

**Law Offices of Jim Brown, P.A.**

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**RECEIVED**

**FEB 21 2020**

**S.C. SUPREME COURT**

February 19, 2020

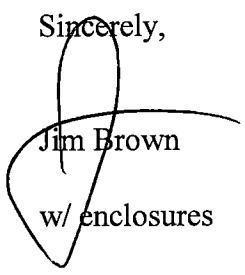
The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re: Notice of Appeal and Proof of Service, Trevin Milledge-2018-CP-07-01621

Mr. Shearouse:

Under cover of this letter, please find enclosed for filing in your court a Notice of Appeal (NOA) and Proof of Service (POS) in the above-referenced matter. Also enclosed please find copies of the Order of Dismissal and the Order Denying the Rule 59 Motion to Alter or Amend. Finally, I am also moving to be relieved as counsel and have enclosed a Motion to be Relieved and Proof of Service for the same. Thank you, in advance, for your assistance and please contact with any questions or concerns.

Sincerely,



Jim Brown

w/ enclosures

cc: Beaufort County Clerk of Court, w/ NOA and POS only  
Benjamin Limbaugh, Office of the Attorney General,  
w/ NOA, POS and Motion to Be Relieved only  
SC Office of Appellate Defense, w/ all enclosures  
Trevin Milledge, w/ all enclosures

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

**FEB 21 2020**

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

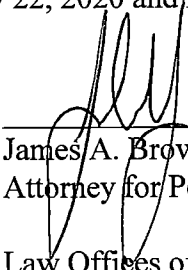
Honorable William H. Seals, Jr.

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Case Number: 2018-CP-07-01621  
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Trevin Milledge.....Petitioner  
v.  
State of South Carolina.....Respondent

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NOTICE OF APPEAL  
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Trevin Milledge appeals the judgment of the Circuit Court, the Honorable William H. Seals, Jr., presiding, denying Petitioner's request for post conviction relief. The Order of Dismissal was filed on November 18, 2019 and received by counsel for the Petitioner on November 22, 2019. The Order Denying the Rule 59 Motion to Alter or Amend was filed on January 22, 2020 and received by counsel for Petitioner on January 25, 2020.

  
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James A. Brown, Jr.  
Attorney for Petitioner

February 19, 2020  
Beaufort, SC

Law Offices of Jim Brown, PA  
1600 Burnside St, Suite 100  
P.O. Box 592  
Beaufort, South Carolina 29901  
(843) 470-0003

Opposing Attorney of Record:  
Benjamin Limbaugh  
Assistant Attorney General  
SC Attorney General's Office  
Rembert C. Dennis Building  
1000 Assembly St.  
P.O. Box 11549  
Columbia, SC 29211-1549

**RECEIVED**

**FEB 21 2020**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Honorable William H. Seals, Jr.

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Case Number: 2018-CP-07-01621  
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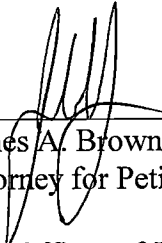
Trevin Milledge.....Petitioner

v.

State of South Carolina.....Respondent

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**PROOF OF SERVICE**  
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Counsel for Trevin Milledge hereby certifies that he has prepared and served a Notice of Appeal on this 19<sup>th</sup> day of February, 2020, upon the State, as specified in S.C. Code Section 203 (b) (1) , by depositing a copy, postage pre-paid, in the United States Mail, addressed to Attorney for Respondent, Benjamin Limbaugh, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211-11549, (803) 734-3970.



-----  
James A. Brown, Jr.  
Attorney for Petitioner

February 19, 2020

Law Offices of Jim Brown, PA  
1600 Burnside St., Suite 100  
P.O. Box 592  
Beaufort, South Carolina 29901  
(843) 470-0003

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF BEAUFORT  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2018CP0701621

Trevin Milledge		South Carolina State Of	
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<b>PLAINTIFF(S)</b>	<b>DEFENDANT(S)</b>
<b>Submitted by:</b>	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**       Rule 12(b), SCRPC;       Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);       Other: See Attached Order
- ACTION STRICKEN (CHECK REASON):**       Rule 40(j) SCRPC;       Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;       Other: \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;       Reversed;       Remanded;       Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order       Statement of Judgment by the Court:

**Order of Dismissal**

**ORDER INFORMATION**

**This order**  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.  
**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

s/ W. H. Seals, Jr  
Circuit Court Judge

2157  
Judge Code

11/7/2019  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on **November 18, 2019**, and a copy mailed first class or placed in the appropriate attorney's box on **November 19, 2019**, to attorneys of record or to parties (when appearing pro se) as follows:

**James Arthur Brown Jr. PO Box 592 Beaufort, SC 29901**

**Sara Elyssa Gunton PO Box 11549 Columbia, SC 29211**

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

MMK

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**Court Reporter**

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**Jerri Ann Roseneau - Clerk of Court**

**Court Reporter:**

**E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.**

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )  
) )  
) )  
Trevin Milledge, #156046, )  
) )  
Applicant, )  
) )  
v. )  
) )  
State of South Carolina, )  
) )  
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-07-1621

**ORDER OF DISMISSAL**

FILED  
2019 APR 11 AM 11:10  
CLERK OF COURT  
BEAUFORT COUNTY

This matter is before the Court by way of an application for post-conviction relief (“PCR”) filed on August 10, 2018 by Applicant’s counsel. An evidentiary hearing was convened on April 1, 2019 in Beaufort County at the Beaufort County Courthouse. Applicant was present and represented by James A. Brown Jr., Esquire. Benjamin Limbaugh, Esquire, of the South Carolina Attorney General’s Office, represented the State.

Before the Court were the records of the Beaufort County Clerk of Court regarding the subject conviction, Applicant’s records from the South Carolina Department of Corrections, and the application.

**I. PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections, pursuant to orders of commitment of the Beaufort County Clerk of Court. In October 2011, the Beaufort County Grand Jury indicted Applicant for trafficking in cocaine base, 28g to 100g, third or subsequent offense (2011-GS-07-1653) trafficking in cocaine, 10g-28g, third or subsequent offense (2011-GS-07-1654), manufacturing or possession of Alprazolam, third or subsequent offense (2011-GS-07-1655), and possession of Oxycodone, second or subsequent offense (2011-

GS-07-1656). Jared S. Newman, Esquire, represented Applicant at trial. Assistant Solicitors Lynorr Musser and Brian Hollen prosecuted the case. On January 26, 2015, Applicant proceeded to a jury trial before the Honorable Carmen T. Mullen. The jury found Applicant guilty of trafficking in cocaine base or crack cocaine, 10-28g, manufacturing/distribution/possession (“MDP”) of cocaine, third or subsequent offense, simple possession of Alprazolam, and possession of a controlled substance, Oxycodone. On January 28, 2015, Judge Mullen sentenced Applicant to imprisonment of twenty-six years for trafficking in cocaine base, 10g-28g, twenty-six years for MDP of cocaine, one year for simple possession of Alprazolam, and one year for possession of Oxycodone, all to be served concurrently.

Applicant filed a timely notice of appeal. Timothy J. Vitollo, Esquire, perfected the appeal. In his appeal, Applicant argued the trial court erred in denying his motion to suppress evidence obtained by the search warrant which he alleges was supported by an affidavit that failed to provide information sufficient to assess the veracity, reliability, or basis of knowledge of the confidential informant. Applicant additionally argued the trial court erred in denying his motion to suppress his confession, when his confession was fruit of the poisonous tree obtained as a result of a defective search warrant. Further, Applicant alleged he was not advised of his rights to remain silent and to an attorney. The South Carolina Court of Appeals found no error as to all issues and affirmed Applicant’s convictions on May 30, 2018. State v. Millidge, Op. No. 2018-UP-220 (Ct. App. 2018). The remittitur was returned to the circuit court on June 15, 2018.

#### **STATEMENT OF FACTS**

At the conclusion of a several-month-long narcotics investigation, conducted by members of the Beaufort/Jasper Multi-Agency Drug Task Force, Investigator Justyna Lindahl, of the Beaufort County Sheriff’s Office, sought a “no knock” search warrant for a multi-room mobile

home located on Miranda Circle in Beaufort, South Carolina on July 28, 2011. (R. p. 31; pp. 62-63; pp. 129-130; pp. 426-446). In seeking a search warrant for the Miranda Circle residence, Investigator Lindahl prepared a lengthy search warrant affidavit that included the following information:

1. That within the previous month the Beaufort/Jasper Multi-Agency Drug Task Force has received information from a Reliable and Confidential Informant working under the direction and control of the Beaufort/Jasper Multi-Agency Drug Task Force that illegal drugs are being sold and distributed by a black male known as Trevin Mill[i]dge AKA "Horse." Based on this information, a drug investigation was started.
2. The Reliable and Confidential Informant advised that Trevin Mill[i]dge resides at 6 Miranda Circle, Port Royal, Beaufort County, SC. The Reliable and Confidential Informant positively identified the residence at 6 Miranda Circle, Port Royal, SC to members of the Beaufort/Jasper Multi-Agency Drug Task Force as the residence from which the Reliable and Confidential [Informant] bought Crack Cocaine from. Further investigation revealed that according to the South Carolina Department of Motor [V]ehicles that Trevin Lorenzo Millidge . . . lives at 6 Miranda Circle, Beaufort, SC 29906.
3. Within the last month a Reliable and Confidential Informant working under the direction and control of the Beaufort/Jasper Multi-Agency Drug Task Force conducted multiple controlled purchases of a quantity of Cocaine from a black male known to the Confidential Informant as Trevin Mill[i]dge AKA "Horse" from within the residence at 6 Miranda Circle, Port Royal, South Carolina, 29906, in the County of Beaufort. The controlled purchase was monitored by members of the Beaufort/Jasper Multi-Agency Drug Task Force at the incident location.
4. That within the last 72 hours a Reliable and Confidential Informant working under the direction and control of the Beaufort/Jasper Multi-Agency Drug Task Force did conduct a controlled purchase of a quantity of Crack Cocaine from a black male known to the Confidential Informant as Trevin Mill[i]dge AKA "Horse" from within the residence at 6 Miranda Circle, Port Royal, South Carolina, 29906, in the County of Beaufort. The controlled purchase was monitored by members of the Beaufort/Jasper Multi-Agency Drug Task Force at the incident location.
5. The Confidential Informant was shown an unmarked photograph of Trevin Lorenzo Mill[i]dge . . . . The Confidential Informant positively identified Trevin Lorenzo Mill[i]dge as the same black male who sold the Confidential Informant a quantity of Crack Cocaine.
6. Trevin Lorenzo Mill[i]dge . . . has numerous criminal convictions in the State

of South Carolina. Mill[i]dge was convicted of Possession of Cocaine on 03-16-00, Simple Possession of Marijuana on 12-14-87, Disorderly Conduct on 06-24-88, Sale and Distribution of Crack Cocaine on 02-09-89, Sale and Distribution of Crack Cocaine on 02-23-95, Disorderly Conduct on 07-22-93 and other charges. Trevin Lorenzo Mill[i]dge has the following criminal convictions in the State of North Carolina. Mill[i]dge was convicted of Possession with Intent to Sell and Deliver Cocaine on 08-01-94.

7. Based on the ongoing criminal activity, substantiated by the controlled purchase of Crack Cocaine from the residence at 6 Miranda Circle, Port Royal, South Carolina, in the County of Beaufort, a search warrant . . . is requested for the above listed residence located at 6 Miranda Circle, Port Royal, South Carolina, in the County of Beaufort.

Based on the above statement of facts, collected by Beaufort/Jasper Multi-Agency Drug Task Force officers, it is the affiant's belief that there is an active and ongoing criminal enterprise, involving the Storage, Sale and Distribution of illegal drugs, operating via 6 Miranda Circle, Port Royal, South Carolina, in the County of Beaufort.

(R. pp. 426-446). Additionally, in the search warrant affidavit, Investigator Lindahl included information derived from her training, experience, and participation in other narcotics investigation that indicated drug traffickers commonly keep drugs, firearms, money, drug paraphernalia, ledgers, and other items connected to the drug trade in their residences. (R. pp. 426-446). After Investigator Lindahl presented that affidavit to a judge, a search warrant was issued for the Miranda Circle residence. (R. p. 130; pp. 426-446).

Thereafter, at approximately 4:54 a.m. on July 30, 2011, officers from the Drug Task Force executed the search warrant at the Miranda Circle residence, with the assistance of members of the S.W.A.T. team. (R. pp. 50-51; pp. 57-58; pp. 66-67; pp. 76-77; pp. 95-96; pp. 104-105; pp. 129-130; p. 135; pp. 213-214; pp. 426-446). Inside the residence, the officers located several individuals, including Applicant Trevin Millidge. (R. p. 59; p. 67; pp. 76-77; pp. 132-133). Applicant and the other individuals were then detained, secured, and removed from the residence, so a search of that location could be conducted. (R. p. 59; p. 67). Once those individuals were

secured, Sergeant Kyle Strickland, an officer with the Beaufort County Sheriff's Office, searched Applicant's person and located clear plastic bags containing cocaine and crack cocaine, \$828 in cash, and an identification card that listed 6 Miranda Circle as his address. (R. pp. 66-69; pp. 135-136; pp. 140-141). At that point, Applicant was handcuffed and taken into custody. (R. pp. 216-217; p. 225).

After Applicant was taken into custody, Sergeant Walker Michaud, of the Beaufort County Sheriff's Office, spoke with Applicant, while he was seated in the front seat of an unmarked law enforcement vehicle parked in the front yard of Applicant's residence. (R. pp. 26-27; pp. 215-216). At the outset of their conversation, Sergeant Michaud informed Applicant of his rights, including his rights to remain silent, have an attorney present, have an attorney appointed if he could not afford one, and his right to refuse to answer any questions or make any statements at any time. (R. p. 27; pp. 217-219). The officer then asked Applicant if he understood his rights and wished to speak with him, and Applicant responded that he did. (R. p. 29; pp. 219-220). At that point, Sergeant Michaud reviewed the search warrant with Applicant and questioned him about his activities. (R. pp. 222-223). During their ensuing conversation, that lasted roughly thirty minutes, Applicant revealed he had returned to his home just before the officers arrived, had gone to a club and sold drugs on the preceding night, and had hidden roughly an ounce of cocaine in a pair of shorts concealed in his closet. (R. pp. 29-30; pp. 222-223; p. 233). Applicant further stated there was approximately \$1,000 in cash in his dresser, while claiming his girlfriend had no knowledge of the drugs. (R. pp. 230-232).

Meanwhile, officers conducted a search of the Miranda Circle residence. (R. pp. 78-79; p. 96; p. 99; p. 105). During a search of the residence's master bedroom, officers located: (1) a handgun; (2) a magazine loaded with seven rounds; (3) bills addressed to Applicant; (4) quantities

of cash totaling \$950; (5) a bottle of inositol powder, which is a common cutting agent used in the drug trade; (6) a bag containing approximately twenty-three alprazolam pills; and (7) several bags containing cocaine and crack cocaine, including one bag that had been hidden in a pair of shorts found in the closet. (R. pp. 79-85; pp. 143-149; pp. 155-157; p. 172; pp. 263-269). Likewise, during a search of the bathroom, connected to the master bedroom, officers found \$22 in cash and a partial oxycodone pill. (R. pp. 97-99). Additionally, during a search of the residence's kitchen, officers located a digital scale covered in white residue and what appeared to be a ledger containing records of drug sales. (R. p. 86; pp. 99-100; pp. 158-159). Furthermore, in the residence's den, officers located a police scanner concealed in a desk drawer. (R. p. 106; pp. 162-163). All of the evidence discovered during the searches of Applicant's residence and person was then collected and secured, and the suspected drugs were ultimately analyzed and identified as roughly fourteen grams of crack cocaine, nine grams of cocaine, twenty-three alprazolam pills, and one tablet of oxycodone. (R. pp. 250-251; pp. 263-270).

Subsequently, Applicant was indicted for trafficking in cocaine base, possession of cocaine with intent to distribute, possession of alprazolam with intent to distribute, possession of oxycodone, and possession of a firearm during the commission of a violent crime, and Applicant proceeded to trial. (R. pp. 21-22; pp. 447-458). At the outset of trial, defense counsel indicated he intended to challenge the admission of Applicant's incriminating out-of-court statement, and the trial judge conducted an in camera hearing on the matter. (R. p. 23; p. 27). During the hearing, Sergeant Michaud testified about his interview of Applicant at the time the search warrant was executed at his residence, confirmed he informed Applicant of his rights at the beginning of the interview, and noted Applicant affirmatively stated he understood his rights before speaking with the officer. (R. pp. 26-29). Additionally, Sergeant Michaud indicated he did not threaten

Applicant, use force on Applicant, draw his weapon on Applicant, touch Applicant, or make any promises to Applicant, during the course of the interview. (R. pp. 29-30). Likewise, he indicated Applicant did not appear to be under the influence of drugs or alcohol at the time of the interview and did not ask to speak with an attorney at any point during the course of the interview. (R. p. 29; p. 31). However, Sergeant Michaud readily acknowledged Applicant's statement was not recorded in any manner. (R. p. 31).

Following the presentation of Sergeant Michaud's testimony, defense counsel contended Applicant's statement was inadmissible, because no showing had allegedly been made establishing that Applicant validly waived his rights before speaking with the officer. (R. pp. 32-33). In response, the solicitor noted evidence had been presented establishing Applicant had, in fact, waived his rights before making a statement. (R. p. 33). After considering the arguments of counsel, the trial judge found by a preponderance of the evidence Applicant's out-of-court statement was voluntarily made and admissible. (R. p. 33).

At that point, defense counsel moved to suppress the evidence discovered during the search of Applicant's residence. (R. pp. 34-35). In support of the suppression motion, defense counsel contended no information was included in the search warrant affidavit to establish the reliability of the confidential informant, and nothing had been presented to establish the controlled drug buys from Applicant's residence actually occurred. (R. pp. 34-35). As a result, defense counsel maintained the search warrant affidavit failed to establish a probable cause basis supporting a conclusion drugs would be found in a search of the residence. (R. p. 35). In response, the solicitor asserted the search warrant affidavit contained information establishing that the officers had corroborated the information provided by the confidential informant, conducted surveillance, and conducted controlled buys. (R. pp. 35-36). Based on that included information, the solicitor

argued the search warrant affidavit established a probable cause basis supporting the issuance of the search warrant. (R. pp. 35-36). After considering the arguments of counsel, the trial judge denied the suppression motion and found the search warrant was properly issued, based on the corroboration of the information provided by the informant, the surveillance conducted by the officers, and the controlled buys performed at the residence. (R. pp. 36-37).

Thereafter, during trial, the officers from the Drug Task Force testified about the execution of the search warrant at the Miranda Circle residence and the discovery of drugs and other incriminating evidence during searches of both the residence and Applicant's person. (R. pp. 50-69; pp. 76-86; pp. 95-99; pp. 104-106; pp. 129-172). Additionally, Sergeant Michaud testified over objection about his interview of Applicant and the incriminating statement Applicant made during that interview. (R. pp. 215-233). The officer further confirmed Applicant freely made the incriminating statement, after he was informed of his rights, indicated he wished to speak with the officer, and voluntarily made a statement without being threatened, coerced, or promised anything. (R. pp. 217-221; p. 224). Furthermore, Renita Berry, the expert drug analyst who examined the evidence collected in Applicant's case, confirmed the substances discovered during the searches were crack cocaine, cocaine, alprazolam, and oxycodone; the incriminating items discovered during the searches were admitted into evidence over defense counsel's objection. (R. pp. 88-89; pp. 250-253; pp. 263-270; pp. 272-273).

Subsequently, at the conclusion of trial, the jury convicted Applicant of trafficking in cocaine base, possession of cocaine with intent to distribute, possession of alprazolam, and possession of oxycodone. (R. pp. 412-413). The trial judge then sentenced Applicant to an aggregate term of imprisonment of twenty-six years. (R. p. 425).

## ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Due Process/Brady Violation

- a. "Applicant was denied due process ... based upon the suppression of impeachment information concerning the officers involved in his case. Brady v. Maryland, 373 U.S. 83 (1963) and Riddle v. Ozmint, 631 S.E.2d 70 (2006).
- b. "The State presented testimony of several law enforcement officers during Applicant's criminal trial."
- c. "The State was aware of impeachment information concerning misconduct committed by law enforcement."
- d. "The State failed to disclose this information to Trial Counsel."
- e. "This suppression of impeachment information, material to the case, and favorable to Applicant, deprived Applicant of due process."

2. Due Process/Brady Violation – Suppression of impeachment information concerning third party guilt and actions of confidential informant used by law enforcement.

- a. "The State presented testimony concerning the constructive possession of drugs by Applicant."
- b. "The State was aware of exculpatory information and impeachment material indicating that the confidential informant purchased drugs from third parties at the same location in which Applicant was alleged to have constructively possessed the drugs in question."
- c. "The State failed to disclose this information to Trial Counsel."
- d. "This suppression of exculpatory information and impeachment material, material to the case and favorable to Applicant, deprived Applicant of due process."

3. Ineffective assistance of counsel based on Trial Counsel's failure to adequately challenge admission of evidence seized pursuant to a search warrant. Strickland v. Washington, 466 U.S. 668 (1984) and State v. Gentile, 646 S.E.2d 171 (Ct. App. 2007).

- a. "The State introduced evidence seized pursuant to a search warrant."
- b. "Trial Counsel failed to adequately argue the deficiencies in this warrant, including but not limited to the fact that the confidential informant was not searched before any alleged purchases, that the informant was caught carrying his own drugs in the car, would swap substances bought with substances he owned and that no real control was involved in the purchases supporting the warrant."
- c. "But for counsel's deficient performance, the outcome of the proceedings would have been different."

4. Ineffective assistance of counsel based upon Trial Counsel's failure to object to improper jury charges. Strickland; State v. Stukes, 787 S.E.2d 480 (2016).
  - a. "The trial court provided jury instructions regarding constructive possession."
  - b. "These instructions were provided multiple times during the instructions to the jury."
  - c. "These instructions constituted an improper comment on the facts."
  - d. "These instructions improperly lessened the State's burden of proof by conflating the elements of the offense."
  - e. "Trial Counsel failed to object to these instructions."
  - f. "But for counsel's deficient performance, the outcome of the proceedings would have been different."

#### **APPLICABLE LAW**

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, the applicant must prove that counsel's performance was deficient. *Id.*; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing Strickland,

466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. Further, this Court has had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Jared Newman (Applicant's trial counsel) and Lynorr Musser (solicitor) both gave highly credible testimony during the evidentiary hearing. Set forth below are the relevant findings of facts and conclusions of law, pursuant to S.C. Code Ann. §17-27-80 (1985).

#### ***Brady Violation (Law Enforcement Impeachment Evidence)***

Applicant alleges the Solicitor's Office committed a Brady violation and violated his Due Process rights, by failing to disclose impeachment information concerning misconduct committed by law enforcement officers that testified during the trial.

In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387, 1391 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching and not material. See Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence

been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

During the evidentiary hearing, Solicitor Musser was questioned extensively by PCR counsel as to her obligations to disclose information pursuant to Brady and specifically as to what impeachment evidence she had pertaining to law enforcement in this case. Solicitor Musser testified consistently that she was not aware of any misconduct by law enforcement prior to or during the course of the case. Solicitor Musser testified that she was not aware of any issues concerning Officer Michaud until well after the case, and there was no indication of misconduct prior to the case. Additionally, Solicitor Musser testified that she was not aware of any impeachment evidence related to Officer Lyndal allegedly lying on the search warrant used in the case. Solicitor Musser testified that she was not aware of any issues concerning Officer Strickland during the case. Further, Solicitor Musser testified that if there had been an indication or some reason to believe that there was misconduct, she would have looked into the matter and turned over the results if any Brady material was discovered. Ultimately, Solicitor Musser credibly testified that at no point did she have any impeachment evidence, nor was she aware of any, related to law enforcement in this case.

Applicant alleges that Solicitor Musser should have disclosed Officer Michaud's past incidents of misconduct and Officer Lyndahl's alleged misconduct obtaining the search warrant. In evaluating Applicant's post-trial Brady claim, this Court need only look to the first prong of Wolf. This Court acknowledges that there are three prongs to Wolf's analysis. However, if Applicant fails to prove one prong, the allegation is necessarily dismissed. Solicitor Musser credibly testified that she had no indication of any misconduct by law enforcement during or prior to this case. Solicitor Musser additionally testified that she does not go on fishing expeditions into

law enforcement personnel records for potential impeachment information. Further, Solicitor Musser testified that if she had information that there was potential misconduct, she would have investigated it and turned any Brady related findings over to the defense. Considering this credible testimony, and the fact that no other concrete evidence was presented by Applicant, this Court finds that Applicant has failed to meet his burden in regard to this allegation. Applicant has failed to prove that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. Wolf, 839 F.2d at 1391 (10th Cir. 1988) (emphasis added). Therefore, this Court dismisses this allegation with prejudice.

#### ***Brady Violation (Third Party Guilt)***

Applicant alleges the Solicitor's office committed a Brady violation by failing to disclose exculpatory information and impeachment material indicating that the confidential informant purchased drugs from third parties at the same location in which the Applicant was alleged to have constructively possessed the drugs in question.

As with the previous allegation, this Court will evaluate this allegation using the factors enumerated in Wolf to determine if Applicant has met his burden in proving a Brady violation in a post-trial proceeding. On cross-examination, Solicitor Musser testified on a similar line of questioning as the previous allegation about what information her office had concerning the confidential informant. Solicitor Musser consistently testified that she had no information about the confidential informant and was not even aware of the informant's real name. Solicitor Musser testified that she does not request confidential informant information and did not need to do so in this case. Solicitor Musser testified that this was not a "buy and bust" situation, but rather that the confidential informant made controlled buys used to support the issuance of the search warrant. Solicitor Musser testified that if she had information related to the confidential informant, she

would not have turned the information over, and defense counsel would have needed to file a motion to compel. Additionally, Solicitor Musser testified that she was not obligated under the law to turn over information related to the confidential informant because it was not material to law enforcement's search that day. Solicitor Musser testified that law enforcement corroborated the information given to them by the reliable confidential informant in obtaining their search warrant. Solicitor Musser testified that even if the confidential informant lied on this specific occasion, law enforcement would still have had reasonable belief to go forward with the warrant, based on their reliance on him in past dealings. Solicitor Musser testified that her argument, as it related to the search warrant, was that the Judge should consider the four corners of the document, and that the document had been corroborated by law enforcement.

Applicant presented an affidavit and testimony from the confidential informant (Edward Fields) during the evidentiary hearing. Fields testified that he bought drugs from several other people at the house which he had told law enforcement he purchased from the Applicant. Fields testified that law enforcement only searched his car for drugs one time, and he had likely made more than five drug buys in that time. Fields testified that he did not buy drugs from Applicant, and all of his purchases were made outside of the residence. Fields testified he told law enforcement that he did not buy drugs from Applicant, but he bought drugs from other people, and he did not buy drugs inside the residence. Fields testified he did not recall buying drugs from the residence within 72 hours of July 28, 2011, and law enforcement never showed him a picture of Applicant. Fields testified he was never approached by defense counsel or a solicitor during the case.

As with the previous allegation, this Court finds that Applicant has failed to meet his burden in proving that (1) the prosecution suppressed evidence, (2) the evidence would have been

favorable to the accused, **and** (3) the suppressed evidence is material. Wolf, 839 F.2d at 1391 (10th Cir. 1988) (emphasis added). Solicitor Musser credibly testified that she did not have any information related to the confidential informant, and she relied on the four corners of the search warrant. Even if this Court believed Mr. Fields, there is no evidence that Solicitor Musser had any indication that Mr. Fields made any misstatements to law enforcement or that law enforcement lied in an effort to obtain the search warrant. Solicitor Musser testified that she did not have information that Mr. Fields purchased drugs from third parties at the same location Applicant constructively possessed the drugs. In conclusion, this Court finds that Applicant has failed to prove that the prosecution suppressed any evidence which should have been turned over to the defense relating to the confidential informant. Therefore, this Court finds that Applicant has failed to meet his burden of proof and dismisses this allegation with prejudice.

#### ***Failure to Adequately Challenge Admission of Evidence***

Applicant alleges counsel was ineffective for failing to adequately challenge the admission of evidence seized pursuant to a search warrant. Applicant alleges counsel failed to adequately argue deficiencies in the warrant, including, but not limited to, the fact that the confidential informant was not searched before any alleged purchases, the informant was caught carrying his own drugs in the car, the informant would swap substances bought with substances he owned, and no real control was involved in the purchases supporting the warrant.

Counsel testified at the evidentiary hearing he did challenge the validity of the search warrant on the grounds that it was not sufficient for failing to set out the basis of the reliability and the basis of the informant's knowledge as to the information that he was giving. Counsel testified he is aware that this issue was raised on direct appeal and that the Court affirmed the convictions. Additionally, Counsel testified he was not provided any information about the confidential

informant and does not believe he was entitled to any information. Counsel testified it is his understanding that confidential informant information is not required to be turned over where they are used for controlled buys that provide basis for a warrant. Counsel testified he understands that if the State were to charge Applicant with the underlying controlled buy, the State would have to disclose the informant's information. Counsel testified you could potentially get information showing a buy or corroborating a buy, but that the informant's identity would be redacted. Counsel testified he did not request a Franks challenge in this case. Counsel, after being examined about the confidential informant's affidavit, testified that all of this information would have been very helpful to the defense at trial. Counsel testified he would have been better equipped to challenge the search warrant and would have had better evidence to present in regard to the third-party defense. Counsel testified he did not have the information from Mr. Field's affidavit, and it was not turned over to him from the solicitor.

Counsel was able to challenge the search warrant, albeit not as robustly, even without the information contained in Field's affidavit. Certainly, counsel would have liked to have had this information during the trial to be able to use in Applicant's defense, as was testified to during the evidentiary hearing. However, there was no legal basis for counsel to obtain this information on his own, and there was no obligation to turn over the confidential informant information in a case not involving the defendant being charged with the underlying controlled buy. Counsel testified that this information was also not turned over through Brady. However, Solicitor Musser testified that she also did not have this information during the trial. Counsel's inability to receive this information and the solicitor not having this information precludes counsel from being found deficient for failing to use this information to challenge the search warrant. This Court finds that counsel was not deficient for failing to obtain information he was not legally entitled to obtain.

This Court finds that Applicant has failed to meet his burden in showing any deficiency by counsel. Therefore, this Court finds this allegation to be dismissed with prejudice.

### ***Failure to Object to Jury Instruction***

Applicant alleges trial counsel was ineffective for failing to object to the trial court charging the jury on constructive possession, as it was an improper comment on the facts of the case.

Applicant argued at the evidentiary hearing that the constructive possession charge given by the trial court improperly commented on the facts by equating dominion and control of the premises with control over the drugs. Applicant argued that the charge improperly allows the jury to assume that if Applicant had control over the house, he automatically had control over the drugs that were found. Applicant contends that this charge improperly equates an element of the crime charged with a fact in the case. Applicant also conceded that the charge creates an inference the jury is allowed to make and that inferences are explicitly allowed by our courts. Applicant further conceded that there is currently no case law on point that would invalidate this charge specifically, but that the Supreme Court has invalidated other charges as improperly commenting on the facts of the case. Counsel testified that he does not like the charge generally, but that there is basis in the law to give the charge. Counsel further testified that he did not see anything at the time that would prevent the court from giving that charge. Counsel testified that the charge allows the jury to infer that if you are in control of the premises you are deduced to know what is on the premises. Counsel testified one could argue that it is an improper comment on the facts. Counsel further testified that one could argue that the charge improperly attributes weight to a fact as it relates to an element of the charge.

As of the time of the trial, and to-date, the constructive possession charge given by the trial court was good law. Applicant has failed to present any case law on point suggesting counsel should have objected to a proper jury instruction. Here, Applicant, in a collateral setting seeks for the first time for this court to declare the instruction, defining constructive possession, is a charge on the facts and that counsel was deficient in failing to challenge it. Counsel cannot be deficient in failing to object to an instruction which has been used, and no opinion of a court has concluded it was a violation of the State Constitution. See Teamer v. State, 416 S.C. 171, 183, 786 S.E.2d 109, 115 (2016) (“We have never required an attorney to be clairvoyant or anticipate changes in the law”). See United States v. McNamara, 74 F.3d 514, 516-17 (4th Cir. 1996) (holding trial counsel cannot be found deficient under Strickland where counsel failed to anticipate a subsequent change in the law) (collecting cases); see also Honeycutt v. Mahoney, 698 F.3d 213, 217 (4th Cir. 1983) (finding trial counsel was not deficient for not objecting to a malice charge that was correct under state law at the time it was given, despite persuasive authority from other jurisdictions calling the validity of the charge into question). Applicant has failed to show how counsel could be deficient for failing to object to a charge that is good law in South Carolina. Therefore, this Court finds that Applicant has failed to meet his burden of proof, and this allegation is dismissed with prejudice.

### CONCLUSION

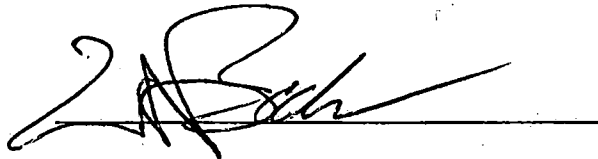
Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 7 day of November, 2019.



WILLIAM H. SEALS, JR.  
Presiding Judge  
Fourteenth Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP- 07-01621

TREVIN MILLEDGE, #0156046

STATE OF SOUTH CAROLINA

2020 JAN 22 PM 3:19

PLAINTIFF(S)

JERRI ANN ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (*CHECK REASON*):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (*CHECK REASON*):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: After careful and deliberate consideration of the evidence presented at the post-conviction relief hearing, the case law and proposed orders the Court is hereby denying Applicant's Rule 59 Motion to Alter or Amend.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

RECEIVED JAN 25 2020

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the 22<sup>nd</sup> day of Jan, 2020 and a copy mailed first class or placed in the appropriate attorney's box on this 23<sup>rd</sup> day of JAN, 2020 to attorneys of record or to parties (when appearing pro se) as follows:

J. A. Brown, Jr

S. Gunton

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

[Signature]  
CLERK OF COURT

**Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Multiple horizontal lines for providing additional information regarding the decision.

*J. A. Saha*  
2157

1/20/2020

**RECEIVED**

**FEB 21 2020**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Honorable William H. Seals, Jr.

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Case Number: 2018-CP-07-01621  
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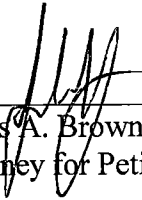
Trevin Milledge.....Petitioner

v.

State of South Carolina.....Respondent

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**PROOF OF SERVICE**  
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Counsel for Trevin Milledge hereby certifies that he has prepared and served a Motion to be Relieved on this 19<sup>th</sup> day of February, 2020, upon the State, as specified in S.C. Code Section 203 (b) (1) , by depositing a copy, postage pre-paid, in the United States Mail, addressed to Attorney for Respondent, Benjamin Limbaugh, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211-11549, (803) 734-3970.

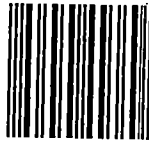
\_\_\_\_\_  
  
James A. Brown, Jr.  
Attorney for Petitioner

February 19, 2020

Law Offices of Jim Brown, PA  
1600 Burnside St., Suite 100  
P.O. Box 592  
Beaufort, South Carolina 29901  
(843) 470-0003



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R2304H109039-24

The Honorable Daniel E. Shearouse  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211