know you told me - at our last meeting that you don't need anything further from me (except money, if I had any). Regretably, I do not.

I also do not have any idea of what areas of this case you intend to argue, or to what

extent. I just know that - this time - when I enter that courtroom, it will be with a good-deal more knowledge and understanding than the last. This time I (WE) will - through my brief - know exactly where we are going and how to get there. I hope (and pray) our goals and methods line up.

Your work is done! All that I ask is that you (upon filing this brief) review and examine me on its aspects (contents) when I take the stand. As for the State's cross-examination, I already anticipate (suspect) that their position will be that all that I am going to present is moot, because I pled in open court, professing full knowledge of what I was doing and the consequences thereof, because of effective counsel. And yet we have this PCR, which suggests otherwise! So Be It! Enough said!

As a defense lawyer, you are in a unique position to experience PCR circumstances constantly - from both sides of the courtroom. As an inmate, I too am in a unique position to experience PCR circumstances, through others - (some, your former clients) who have been through and assisted others through, both successful and unsuccessful events. PCR and otherwise. Fortunately, my current knowledges are being provided under a successful PCR (and) Habeas litigant with replete documentation thereto.

(4.)

Mr. Richie,

I now know a good deal of what constitutes a PCR circumstance. I also know what part(s) we need to incorporate, to have a good PCR circumstance. Win, or lose.

I know this Amended (APCR) / Memorandum, must be made a part of the appellate record!

I know that, as my counsel, I need you to do this for me. If nothing else.

I know that, if you decide otherwise, I will be compelled to do so, by other means.

I have repeatedly attempted to reach you - recently - to no avail - by phone. And will continue to do so, unless and until, I hear from you, otherwise.

I anxiously await your reply, and a copy of the document enclosed. As well as, ...:

1. A copy of the State's PCR Return, (PLEASE)!
2. Notification of our next hearing date.

Yours, Sincerely, Gratefully!

/s Michael Wiggleton

Mr. Michael Wiggleton
Applicant

Sworn To and Before Me,
This 23 day of October 2018

L.S.

Notary Public of S.C.
My Commission Expires: Dec. 10, 2024

State of South Carolina
County of Spartanburg
Michael Wiggleton, #167168
Applicant

vs.

State of South Carolina
Respondent

In The Court of Common Pleas
Case No: 2017-CP-42-1250

Affidavit of Service

1. I am the Applicant / Attorney for The Applicant in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service.

3. I have this day served a copy of the Amended Application and Memorandum of Law In Support of the (APCR) on Respondent counsel of Record.

DATED This ____ of _____, 2018.

3

Rodney Richie, Esquire (P.A.)
Attorney for The Applicant

State of South Carolina County of Spartanburg Michael Wiggleton #167168 Applicant V/S. State of South Carolina Respondent	In The Court Of Common Pleas Case No. 2017-CP-42-1250 Amended Application And Memorandum Of Law In Support Of (APCR)

This matter comes before the Court by way of an application for post-conviction relief (APCR).
On October 21, 2016, Mr. Wiggleton pled guilty to one count of possession with intent to distribute a controlled substance (PWID) within a half mile of a school; 2014-249- trafficking in cocaine between 10 and 28 grams, second offense. He was sentenced to 30 months-consecutive (on home detention) for the (PWID) charge, and 12 years for the trafficking charge.
In his current application Mr. Wiggleton is alleging that his conviction and sentence were in violation of the Constitution of the United States and the Consti-

(1) 2013-5669-

tution or the laws of South Carolina due to ineffective assistance of counsel issues, namely:

a.) "I.A.C.
b.) coerced into a plea of guilty"
c.) counsel did not impart to the Applicant an understanding of the law in relationship to the facts

Question 11- APCR

a.) "counsel failed to articulate(1) on a 4th Amendment violation(s)
b.) "counsel did not familiarize himself with the facts of the case.
c.) "counsel failed to take me to trial."

This application / memorandum is intended to incorporate the issues presented in the initial application, fortify the arguments presented therein, and add the following ground(s) and supportive argumentation:

Question 10- APCR

B.) Involuntary guilty plea ... Due Process violation(s)

"A guilty plea may be set aside as involuntary if the defendant can establish prejudice resulting from prosecutorial misconduct."
Ferrara v. U.S., 456 F.3d 278, 297-98 (1st Cir. 2006)

(1.) explain (2.)

"The Constitution requires that a defendant's plea be made voluntarily, knowingly, and intelligently." (1.)
U.S. v. Robinson, 187 F.3d 516, 517-18 (5th Cir. 1999).
"Plea not knowing because court did not explain waiver of appeal provision at plea colloquy."

The Applicant asserts that, as evidenced by this PCR agenda, he would have opted for the exercised appellate provision. Seeing as how... "Therefore, PCR is not a substitute for an appeal and an issue that could have been raised at applicant's trial or on appeal is not cognizable in an application for PCR."
Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974).

The Applicant would further assert that - as will be testified to - there was extensive court-time appearances made by himself, his counsel, and the state, where he (applicant) made repeated/y adamant desires to take his case to trial. Most recently, every day for a solid week (Mon.-Fri.). The same week where he appeared and was convicted. The same week where he expressly conveyed his discomforts concerning both the plea negotiations and the legiti-

(1.) Boykin v. Alabama, 395 U.S. 238 (1968)

macy of the traffic stop and search and seizure circumstances, and the prosecutor's usage of them, as well. Right up to-and including-the day of the plea. As the Court was also well aware.
(Plea Trans. Pgs. 3-5, lines 9-9).
Nonetheless.... and Further....

"However, if applicant's trial counsel failed to object to the error- or in the instant case, point out the ommission- or properly preserve it for appeal, then a proper claim is that counsel was ineffective for failing to object or properly preserve the issue."
South Carolina Post-Conviction Manual-(Page 6).

Here, the Applicant would ask that the Court be adequately informed that the above quotation, while intended to relate a supportive aspect of the involuntary guilty plea argument, being an issue for preservation on direct appeal, it has (in fact) introduced (incorporated) two additional ground arguments that will be submitted within. Those being:
Questions 10 and 11 (c.) - APCR
Ineffective Assistance of Counsel - Failure to preserve Applicant's right to direct appeal. And....

Questions 10 and 11 (F.) - APCR

Due Process Violation - (14th Amendment) - Failure of the Court to advise defendant of the direct appeal provision, during the plea colloquy.

Question 10.(d.) APCR - Cont'd - Involuntary Guilty Plea; Due Process Violation(s)

** Note: In the Applicant's initial APCR there was a response to question 10.(a.), however, there was no elucidation① of the facts of the 4th Amendment violations asserted in question 11.(a.). It is therefore the Applicant's desire to apply the argument(s) and citation(s) of law, in this ground, to the Court's assessment of Ground 10.(a.)/Fact(s) 11.(a.).

"The test for whether a defendant is competent to plead guilty is whether the defendant comprehends the proceedings against him and has the ability to consult with a lawyer with reasonable understanding."

Ind. v. Edwards, 554 U.S. 164 (2008). Further.....

"Restrictions on Federal habeas corpus review

① explanation

of 4th Amendment claims announced in Stone v. Powell, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed. 2d 1067 do not extend to 6th Amendment claims (I.A.C.) which are founded primarily on incompetent representation with respect to a 4th Amendment issue.. Federal Courts may grant habeas corpus in appropriate cases regardless of the nature of the underlying attorney error."

Kimmelman v. Morrison, 477 U.S. 365, 91 L.Ed 2d 305, 106 S.Ct. 2574 (1986).

"If counsel entirely fails to subject the prosecutions case to a meaningful adversarial testing, then there has been a denial of 6th Amendment rights that makes the adversary process itself presumptively unreliable.

U.S. v. Cronic, 466 U.S. 648, 104 S.Ct. 2039 80 L. Ed 2d 657 (1984).

Here, in reinforcement (and reiteration) of Questions / Facts 10 (a., b., and d.) the Applicant further asserts that this whole circumstance-(arrest, conviction and sentence)-was not the result of a random occurence. During the Applicant's interrogation - shortly after arrest - he was informed that he was already a person of interest, and

as such, under investigation and surveillance.
While awaiting his Gneral Sessions appearance the Applicant repeatedly requested counsel to investigate the surveillance circumstances. The Applicant adamantly expressed that the traffic stop was suspicious. Particullarly the irony of the stop being conducted by two narcotic officers. Futhd.....
"Consent to search is ginirally invalid if an illegal search or seizure occurred befor the consent was given."
40 Geo. L.J. Ann. Rev. Crim. Proc.
"Consent invalid because no brak in casual chain, chain between unjustified investigatory stop of vehicle occupied by defendant and subsequent discovery of weapons in defendant's possession."
U.S. v. Martinez, 486 F.3d 855, 864-65 (5th Cir. 2007)
"Consent withdrawn because suspect shouted "no wait" when officer reached in to grab object from defendant's pocket and defendant tried to free himself from restraint."
U.S. v. Fuentes, 105 F.3d 487, 489 (9th Cir. 1997).
The Applicant asserts that the three afore-

mentioned quotations all denote consents of an invalid nature. The Applicant then requests, how much more so would a search and seizure be when the party to be searched unambiguously denies consent to the search of his person? After being asked while not under arrest? For a weapon? See- Plea hearing transcript ①
See also- Applicant's arrest "incident reports", ENCLOSED!

Under Minnesota v. Dickerson, it is stated:
"A Terry protective search is permitted without a warrant and on the basis of reasonable suspicion less than probable cause. However, the search must be strictly limited to that which is necessary for the discovery of a weapon which might be used to harm the officer, or others nearby.
"A police officer overstepped lawful bounds marked by Terry when officer determined that lump in the pocket of the defendant's jacket was contraband (crack cocaine) only after squeezing, sliding, and /or otherwise manipulating the contents of the defendant's pocket. A pocket which the officer already knew contained no weapon."

① October 21, 2016 - Pgs. 9-10, lines 22-3

Terry v. Ohio, 392 U.S. 88 S.Ct. 1868, 20 L.Ed 2d 889 (1968).

It both was, and always has been the Applicant's position that:

a.) The search of his person-without consent- and without being under arrest violated his constitution al rights. And as such....

b.) Anything seized from himself was inadmissable towards prosecution.

c.) That all other circumstances (the arrest and interrogation, the search and seizure of the residence where he did not live, the enhancement of his charges)- were, and should have been considered unconstitutional as "fruit of a (the) poisoned tree."

Lastly, the Applicant has also always maintained that:

a.) With the expertise of three different appointed defense counsels, and a thorough investigation of all aspects of this circumstance, no conviction and sentence would have been rendered. With the exception of the parole violation and failure to appear.

"Cumulative error applies when, although no single trial (plea) error examined in isolation is sufficiently prejudicial, the cumulative effect of multiple errors may still prejudice defendant."
Mancuso v. Olivarez, 292 F.3d 939 (9th Cir. 2002).
"Due process requires that a convicted person not be sentenced on materially untrue assumptions or misinformation.
U.S. Miller, 263 F.3d 1 (2nd Cir. 2001)

In reference to Question (Ground) 10.(e.), while the ground infers ineffective plea (trial) counsel, and (Facts 11.(e.)) recites "counsel failed to take me to trial," the Applicant respectfully asserts that both have been effectively addressed herein respectively through Question (Ground) 10.(d.),(e.), and (F.), and Question (Fact) 11.(a.) and (b.).

In reference to Question(s) (Grounds) 10.(e.) and (F.), each is self-explanatory and argued.

CONCLUSION

WHEREFORE, based on all aforementioned issues, the Applicant seeks PCR relief.

Respectfully Submitted(10.)

3.

Rodney Richie, Esq.
Attorney for Applicant

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

MICHAEL F. WIGGLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-000166

JOHNSON PETITION FOR WRIT OF CERTIORARI

Victor R Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

INDEX

ISSUE PRESENTED

Whether plea counsel provided ineffective assistance of counsel when he failed to inform Petitioner, prior to pleading guilty, that he could have challenged the legality of the pat down search during the traffic stop, where the police officers who conducted the search gave contradictory reasons as to why reasonable suspicion existed to search Petitioner's person, and where the rest of the evidence against Petitioner stemmed from that illegal search?

STATEMENT

During the December 2013 term, the Spartanburg County Grand Jury indicted Petitioner for trafficking cocaine, possession of a weapon during the commission of a violent crime, and possession of cocaine with intent to distribute within one-half mile of a school. App. 118 – 123.

On October 18, 2016, a hearing was held before the Honorable J. Derham Cole. App. 1. John Belton White, Jr., and Ryan Frederick McCardy represented Petitioner. Id. Derrick Bruce Bulsa represented the state. Id. The purpose of the hearing was for the state to explain its plea offer on the record[1]. App. 4, l. 1 – 12, l. 22.

On October 21, 2016, Petitioner pled guilty before the Honorable J. Derham Cole. App. 16. Ryan Frederick McCardy represented Petitioner. Id. Derrick Bruce Bulsa represented the state. Id.

Judge Cole accepted Petitioner's plea. App. 26, ll. 1 – 2. Petitioner was sentenced, pursuant to the negotiated sentence, to twelve years' imprisonment with thirty-months of home detention to run consecutive. App. 27, l. 21 – 28, l. 3.

On April 6, 2017, Petitioner filed a post-conviction relief (PCR) application alleging that plea counsel failed to advise Petitioner of his Fourth Amendment rights and of the potential defenses to the illegal search in his case. App. 30 – 36. On November 1, 2017, the state filed its Return. App. 37 – 44.

[1] The state's plea offer was, "a twelve-year active Department of Corrections sentence with two and a half years of home detention to follow." Id. The 808 days of time served credit that Petitioner was entitled to would be applied to his prison sentence and not his home detention. Id. The state also said that if Petitioner deiced to go to trial, they would seek a life without parole sentence. Id. The state's offer expired by the end of the week. Id.

On November 7, 2018, Petitioner's PCR hearing was held before the Honorable J. Mark Hayes, III. App. 45. Rodney W. Richey represented Petitioner. Id. Jordan A. Cox represented the state. Id.

In an Amended Order of Dismissal filed on January 25, 2019, Judge Hayes denied Petitioner relief. App. 107 – 116. Judge Hayes found that Petitioner failed to show how his Fourth Amendment rights were violated in this case. App. 113. Moreover, he found that Petitioner did not show that he would have been successful on his Fourth Amendment challenge had he proceeded to trial. App. 113.

ARGUMENT

Plea counsel provided ineffective assistance of counsel when he failed to inform Petitioner, prior to pleading guilty, that he could have challenged the legality of the pat down search during the traffic stop, where the police officers who conducted the search gave contradictory reasons as to why reasonable suspicion existed to search Petitioner's person, and where the rest of the evidence against Petitioner stemmed from that illegal search.

Relevant Facts

On June 28, 2013, police officers pulled over Appellant because he, "turned left without using a turn signal," and he was allegedly speeding. App. 24, l. 15 – 25, l. 20. During the traffic stop, the officers gave two different accounts as to why they had reasonable suspicion to take Petitioner out of his car and pat him down. App. 24, ll. 22 – 25; App. 55, ll. 4 – 13. When the officers patted Petitioner down, "the found a bulge in his pocket" which, after reaching into his pocket, was found to be cocaine. App. 24, l. 25 – 25, l. 3. The traffic stop was within half a mile of a school. App. 25, ll. 9 – 11.

As a result of the drugs found during the traffic stop, a search warrant was obtained for Petitioner's residence. App. 25, ll. 15 – 20. Upon execution of the search warrant, police officers discovered more drugs inside Petitioner's residence. Id.

At Petitioner's PCR hearing he testified that the entirety of the state's case was derived from the search during the traffic stop. App. 52, l. 18 – 53, l. 6. Petitioner told the plea court he was satisfied with his attorney during the colloquy because he did not know of the potential challenges he could have raised regarding legality of the traffic stop search, until after he pled guilty. App. 64, l. 24 – 65, l. 11; App. 70, l. 18 – 71, l. 9.

Petitioner stated that when he and plea counsel spoke about his case, plea counsel would tell Petitioner that he had no chance at trial and no defenses to the charges against him. App. 53, l. 25 – 56, l. 16; App. 62, l. 17 – 63, l. 23. Had Petitioner known of the possible challenges to the searches he could have made, he would have proceeded to trial. App. 53, l. 1 – 24; App. 60, l. 2 – 61, l. 2.

Petitioner explained that his Fourth Amendment challenge to the traffic stop search would have been successful because the officers lacked reasonable suspicion to take him out of the car and search him. App. 53, l. 25 – 56, l. 16. Moreover, the arresting officers gave two different reasons for searching him. Id. One officer said they thought he had a weapon and the other said they thought Petitioner "placed something in the car." Id.

Plea counsel testified he discussed the Fourth Amendment issues with Petitioner in his case. App. 75, l. 16 – 77, l. 22. Plea counsel said that since there was no video or audio of the traffic stop, it was Petitioner's word versus the arresting officers' word. App. 78, l. 1 – 79, l. 1. Plea counsel stated that it was Petitioner's decision to plead guilty, but admitted that Petitioner wanted to go to trial "up until the last minute." App. 79, l. 15 – 80, l. 10.

The PCR court found that Petitioner failed to show how his Fourth Amendment rights were violated by the search during the traffic stop. App. 103. The court also stated that Petitioner did not show how he would have been successful had he challenged the legality of the search at trial. Id.

Discussion

Petitioner pled guilty without knowing his Fourth Amendment rights or that he could have challenged the legality of the searches in his case. App. 53, ll. 7 – 24. Had plea counsel properly explained the weaknesses of the state's case and the potential Fourth Amendment

challenges that Petitioner could have raised, he would have gone to trial. Id; App. 60, l. 2 – 61, l. 2.

The difference, "between a valid guilty plea and an invalid guilty plea lies in the knowing and voluntary nature of the plea." Berry v. State, 381 S.C. 630, 635, 675 S.E.2d 425, 427 (2009). The longstanding test for determining the validity of a 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) (internal quotations omitted) (applying the two-part test for claims of ineffective assistance of counsel in Strickland v. Washington, 466 U.S. 668 (1984) to claims of the same against plea counsel).

First, "the voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases." Hill, at 56. On the other hand, the prejudice requirement focuses on whether "there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." Id. at 59. "[T]he voluntariness of a guilty plea is not determined by an examination of a specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea, and also from the record of the PCR hearing." Holden v. State, 393 S.C. 565, 572-74, 713 S.E.2d 611, 615-12 (2011).

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984). To prove ineffective assistance of counsel, "the defendant must show that counsel's performance was deficient" and "that the deficient performance prejudiced the defense." Id. "When a convicted defendant complains of the ineffectiveness of counsel's assistance, the defendant must

show that counsel's representation fell below an objective standard of reasonableness." Id. at 687 – 688. To prove prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694.

The police pulled Petitioner over because he allegedly failed to use a turn signal and was speeding. App. 24, l. 15 – 25, l. 20. However, the officers gave conflicting accounts as to why they patted Petitioner down during the traffic stop. App. 53, l. 25 – 56, l. 16.

Plea counsel failed to explain to Petitioner that the police needed articulate a "reasonable suspicion that [Petitioner] was armed and dangerous," before patting him down. App. 57, ll. 12 – 15; App. 59, ll. 2 – 4. State v. Banda, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006) ("a police officer must have a reasonable suspicion that a person is armed and dangerous before conducting a pat down or frisk of that person. 'Reasonable suspicion' of weapons requires that a reasonably prudent person under the circumstances be warranted in the belief that his safety or that of others is in danger.") (internal citations omitted)

Moreover, plea counsel failed to explain that the United States Supreme Court extended that standard to "valid automobile stops for traffic violations." App. 59, ll. 2 – 4; Pennsylvania v. Mimms, 434 U.S. 106, 111-112 (1077). Thus, Petitioner would likely have been successful if he challenged the legality of the traffic stop pat down for lacking reasonable suspicion that Petitioner was armed and dangerous. App. 53, l. 25 – 56, l. 16

The search warrant for Petitioner's home was obtained and executed because of the drugs found on Petitioner during the traffic stop search. App. 52, l. 18 – 53, l. 6. Plea counsel never discussed with Petitioner that he could challenge the admissibility of the evidence found from

both of the aforementioned searches as fruit of the poisonous tree. App. 53, ll. 7 – 24; Wong Sun v. United States, 371 U.S. 471, 485 (1963) ("The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion.")

In the instant case, plea counsel's failure to explain to Petitioner that he could have challenged the admissibility of the drugs discovered if he proceeded to trial constituted deficient performance. App. 53, l. 25 – 56, l. 16. That deficient performance induced Petitioner to plead guilty and prejudiced Petitioner because he would not have pled guilty if plea counsel had explained that he could have challenged the drug evidence discovered after the illegal search of Petitioner during the traffic stop. App. 53, ll. 7 – 24; App. 55, ll. 14 – 24; App. 60, l. 2 – 61, l. 2; Hill, at 57 – 59.

CONCLUSION

Based on the foregoing arguments, Petitioner respectfully requests that this Court grant certiorari to allow for full briefing on this issue.

Victor R. Seeger

Victor R Seeger
Appellate Defender

ATTORNEY FOR PETITIONER

This 27th day of August, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

MICHAEL F. WIGGLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael F. Wiggleton states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent petitioner.

2. He has reviewed the record of petitioner's post-conviction relief hearing before Judge J. Mark Hayes, which was held on November 7, 2018, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve him as counsel for Michael F. Wiggleton.

Respectfully Submitted,

Victor R. Seeger

Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

This 27th day of August, 2019.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable J. Mark Hayes, Circuit Court Judge

MICHAEL F. WIGGLETON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix in the above referenced case has been served upon Johnny Ellis James, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Johnson Petition for Writ of Certiorari and a copy of the Appendix have been served on Michael F. Wiggleton, #167168, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 27th day of August, 2019.

Victor R. Seeger

Victor R Seeger
Appellate Defender
ATTORNEY FOR PETITIONER

SUBSCRIBED AND SWORN TO before me
this 27th day of August, 2019.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: October 26, 2019

Spartanburg Public Safety Department ADDRESS: 145 W. Broad St. Spartanburg S.C. 29306- PHONE#:(864)596-2035

AGENCY I.D. SC0420100

INCIDENT REPORT

CASE NUMBER: 06083713 | NCIC INQ.: F | NCIC ENTD.: F

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. 35A DRUG/NARCOTIC VIOLATIONS	☒ YES ☐ NO	☐ YES ☐ NO	HIGHWAY/ROA...	
2. 901 NON-REPORTABLE TRAFFIC OFFENSE (DUS/SPEEDING/ETC)	☒ YES ☐ NO	☐ YES ☐ NO	HIGHWAY/ROA...	
3.	☐ YES ☐ NO	☐ YES ☐ NO		

TYPE VICTIM: ☐ Individual ☐ Business ☐ Financial Inst. ☒ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): ARCH ST _HOWARD ST Spartanburg SC | ZIP CODE: 29301- | WEAPON TYPE:

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK: DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
06/28/2013	17:03		06/28/2013	19:00	06/28/2013	17:03	17:03	19:00	1

VICTIM NO. 1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
MATHIS, BRENDALL K									H 864-596-2224 B	H - - B

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
145 W BROAD ST	Spartanburg	SC	29306-	3

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT #1	#2	#3	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
CITY OF SPARTANBURG	ST								H 864-596-2035 B	H - - B

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
145 W BROAD ST	Spartanburg	SC	29306-	3

VISIBLE INJURY (VICT. 1) ☐ YES NO ☐ EXPLAIN— | COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES NO ☐

VICTIM (NO. 1) USING: ALCOHOL ☐ YES NO ☐ UNK. ☐ DRUGS: ☐ YES NO ☐ UNK. ☐ TYPE:

TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐

* J—This Jurisdiction. S—State. O—Out of State. U—Unknown

SUBJECT NO. 1

☒ SUSPECT ☐ RUNAWAY ☐ WANTED ☒ WARRANT ☒ ARREST ☒ JAIL ☐ SUMMONS

NAME, (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
WIGGLETON, MICHAEL FITZGERALD	B	M	46	N	11/24/1966	508	175	BL...	BRO...

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
147 HEATHER DR	Spartanburg	SC	29301-	4

SUBJECT(NO. 1) USING: ALCOHOL: ☐ YES NO ☒ UNK. ☐ | DRUGS: ☐ YES NO ☒ UNK. ☐ TYPE:

ARRESTED NEAR OFFENSE SCENE ☒ YES NO ☐ | TOTAL # ARRESTED 1

DATE/TIME OF OFFENSE: 06/28/2013 17:03 | DATE/TIME OF ARREST: 06/28/2013 17:03

NARRATIVE

ORIGINAL - MATHIS, B.

ON 06-28-2013 AT APPROXIMATELY 1703 HOURS SPO MORROW AND I (SPO MATHIS) WERE PATROLLING THE AREA OF ARCH STREET AND HOWARD STREET WHEN WE GOT BEHIND A BURGUNDY HONDA WITH SOUTH CAROLINA TAG IYM425 SITTING AT THE INTERSECTION. THE VEHICLE THEN TURNED LEFT ONTO HOWARD STREET WITHOUT USING A TURN SIGNAL. WE GOT BEHIND THE VEHICLE WHILE TRAVELING DOWN HOWARD STREET AND PACED THE VEHICLE AT A SPEED OF 45 MPH IN A 30 MPH SPEED ZONE. I INITIATED A TRAFFIC STOP ON THE VEHICLE AND WE STOPPED AT HOWARD STREET AND OLD HOWARD GAP. I APPROACHED THE DRIVER OF THE VEHICLE AND ASKED HIM FOR HIS DRIVER'S LICENSE, REGISTRATION AND PROOF OF INSURANCE WHILE SPO MORROW APPROACHED THE PASSENGER SIDE. THE DRIVER WHO WAS IDENTIFIED AS MICHAEL WIGGLETON (B/M DOB 11-24-1966) PROVIDED ME THE REGISTRATION AND PAPERWORK FOR HIS INSURANCE POLICY. I TOOK THE PAPERWORK BACK TO MY PATROL VEHICLE AND BEGAN LOOKING OVER THE PAPERWORK AND CHECKING HIS DRIVER LICENSE. I WALKED BACK UP TO THE VEHICLE TO TALK WITH MR. WIGGLETON ABOUT THE INSURANCE PAPERWORK AND WHILE I WAS SPEAKING WITH HIM HE MOVED HIS HANDS FROM HIS LAP AND BEGAN GRIPPING THE STEERING WHEEL SO TIGHT WHERE I COULD SEE HIS PULSE IN HIS HANDS. MR. WIGGLETON THEN REMOVED HIS HANDS FOR A BRIEF SECOND THEN PLACED THEM BACK ON THE STEERING WHEEL AND BEGAN CLINCHING IT AGAIN. I WALKED BACK TO MY VEHICLE AND SPO MORROW STOOD BY AT THE PASSENGER SIDE. WHILE I WAS CHECKING THE PAPERWORK SPO MORROW ADVISED ME THAT MR. WIGGLETON APPEARED TO PLACE AN ITEM IN BETWEEN HIS SEAT AND THE CENTER CONSOLE AND HE WAS GOING TO HAVE HIM STEP OUT. SPO MORROW HAD MR. WIGGLETON STEP OUT AND ASKED HIM IF HE HAD ANY WEAPONS ON HIS PERSON AND MR. WIGGLETON

	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY

PROPERTY EST.

TYPE (GROUP)							TOTAL VALUE
STOLEN	$0.00						$0.00
DAMAGED	$0.00						$0.00
BURNED	$0.00						$0.00
RECOVERED	$0.00						$0.00
SEIZED	$263.00						$263.00

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED				
☒ YES NO ☐	☒ YES NO ☐	☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4 ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
Mathis, Brendall K	06/28/2013 17:03	0281			
MORROW, MICHAEL SHANE	06/28/2013 17:03	0206	FOLLOW-UP INVESTIGATION ☐ YES NO ☒ OFFICER		

REPLIED "NO". SPO MORROW THEN ASKED IF HE HAD ANYTHING ILLEGAL ON HIS PERSON AND MR. WIGGLETON REPLIED "NO". SPO MORROW THEN ASKED FOR CONSENT TO SEARCH HIS PERSON BUT MR. WIGGLETON STATED "NO". DUE TO THE WAY MR. WIGGLETON WAS REACHING IN BETWEEN THE SEAT WE ADVISED HIM WE WERE GOING TO CONDUCT A PAT DOWN OF HIS PERSON FOR WEAPONS. MR. WIGGLETON THEN TURNED AND PLACED HIS HANDS ON THE TOP OF THE VEHICLE. DURING THE PAT DOWN SPO MORROW FELT A LARGE BULGE IN MR. WIGGLETON'S FRONT POCKET CONSISTENT WITH NARCOTICS. SPO MORROW THEN DETAINED MR. WIGGLETON AND LOCATED A CLEAR PLASTIC BAGGIE OF A WHITE POWDER SUBSTANCE BELIEVED TO BE COCAINE (APPROXIMATELY 16 GRAMS) IN HIS LEFT FRONT POCKET. MR. WIGGLETON WAS PLACED UNDER ARREST AND HIS HANDCUFFS WERE CHECKED FOR FIT AND DOUBLE LOCKED. MR. WIGGLETON HAD A SUM OF US CURRENCY IN HIS POCKETS NEXT TO THE NARCOTICS WHICH WAS BROKEN DOWN INTO DENOMINATIONS OF A 100, 10'S, 5'S AND 1'S. MR. WIGGLETON VOLUNTARILY FORFEITED THE SUM OF CURRENCY. DURING A SEARCH OF THE VEHICLE I LOCATED FIVE DIFFERENT CELL PHONES IN THE CENTER CONSOLE ALL BELONGING TO MR. WIGGLETON. I ALSO LOCATED PAPERWORK FROM APRIL 2013 FOR CHARGES THAT HE RECEIVED EARLIER IN THE YEAR ALONG WITH ALL HIS DRY CLEANED CLOTHES IN THE TRUNK. WHILE I WAS TALKING WITH MR. WIGGLETON HE WOULD REFER TO THE VEHICLE AS BELONGING TO HIM AND DUE TO THE AMOUNT OF NARCOTICS THAT WERE RECOVERED AND NUMEROUS PERSONAL ITEMS LOCATED IN THE VEHICLE WE SEIZED THE HONDA. THE HONDA WAS A 2002 FOUR DOOR ACCORD WITH VIN 1HGCG16532A048091. ACE TOWING RESPONDED AND TOWED THE VEHICLE TO THE CITY IMPOUND LOT AND A TOW SHEET WAS COMPLETED. MR. WIGGLETON SIGNED A CONSENT TO SEARCH AUTHORIZATION FOR ALL FIVE OF HIS PHONES AND THEY WERE PLACED INTO EVIDENCE AT CITY HALL. MR. WIGGLETON RECEIVED A CONVICTION FOR TRAFFICKING COCAINE ON 03-19-1989 AND A CONVICTION FOR PWID COCAINE 1-10-2013. I WILL SPEAK WITH A JUDGE AND SEEK A WARRANT FOR TRAFFICKING COCAINE 2ND OFFENSE. THE WHITE POWDER SUBSTANCE TESTED POSITIVE FOR COCAINE USING A REAGENT. BEST ENVELOPE # S153599 WAS COMPLETED AND PLACED INTO EVIDENCE ALONG WITH THE CELL PHONES, KEYS TO THE VEHICLE AND PAPERWORK. SEE SPO MORROW'S SUPPLEMENTAL FOR ADDITIONAL INFORMATION.

REVIEWED BY SGT HILLERS 06-28-13

Entered By: MICHAEL SHANE MORROW, on 7/2/2013 9:48:01 AM
Jurisdiction: SC0420100
Case Number: 06083713
Supplement: No
Source Table: RMS_Case

Title: SUPPLEMENTAL - MORROW, M S

ON 06-28-2013 AT 1703 HRS, SPO MATHIS AND I (SPO MORROW) OBSERVED A BURGUNDY HONDA ACCORD BEARING SC LICENSE PLATE OF IYM-425 THAT FAILED TO USE A LEFT TURN SIGNAL AT ARCH STREET AND HOWARD STREET. WE ALSO PACED THE VEHICLE AT 45 MPH IN A 30 MPH ZONE. SPO MATHIS ACTIVATED HIS BLUE LIGHTS IN THE VEHICLE STOPPED ON OLD HOWARD GAP RD. AND HOWARD ST. SPO MATHIS APPROACHED THE DRIVER SIDE AND I APPROACHED ON THE PASSENGER SIDE. THE DRIVER ROLLED DOWN ALL FOUR WINDOWS. SPO MATHIS ASKED THE BLACK MALE DRIVER FOR HIS DRIVER'S LICENSE, REGISTRATION, AND INSURANCE. SPO MATHIS WENT BACK TO HIS PATROL CAR TO RUN HIS DRIVER'S LICENSE. THE DRIVER WAS IDENTIFIED AS MICHAEL FITZGERALD WIGGLETON (B/M, DOB: 11/24/1966). I STAYED BY THE PASSENGER SIDE WINDOW AND WATCHED THE DRIVER WHILE SPO MATHIS CONDUCTED CHECKS ON MR WIGGLETON. I OBSERVED MR WIGGLETON PLACE HIS RIGHT HAND IN BETWEEN THE SEAT AND CENTER CONSOLE. WHEN I LOOKED HIS WAY, HE SNAPPED HIS HEAD AROUND AND LOOKED AWAY FROM ME. I ORDERED HIM TO LET ME SEE HIS OTHER HAND. I FELT LIKE THE SUBJECT WAS RETRIEVING A WEAPON FROM THAT LOCATION. HE PULLED HIS HAND UP SLOWLY, AND MOMENTARILY RESTED ON THE CENTER CONSOLE ARMREST. I THEN OBSERVED HIS PULSE WAS BEATING RAPIDLY ON THE TOP OF HIS HAND. THROUGH MY TRAINING AND EXPERIENCE THIS IS COMMON AREA WHERE WEAPONS ARE CONCEALED FOR EASY ACCESS. HE REACHED OVER AND TURNED THE IGNITION OFF AND MOVED BOTH HANDS TO THE STEERING WHEEL WITH A TIGHT GRIP. I ADVISED SPO MATHIS OF WHAT I OBSERVED. DUE TO HIM POSSIBLE ARMED, I ASKED HIM TO STEP OUT OF THE VEHICLE TO CONDUCT A PAT DOWN FOR WEAPONS. I ASKED HIM IF HE HAD ANY WEAPONS ON HIS PERSON AND HE SAID "NO". THEN I ASKED HIM IF HE HAD ANY OTHER ILLEGAL CONTRABAND ON HIS PERSON AND SAID "NO". I ASKED HIM FOR CONSENT TO SEARCH HIS PERSON AND SAID "NO". I ADVISED HIM DUE TO HIS ACTIONS THAT I WAS GOING TO PAT HIM DOWN FOR WEAPONS. I TOLD HIM TO PLACE HIS HANDS ON THE ROOF OF THE VEHICLE AND SPREAD HIS FEET. WHILE PATTING HIM DOWN, HE REMOVED HIS HANDS TWO DIFFERENT TIMES OFF THE VEHICLE AND THEN TRIED TO MOVE THEM TO HIS MID SECTION. I CHECKED HIS WAIST AREA, I RAN MY HAND DOWN THE FRONT OF HIS PANTS. WHEN I RAN MY OPEN HAND DOWN THE FRONT OF HIS LEFT SIDE, I FELT WHAT I IMMEDIATELY RECOGNIZED TO BE ILLEGAL NARCOTICS (A LARGE ROUND BULGE THAT CHANGED FORM AS I PASSED OVER IT). I SECURED THE OBJECT FROM THE OUTSIDE AND ASKED HIM WHAT THE OBJECT WAS WHICH I KNEW TO BE ILLEGAL DRUGS. MR WIGGLETON DROPPED HIS HEAD AS IF DEFEATED AND WOULD NOT ANSWER ME. I REACHED INTO THE POCKET AND PULLED OUT A PLASTIC BAGGY OF WHITE POWDER SUBSTANCE BELIEVED TO BE COCAINE. I IMMEDIATELY DETAINED HIM AND LOCATED A SUM OF CASH ALONG WITH THE DRUGS. THE WHITE POWDER SUBSTANCE WEIGHED APPROXIMATELY 16 GRAMS AND FIELD TESTED POSITIVE FOR COCAINE USING A REAGENT. SPO MATHIS ASKED HIM IF THERE WAS ANYTHING ELSE IN THE VEHICLE AND HE STATED "NO". SPO MATHIS LOCATED THREE MONEY ORDER RECEIPTS MADE OUT TO REBECCA PHILLIPS AT 416 DOVETAIL CIRCLE SUMMERVILLE, SC 29483 FOR $900.00. THE LATEST RECEIPT BEING 06-27-2013. MR WIGGLETON'S DRY CLEANED CLOTHING WAS IN THE TRUNK OF THE VEHICLE ALONG WITH RECEIPTS IN HIS NAME. WE ALSO LOCATED SEVERAL SETS OF CAR KEYS IN THE CENTER CONSOLE. WE ALSO LOCATED A PROBATION PAROLE PAPER WORK IN MR WIGGLETON'S NAME. WE NOTIFIED ACE WRECKER SERVICE TO TOW THE VEHICLE TO THE CITY HALL (145 W BROAD ST). I PLACED THE NARCOTICS IN BEST ENVELOPE S153599 AND DROPPED IT INTO THE EVIDENCE DROP BOX ALONG WITH THE RECEIPTS AT 145 W BROAD ST. WE TRANSPORTED MR WIGGLETON TO THE CITY HALL. HE VOLUNTARILY FORFEITED A SUM OF CASH TO SPO MATHIS. INVESTIGATOR KIRBY RESPONDED AND SPOKE TO MR WIGGLETON. SPO MATHIS AND I TRANSPORTED MR WIGGLETON TO THE COUNTY JAIL FOR BOOKING. JUDGE TALLEY ISSUED WARRANT NUMBER 2013A4210202315 FOR TRAFFICKING COCAINE 2ND OFFENSE.

HWS&C
HARRISON, WHITE, SMITH & COGGINS, P.C.
Attorneys at Law

Ben C. Harrison
John B. White, Jr.
Danny R. Smith
Donald C. Coggins, Jr.
Thomas A. Killoren, Jr.*
Wes A. Kissinger
Jeremy A. Dantin°
Allison P. Dunham
Amanda H. Craven^
Stephen L. Denton
Marghretta H. Shisko
Ryan F. McCarty

Of Counsel
Griffin L. Lynch

178 WEST MAIN STREET
P.O. BOX 3547
SPARTANBURG, SC 29304
www.spartanlaw.com

TELEPHONE: 864-585-5100
TOLL FREE: 800-543-2990
FACSIMILE: 864-591-0491

FEIN 57-1088154

* also licensed in GA, NC, IL
° also licensed in GA
^ also licensed in FL

August 2, 2016

Via Hand Delivery
Michael Wiggleton
Spartanburg County Detention Center
950 California Ave
Spartanburg, SC 29303

Dear Mr. Wiggleton:

Please allow this letter to serve as our advisement to you, as your attorneys, that we have been given notice that your case is going to be scheduled for the September 6, 2016 General Sessions Trial Docket in Spartanburg County South Carolina. In this letter, we are setting forth the information relating to your charges, your potential sentence, and the plea offer which has been extended by the State in your case.

Current Charges

1.	Indictment:	2014-GS-42-0248
	Warrant:	2013A4210202316
	Charge:	Trafficking in Cocaine, 400g or more
	Sentence:	25-30 years & $200,000 fine (Violent; Serious; 85%)
1A.	Indictment:	2014-GS-42-0248A
	Warrant:	2013A4210202317
	Charge:	Poss. of Weapon During Violent Offense
	Sentence:	5 years

2. Indictment: 2014-GS-42-0249
Warrant: 2013A4210202315
Charge: Trafficking in Cocaine, 10-28g, 2nd Offense
Sentence: 5-30 years & $50,000 fine (Violent; Serious; 85%)

3. Indictment: 2013-GS-42-5669
Warrant: 2013A4210202318
Charge: PWID within ½ mile of school or park
Sentence: 0-10 years &/or $0-10,000 fine (Serious)

Probation Violation

Additionally, you have been charged with violating your previous probation. You have a potential probation violation exposure of five years in addition to the charges set forth above.

Life without Parole

As you are aware and understand, the Solicitor will seek a sentence of life without parole (LWOP) for you if you are convicted on any of the charges listed above. The State is permitted to do this pursuant to South Carolina Code of Law §17-25-45 based on your prior criminal record which includes, but is not limited to, a conviction for Trafficking Cocaine in 1990 and a conviction for Possession With Intent to Distribute Cocaine Within One Half Mile of a School in 2012. Both of these offense were designated as "serious offenses" pursuant to South Carolina Code of Laws § 17-25-45. We are enclosing a copy of the Notice of Life Sentence which was served upon you in September 2015. This notice is attached and marked as Exhibit #1 to this letter.

As we have explained to you in the past, if the State convicts you of any of the charges listed above, because these charges are all serious offenses, you will serve out the remainder of your life in the custody of the Department of Corrections. You will not be eligible for any type of parole or early release. You have known that future drug charges, such as these, would subject you to the possibility of an LWOP sentence. Attached to this letter, as Exhibit #2, is an excerpt from the transcript from your December 11-12, 2012 guilty plea. As you will see, even in 2012, you were aware that any future drug offenses may subject you to an LWOP sentence.

Plea Offer

The State has extended the following offer which will take resolve all of your pending charges, including the probation violation. The State's offer is as follows:

15 year negotiated sentence in the South Carolina Department of Corrections.

Release Date Calculation

If you accept the State's offer of a negotiated 15 year sentence, you are entitled to receive credit against the sentence for the time you have served prior to trial and/or sentence pursuant to

South Carolina Code of Law § 24-13-40. However, if you do not accept the State's plea offer, and the State convicts you of one of the above listed charges, any credit for time which you may have served will be of little value to you, as the State has served you with notice of LWOP.

The computation of the time which you have already served will benefit you if you choose to accept the 15 year negotiated sentence. As of the date of this letter, we have calculated the following credit for time which you have already served;

1. Arrest Date for original charges (June 29, 2013)

   1 day time served.

2. Probation Violation and Bond Revocation (July 12, 2013)

   1 day time served.

3. Arrested after running (August 5, 2014) TILL PRESENT DAY OF August 2, 2016.

   729 days (or 1 year, 11 months and 29 days)

   Total Time Served: 731 days

The South Carolina Department of Corrections provides a release date calculator on it's website at www.doc.sc.gov. This release date calculator is a general guideline to provide information regarding sentencing of an offender. This is not the official calculation which the South Carolina Department of Corrections may use; however, it does provide a general guideline to determine possible release dates in the future. A copy of a release date calculation is attached to this letter and marked as Exhibit #3. This release date calculation assumes that you are sentenced to 15 years in the department of corrections for the charge of Trafficking Cocaine, 10 to 28 grams, 2nd Offense.

Attorneys' Advice

It is our advice that you accept the 15 year negotiated sentence that has been offered by the State. If you do not accept the fifteen years as offered by the State, and you are convicted at trial of any of the offenses listed above, the consequence is that you will serve out the reminder of your life in the custody of the South Carolina Department of Corrections without the possibility of parole or early release.

Reasons to Accept 15 Year Sentence

Below, we have set forth, in short form, a summary of the arguments which we could make at trial regarding the charges that you have.

Vehicle Stop

With regard to the cocaine found in the traffic stop, we believe there is very little chance of suppressing the cocaine which was found during that traffic stop due to any violations of your Fourth Amendment protections and guarantees. Our review of the facts of the case, as well as a step-by-step analysis of the search and seizure of you and your vehicle, leaves us with no other

conclusion than (1) the traffic stop was lawfully executed; (2) that you were properly detained and the detention was not excessive in time; (3) that the officers had an articulable, reasonable suspicion to get you out of your vehicle; and (4) due to officer safety reasons alone, the officers were permitted to perform a *Terry* frisk of you that day.

According to the incident report for the events which occurred on Friday, June 20, 2013 (the traffic stop) the officers report that they observed your vehicle turn left on to Howard Street without using a turn signal. Turning without using any signal is a violation South Carolina Code of Law § 56-5-2150 entitled "Turning Movements and Required Signals". That law states that "no person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving appropriate signal as provided in this section." An appropriate signal is defined as a lighted turn signal on your vehicle or hand signals. Therefore, when the officers witnessed this violation they had probable cause to believe that a traffic violation had occurred, and their decision to stop your vehicle is reasonable *per se*. Without the assistance of an in-car video, the only way to challenge the reason for the initial stop is to challenge the officer's credibility, veracity and believability.

Next, the officer describes that they got behind your vehicle and paced your vehicle at approximately 45 miles per hour in a 30 mile per speed zone. This, too, is a violation of the South Carolina Code of Laws. Section 56-5-1520 is entitled "General Rules as to Maximum Speed Limits; lower speeds may be required." Here again, the officers have probable cause to believe that a traffic violation has occurred because you were traveling approximately 15 miles per hour above the posted speed limit. This provides an additional grounds of probable cause for them to stop your vehicle.

In describing the events of the traffic stop, the officer stated that you appeared to place an item in between your seat and your center console and that Officer Morrow elected to have you step out of the vehicle. Again, the law states that once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver and passengers to get out of the vehicle without violating their Fourth Amendment prescriptions against an unreasonable seizure. Once outside your vehicle, the officers describe in their report that due to the way you were reaching in between the seat, that they advised you that they were going to conduct a pat down of your person for potential weapons. Hereto, once an officer has a reasonable suspicion that an individual may be armed or dangerous, they may perform a pat down frisk of that person. As you know, it was during this pat down which cocaine was discovered on your person.

In conclusion, as the facts and law relate to the traffic stop, we believe there is not a substantial likelihood that we can succeed in suppression of the evidence seized against you at the traffic stop. As you are already aware of and have been advised of, if you are convicted for Trafficking Cocaine 10 to 28 grams, 2nd offense, you will receive a life sentence.

Search Warrant

As the facts relate to the search warrant conducted at the home located at 296 Pine Lake Court, after looking at all the facts associated with that case, a step-by-step analysis of the search warrant associated with the facts in that case, and the applicable law in this state, we feel that the

likelihood that we would be able to have the evidence seized from that search warrant suppressed is very good.

To be valid, a search warrant must (1) be based upon probable cause; (2) be supported by an oath or affirmation as well as a sworn affidavit; (3) and describe with particularity or specificity the place of the search and the things to be seized. After reading through the affidavit in support of the search warrant, we believe that the affidavit contains no probable cause to believe that evidence of a crime would be found at 296 Pine Lake Court. We address each statement of the search warrant affidavit in turn:

a. *"In May 2012, your affiant executed a narcotics search warrant on a property rented by defendant as a result of this search warrant, illegal narcotics were located and Wiggleton was appropriately charged."*
    i. Incident described in this sentence occurred 13 months prior to this search warrant
    ii. No information that indicated that this is the same house as before
    iii. Nothing to indicate that anything defendant has recently done relates to the May 2012 search warrant

b. *"Since this time, your affiant has received on-going information that defendant is still involved with illegal narcotic sales and is utilizing a different location to conduct illegal activity."*
    i. On-going information has no basis by which to determine credibility or reliability
    ii. No information about corroborating this information by SPSD
    iii. No information that the different location is 296 Pine Lake Court
    iv. No information as to what the illegal activity was- tax evasion? Dog fighting?
    v. State v. Gentile 373 SC 506 (Ct. App. 2007)
        1. Officer's decision to investigate defendant's address based upon citizen complaints regarding high volume at defendant's address
            a. Ct. App- Affidavit was insufficient to establish PC
            b. Despite verifying high traffic, did not establish narcotic activity taking place
            c. Citizen tips insufficiently vague as to how often and what knowledge they had of narcotic activity

c. *"In August 2012, defendant filed SPSD police report 08-0140-12 from 296 Pine Lake Court in reference to stolen property."*
    i. 11 months earlier
    ii. This statement fails to establish that any illegal narcotic activity was taking place at 296 Pine Lake Court on June 28, 2013

d. *"In the months that followed, your affiant received approx.. 4-5 calls from the property owner, Rebecca Phillips, the last one being approximately March or April 2013...[discussing] her concerns with complaints from neighbors about*

possible illegal activity surrounding defendant occurring at 296 Pine Lake Court"

i. 4 or 5 calls from property owner in 7-8 months -Aug 2012- Mar/Apr 2013
ii. Last telephone call from property owner approximately 2-3 months prior
iii. Property owner lives in Summerville, South Carolina- no independent knowledge
iv. This statement fails to establish that any illegal narcotic activity was taking place at 296 Pine Lake Court
v. What is the possible illegal activity- tax evasion? Dog fighting?

e. *"Your affiant has conducted surveillance at this address and observed vehicles registered to Anitra Wiggleton parked at this location. Anitra Wiggleton is the spouse of defendant who resides at 147 Heather Drive."*

i. When was this surveillance conducted? Nothing indicates that it occurred at any time close to June 28, 2013
ii. Nothing in this statement indicates that surveillance actually produced evidence of illegal narcotic activity

f. *"On 06/28/13, a traffic stop was conducted a vehicle in which Wiggleton was the driver. During the course of the traffic stop officers seized approximately 16 grams of white powder substance...$900.00 receipt dated 06/27/13 to Rebecca Phillips (property owner)"*

i. Nothing in this statement connects 296 Pine Lake Court to the traffic stop which occurred on June 28th
ii. No indication that defendant was followed from his home to the traffic stop
iii. Nothing indicates that the drugs found in the traffic stop came from 296 Pine Lake Court

Further, we believe that the bulk of the information in this affidavit relates to stale information. In order for an affidavit to support probable cause, "it must state facts so closely related to the time of the issuance of the warrant as to justify a finding of probable cause at that time." State v. Winborne, 273 S.C. 62, 64, 254 S.E.2d 297, 298 (1979) (internal quotation marks omitted). "An affidavit which fails altogether to state the time of the occurrence of the facts alleged is insufficient." Id. While the lapse of time involved is an important consideration and may in some cases be controlling, it is not necessarily so. There are other factors to be considered, including the nature of the criminal activity involved, and the kind of property for which authority to search is sought. State v. Corns, 310 S.C. 546, 550-51, 426 S.E.2d 324, 326 (Ct. App. 1992). Nothing in this affidavit supports the conclusion that illegal narcotic activity has taken place at 296 Pine Lake Court within the previous 72 hours. The traffic stop does nothing to establish any connection between the drugs from the stop and the home. SPSD cannot rule out intervening factors. SPSD did not witness you leave this home and constantly surveille you until the traffic stop without any stops in between time. Nothing in the affidavit ever states that illegal narcotic activity was taking place by defendant or at this residence, and therefore the historical aspect of the affidavit fails as well.

As you can see, even if we are successful in suppressing the evidence seized against you from the search warrant, it will not matter if you are convicted of the evidence seized against you in the traffic stop.

Conclusion

It is our advice to you that you accept the 15 year negotiated offer extended to you by the solicitor. As you can see the exhibits attached to this letter, you will be given credit for the time for which you have already served against that 15 year sentence, and according to the release date calculation, which is not official, you would serve less than 11 years in the South Carolina Department of Corrections. However, should you choose to not accept the negotiated 15 year sentence from the State, and you are convicted in trial you will receive a life sentence.

Sincerely,

John B. White, Jr. &
Ryan F. McCarty

Acknowledgment

MW I understand that the plea offer has been sent to my attorneys and has been discussed with me and a copy of this letter is being provided to me.

MW I have been advised and understand that if I do not accept the offer, the state is seeking life in prison for me without parole.

MW I fully understand what has been explained to me and I have no further questions of my attorneys.

MW I am not under the influence of any intoxicant or drug, legal or illegal, nor am I experiencing any mental problems or conditions which affect my judgment and understanding of what has been explained to me in this letter and through my attorneys.

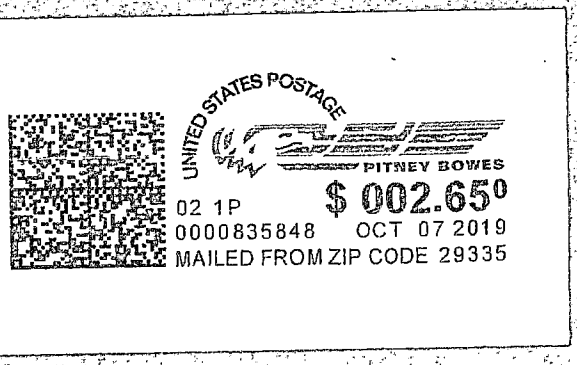
Michael Wiggleton
MICHAEL F. WIGGLETON
Date: AUG 2

Signed in the Presence of:

John B. White, Jr.

Ryan F. McCarty

iggleton, #167168
ofional Institution
d - Upper Yard / Unit 8 / Rm. 206 B
335-9308



VED
2019
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Mr. Daniel E. Shearouse
Hon. Clerk - South Carolina Supreme Court
Post Office Box 11330
Columbia, S.C. 29211