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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to Berkeley County
Court of Common Pleas
The Honorable Bentley Price, Post-Conviction Relief Judge
The Honorable Roger M. Young, Sr., Trial Judge

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Jul 08 2021

S.C. SUPREME COURT

Appellate Case No. 2021-000089

Joseph T. Rowland, #2900065,

Respondent,

vs.

State of South Carolina,

Petitioner.

APPENDIX

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THE STATE OF SOUTH CAROLINA
THE COUNTY OF CHARLESTON

) THE COURT OF COMMON PLEAS
) 9TH. JUDICIAL CIRCUIT
)
)
)

JOSEPH TODD ROWLAND,

APPLICANT

) CASE 2018-CP-10-4545
)
)

Vs.

) AFFIDAVIT OF FACTS GIVING
) JUDICIAL NOTICE; MOTION TO
) RELIEVE COUNSEL; NOTICE OF
) INTENT TO ACT PRO SE IN ALL
) POST PROCEEDINGS AND MOTION
) TO MOTION THEREFOR
)
)

THE STATE OF SOUTH CAROLINA
RESPONDENT

TO: THE CHARLESTON COUNTY COURT OF COMMON PLEAS,
ATTORNEY JAMES FALK,
THE S.C. ATTORNEY GENERAL ET. AL.,

THE APPLICANT GIVES THE COURT OF COMMON PLEAS
AND ALL PARTIES JUDICIAL NOTICE. HERE THE COURT AND PARTIES
WILL FIND:

(1) A COPY OF THE AMENDED PCR APPLICATION FOR THIS CASE.
PER THE LETTER SENT TO ME DATED APRIL 24, 2019 FROM ATTORNEY
FALK. ATTORNEY FALK GAVE ME HIS WORD THAT HE WOULD ENSURE THAT
MY AMENDED PCR APPLICATION WILL BE TIMELY FILED IN THE COURT
OF COMMON PLEAS RELATED TO THESE MATTERS. A COPY OF THE SOUGHT
FILED AMENDED PCR APPLICATION IS SERVED ON ATTORNEY FALK ATTACHED
TO THIS DOCUMENT. HE IS TO ENSURE THAT IT IS FILED WITHIN THIS
CASE AND SERVED UPON ALL NECESSARY PARTIES. THIS DOCUMENT ESTA-
BLISHES SUBJECT MATTER JURISDICTION, DUE PROCESS, FRAUD UPON
THE COURT, PROSECUTIONAL MISCONDUCT, CONSTITUTIONAL CLAIMS AND
OBJECTIONS TO ALL THE CONCERNS RAISED IN THE RESPONDENT'S RE-

PRO SE IF ATTORNEY FALK FAILS TO TIMELY FILE THE AMENDED PCR APPLICATION I SENT HIM? WITH ALL DUE RESPECT, I MOTION TO RELIEVE HIM AS MY COUNSEL AND I MOTION THAT THE COURT OF COMMON PLEAS JUDGE APPOINT SUBSEQUENT COUNSEL FOR THE APPLICANT WHO WILL FILE MY AMENDED PCR APPLICATION AND SEEK FULL AND PROPER REVIEW OF ALL ISSUES PRESENTED WHICH IS MY DUE PROCESS AND CONSTITUTIONAL RIGHT.

EVEN THOUGH THE RESPONDENT ELOQUENTLY QUOTED THE STATUTE ASSERTING THAT ONLY THE ATTORNEY CAN SUBMIT BEFORE THIS COURT. THE ATTORNEY IS SERVED THE AMENDED PCR APPLICATION. THEREUPON I INVOKE THE PROVISIONS OF MARTINEZ V. RYAN. IN MARTINEZ V. RYAN, THE UNITED STATES SUPREME COURT DETERMINED THAT THOUGH THERE MAY BE NO HYBRID-DEFENSE. THE STATE APPOINTED ATTORNEY IS REQUIRED BY DUE PROCESS LAW AND THE U.S. CONSTITUTION TO PRESENT VIABLE ISSUES THAT THE APPLICANT SEEKS TO PLACE BEFORE THIS COURT. BY NO MEANS DO I WAIVE ANY ISSUE THAT I SEEK TO PRESENT VIA THE AMENDED PCR APPLICATION ALSO DUE TO THE FACT THAT THE BURDEN OF PROOF DURING PCR PROCEEDINGS IS ON THE APPLICANT, NOT THE PCR ATTORNEY FOR THE APPLICANT. DESPITE THE CITED STATUTE BY THE RESPONDENT, THE BURDEN IS STILL ON THE APPLICANT, NOT THE ATTORNEY WHOM BY LAW IS REQUIRED TO ACT AS MY ADVOCATE. ANY ATTEMPT BY ATTORNEY FALK, THE COURT OR THE S.C. ATTORNEY GENERAL TO PREVENT REVIEW OF ANY ISSUE PRESENTED SHALL BE VIEWED AS AN ACT OF FRAUD UPON THE COURT WHERE BY SUCH AN ATTEMPTED ACT. I OFFICIALLY MOTION TO RELIEVE THAT STATE APPOINTED COUNSEL AND TO HAVE SUBSEQUENT COUNSEL APPOINTED TO REPRESENT THE APPLICANT.

I GIVE THE COURT AND PARTIES ADDITIONAL JUDICIAL NOTICE. TO PREVENT ANY ATTEMPT AT FRAUD UPON THE COURT WHERE THE STATE ACTORS WOULD MORE THAN LIKELY IN FRAUD SEEK TO APPEAL THIS CASE TO PREVENT ME FROM TIMELY FILING POST MOTIONS UNDER RULE 59e OR 60(b)(3). ONCE A HEARING IS CONDUCTED IN THIS CASE. I MOTION TO OFFICIALLY INVOKE MY DUE PROCESS RIGHT TO ACT PRO SE FOR ANY POST PROCEEDING AND SEEK THAT ATTORNEY FALK SEEK TO RELIEVE HIMSELF AS LEGAL COUNSEL TO ALLOW ME TO EXERCISE THAT CONSTITUTIONAL RIGHT. BY NO MEANS DO I DESIRE THAT ATTORNEY FALK FILE AN APPEAL ON MY BEHALF. APPOINTED COUNSEL MUST RESPECT MY WISHES.

AT ANY SIGN OF FRAUD UPON THE COURT OR PARTIES I AM OFFICIALLY EXERCISING MY CONSTITUTIONAL RIGHT TO ACT PRO SE. I WANT ALL POST PROCEEDING MOTIONS THAT I DESIRE TO BE FILED, FILED WITHOUT RESISTANCE OR OPPOSITION. THIS INCLUDES ANY SOUGHT MOTION FOR REHEARING OR THE FILING OF RULE 59E AND OR 60(b)(3) MOTIONS. BY NO MEANS DO I OFFICIALLY WAIVE MY RIGHT TO ACT PRO SE AT THIS STAGE BASED UPON ANY ACT OF FRAUD UPON THE COURT THAT MAY POTENTIALLY MANIFEST ITSELF. ALL ACTS, ORDERS, DECREES OR JUDGMENTS MAY BE COLLATERALLY ATTACKED FOR FRAUD UPON THE COURT. THIS APPLIES TO ALL ACTS, ORDERS, JUDGMENTS OR DECREES OF "ALL" COURTS. A CLAIM OF HYBRID-DEFENSE IS A PROCEDURAL LIMITATION. AN ATTACK FOR FRAUD UPON THE COURT IS FREE OF ALL PROCEDURAL LIMITATION. ANY CLAIM RELATED TO THE STATUTE CITED BY THE RESPONDENT OR HYBRID-DEFENSE WOULD BE MOOT SINCE FRAUD VITIATES EVERYTHING THAT IT ENTERS MAKING THE PROCEEDINGS UNCONSTITUTIONAL VOIDING THE PCR COURT'S JURISDICTION, MYLES-v.-DOMINOS-PIZZA, LLC, 2017 WL 238436(D.C.Miss.2017); FIRST-TECHNOLOGY-CAPITAL INC.-v.-BANCTEC-INC. 2016 WL 7444943(D.C.Ky.2016); IN-RE:-GEN-ESYS-DATA-TECHNOLOGIES-INC. 204 F3d. 124 (4th.Cir.2000); UNITED STATES-v.-CONRAD, 675 Fed. Appx' 264, 265 CA4 (N.C.2017); FOX EX-REL-FOX-v.-ELK-RUN-COAL-CO.-INC. 739 F3d. 131, 87 Fed. R. SERV.3d. 19 (2014).

RESPECTFULLY,
JOSEPH TODD ROWLAND

APRIL 30, 2019



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JOSEPH T. DOWLAND

#290065 EDISTO A-59

LIEBER C.I. P.O. BOX 205

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MAY 06 2019

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S.C. DEPARTMENT OF CORRECTI

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STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	DOCKET NO. 2018-CP-10-4545
)	
)	
JOSEPH T. ROWLAND)	
)	
Applicant)	
)	
vs.)	
)	
STATE OF SOUTH CAROLINA)	
)	
Respondent)	
)	
)	
)	
	)	TRANSCRIPT OF RECORD

September 30, 2019
Charleston, South Carolina

B E F O R E:

THE HONORABLE BENTLEY PRICE, JUDGE

A P P E A R A N C E S:

JAMES K. FALK, ESQ.
Attorney for the Applicant

BENJAMIN LIMBAUGH, ESQ.
Attorney for the State

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

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PROCEEDINGS

THE COURT: All right. Good morning, Mr. Rowland.
How are you?

MR. ROWLAND: I'm all right.

THE COURT: All right. So we are here today for
your post-conviction relief hearing. However, the State
has not been able to procure Mr. Runyon. But, in your
PCR application you had indicated that your appellate
attorney was Mr. Mark Peper, is that correct?

MR. ROWLAND: Yes, sir.

THE COURT: All right. And are you asserting any
ineffectiveness as to Mr. Peper or just as to Mr. Runyon?

MR. ROWLAND: I'm not here to throw Mr. Peper under
the bus or nothing like that. I just felt like he could
have did more of an argument on my indictment issues.
But, I feel like the brief he put together was a strong
brief. And if it would have got ruled and adjudicated on
I would have been home right now if the search warrant
was thrown out.

THE COURT: All right ---

MR. ROWLAND: --- so Peper did do his job in it.

THE COURT: All right. And Mr. Falk, yes, sir;
I'll be happy to hear from you.

MR. FALK: Yes, just to sort of clarify for the
Court's sake but for the failure to preserve the issues

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1 we think that Mr. Peper filed an excellent brief. He
2 would have gotten the relief he was looking for.

3 THE COURT: All right. I'll deny any relief as to
4 Mr. Peper and I'm going to release him, okay Mr. Rowland?

5 MR. ROWLAND: All right. Where is -- Mr. Runyon
6 couldn't be here today?

7 THE COURT: We're still trying to find him.
8 Allegedly he's here somewhere but we can't find him.
9 We're still looking for him. Mr. Peper, you're free to
10 go.

11 MR. PEPER: Thank you, Judge.

12 THE COURT: Yes, sir. Thank you.

13 [Whereupon, Mr. Peper exits the courtroom]

14 THE COURT: All right. I guess what we're going to
15 do is -- I mean you talked to him on Friday and he said
16 that he was going to be here and wanted to know if he
17 could go last. The office said he left a long time ago.
18 Why don't you call his office and say that he needs to be
19 here by 11:30. All right. We'll be in recess.

20 [Whereupon, Court is in recess from 10:55 a.m. until
21 11:35 a.m.]

22 THE COURT: All right. Mr. Limbaugh, are you ready
23 to proceed?

24 MR. LIMBAUGH: Yes sir, Your Honor.

25 THE COURT: All right.

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1 MR. LIMBAUGH: May it please the Court?

2 THE COURT: Absolutely, yes sir.

3 MR. LIMBAUGH: This is the case of Joseph Rowland,
4 case number 2018-CP-10-4545. Applicant is presently
5 confined in the South Carolina Department of Corrections
6 pursuant to orders of commitment of the Charleston County
7 Clerk of Court.

8 On June 3rd, 2011 Applicant Joseph Rowland was
9 arrested following a narcotics investigation that led to
10 the discovery of cocaine and marijuana in his residence.
11 In April of 2012 Applicant was indicted by the Charleston
12 County Grand Jury for one count of trafficking cocaine,
13 one count of possession of marijuana with intent to
14 distribute, one count of possession of a firearm during
15 the commission of a violent crime, and one count of
16 unlawful possession of a stolen pistol.

17 On May 12th, 2014 a jury trial was commenced in
18 Charleston County Court of General Sessions with the
19 Honorable Roger M. Young, Sr., Circuit Court judge
20 presiding.

21 During trial the trial judge granted directed
22 verdict as to the unlawful possession of a stolen pistol
23 charge. Thereafter at the conclusion of the trial the
24 jury convicted Applicant on the three remaining indicted
25 offenses. Following the verdict the trial judge

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1 sentenced Applicant to concurrent terms of imprisonment
2 of 20 years for trafficking in cocaine, five years for
3 possession of marijuana with intent to distribute and
4 five years for the possession of a firearm during the
5 commission of a violent crime.

6 Applicant filed a timely notice of appeal. Mark
7 Peper, Esquire of the Office of Appellate Defense
8 perfected the appeal. The South Carolina Court of
9 Appeals affirmed Applicant's conviction on May 24th,
10 2017. The remittitur was returned to the Circuit Court
11 on April 17th, 2018.

12 Applicant filed his post-conviction relief
13 application initially alleging ineffective of counsel
14 Fourth, Fifth, Sixth, Thirteenth, Fourteenth, Fifteenth
15 Amendment violations, subject matter jurisdiction, due
16 process violations, fraud upon the Court, newly
17 discovered evidence, and prosecutorial misconduct.

18 I'll hand it over to his counsel, Mr. Jim Falk, to
19 put the allegations that he is going to go forward with
20 on the record, Your Honor.

21 THE COURT: All right. Yes, sir?

22 MR. FALK: Your Honor, I filed an amended PCR
23 application in this case. Do you have a copy of that?

24 [Whereupon, the Court reviews documents]

25 THE COURT: I do not. I have read everything. I

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1 read obviously the application and the returns. Let me
2 just, if you don't mind, I'll take a look at the amended
3 real briefly to see what grounds in which he intends to
4 go forward on.

5 MR. FALK: Or I can just read it in for that
6 matter.

7 THE COURT: Oh, it doesn't matter.

8 [Whereupon, Mr. Falk provides documents to the
9 Court]

10 [Whereupon, the Court reviews documents]

11 MR. FALK: Your Honor, Mr. Limbaugh has indicated
12 that he doesn't have a copy. I believe I sent a copy; I
13 filed it and emailed him a copy also. But if he doesn't
14 have it I will give him an opportunity to look at it.

15 [Whereupon, Mr. Falk provides documents to Mr.
16 Limbaugh]

17 [Whereupon, Mr. Limbaugh reviews documents]

18 MR. FALK: Your Honor, if I may?

19 THE COURT: Absolutely.

20 MR. FALK: And so my client has filed an amended
21 PCR application. He filed it around July 17th of this
22 year.

23 THE COURT: Okay.

24 MR. FALK: So in order to add to the claims and
25 maybe clarify some of the claims that counsel -- that

1 Applicant made they are as follows:

2 The SIU officer executing the search warrant failed
3 to leave a copy of the search warrant affidavit with
4 people at the house, at the residence. And we believe
5 that is a violation of South Carolina Code 17-13-150. We
6 also believe it is a Fourth Amendment violation and also
7 a violation of section 10 Article 1 of the South Carolina
8 Constitution.

9 And also we believe that the SIU officers executing
10 the search warrant were not even in possession of the
11 affidavit when they were serving the warrant. We believe
12 the SIU officer at the premises the probable cause search
13 the premises in part upon the statement provided by a
14 driver of a blue Honda Accord who allegedly was seen to
15 have been involved in the hand to hand transaction at the
16 location before being stopped by Charleston Police
17 Department after leaving the residence, and also upon
18 numerous complaints from unidentified individuals over
19 the past six months.

20 Other than the statement of the driver there was no
21 proof that there were -- there is no proof that there
22 were drugs in the vehicle prior to stopping the vehicle.
23 And also the operator of the motor vehicle certainly had
24 an incentive to lie. So, I guess we're challenging some
25 of the probable cause for the warrant here. And we also

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September 30, 2019

1 have a challenge about the testimony regarding numerous
2 complaints of drug activity in the area. There was no
3 proof regarding the reliability of any of these supposed
4 anonymous informants who were talking about the drug
5 activity in the area. And there was no proof that any of
6 these informants ever saw drugs in the residence.

7 We also believe that trial counsel was ineffective.
8 So there was a suppression hearing held at the beginning
9 of the case. And the trial court ultimately elected or
10 ruled that the evidence would be admitted without being
11 suppressed. So the suppression motion was overruled.

12 However, trial counsel failed to renew his objection
13 to the warrantless, to the reasonableness of the search,
14 that probable cause for the search; any of that. He
15 failed to renew his objections while the evidence was
16 being introduced. As a result those issues were not
17 preserved for appellate review.

18 The opinion by the Court of Appeals in this case
19 sets forth basically that issues that are not raised,
20 that are not preserved cannot be addressed on appeal just
21 because of admission. And they also cite State v Smith
22 for the point State v Smith, which is 337 S.C. 27 for the
23 proposition that a ruling in limine is not final unless
24 objection is made at the time the evidence is offered and
25 a final ruling procured the issue is not preserved for

1 appellate review. So I mean we had that problem. We
2 also believe that trial counsel was ineffective for
3 failing to call John Rowland, Janis Rowland, or Leroy
4 Rowland to the stand. John Rowland could have, would have
5 had he had the opportunity to would -- had he testified
6 at the suppression hearing he could have testified that
7 he had no conversations with Officer Ratliff regarding
8 his brother's activities.

9 Officer Ratliff said that he had talked to the
10 brother and the brother told him that Joseph Rowland was
11 at the house dealing drugs. John Ratliff [sic] would
12 have testified that that was totally fabricated. He
13 would have also testified and he would have claimed
14 ownership for the cocaine that was found at the house.

15 We are alleging that the Solicitor's office engaged
16 in reckless conduct by allowing Officer Ratliff to
17 testify that the Applicant was at the residence at the
18 time the search warrant was served and that the applicant
19 was given a search warrant affidavit.

20 This testimony was directly contradicted and in the
21 record by other testimony. We believe that trial counsel
22 was also ineffective for not raising that during his
23 cross-examination of Officer Ratliff. Trial counsel
24 would have -- Leroy Rowland would have testified as a
25 witness and he would have testified had he owned a weapon

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1 that was found inside the house. And when we're talking
2 about the newly discovered evidence that's really what
3 we're talking about would be the testimony of John
4 Rowland regarding the ownership of the cocaine found in
5 the house.

6 THE COURT: Alrighty. Thank you.

7 MR. FALK: So as far as, in order could we just
8 address the non-preserved issue, the issue preservation
9 question we had. If I could just go through that, if the
10 Court would look at page 125 of the transcript at lines
11 14 and 16 and lines 22 and 23.

12 THE COURT: What was the original page?

13 MR. FALK: 125 of the transcript.

14 [Whereupon, the Court reviews documents]

15 THE COURT: I've got it.

16 MR. FALK: Okay. So at that point in the trial the
17 State was introducing evidence, photographic evidence of
18 the scale that was found inside the house. There was no
19 objection made at that time because the scale was fruits
20 of the search of the house.

21 On page 126, lines 16 to 17 there is testimony
22 regarding a photograph of a ledger that was taken.

23 THE COURT: Okay.

24 MR. FALK: Again on 126 lines 20 to 21 there is a
25 discussion of cocaine that was found in the house. This

1 is all photographic evidence. Page 127, lines 10 and
2 then again 13 through 14 testimony regarding the gun that
3 was found in the house.

4 More testimony about cocaine at page 128 lines two
5 to three. There is testimony regarding marijuana found
6 at page 128 lines 10 and then again at 13 through 14.
7 Currency on page 128; currency that was found inside the
8 house, lines 19 through 24 and then again on page 129
9 lines six through 16.

10 Then on page 130 there is a discussion of a scale
11 that was described as being disguised as being an iPhone.
12 Again, this was a photograph and that was on lines 18 and
13 19. So this is all evidence that was highly prejudicial
14 that the jury saw. And as the Court can see there is no
15 contemporaneous objection to the admission of any of that
16 testimony.

17 Going further there is a lab report on page 157. On
18 page 171 there is testimony of the weights of the cocaine
19 that was analyzed. On page 175 there is testimony of
20 what William Olsen found when he went into bedroom number
21 two. And on page 185 there is testimony about what he
22 saw and what he found in the house.

23 So this is all information that is highly
24 prejudicial, all fruits of the search and seizure and
25 whether or not that was lawful, whether that was a lawful

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1 search and seizure that issue was not preserved for
2 appeal.

3 As far as reaching the prejudice prong here we
4 believe that the failure to make the contemporaneous
5 objection sort of hits the first prong of the prejudice
6 prong. And as far as whether or not the failure to
7 prove prejudicial we would ask the Court to look at the
8 final brief of appellate that was filed on appeal by Mr.
9 Peper. And we would stand on the argument he raised for
10 -- have you been provided that; his appellate brief?

11 THE COURT: I don't believe I have the record on
12 appeal. But I don't know if I have the appellate brief
13 itself.

14 MR. FALK: It should be in the packet but otherwise
15 you can have this copy.

16 THE COURT: All right.

17 [Whereupon, the Court reviews documents]

18 THE COURT: I've got it right here.

19 MR. FALK: Okay. So we would rely on the arguments
20 that Mr. Peper made there as far as whether or not there
21 was a meritorious issue. And we believe that relief
22 would have been granted but for the fact that the issue
23 was not preserved for review.

24 THE COURT: Alrighty.

25 [Whereupon, Mr. Falk confers with his client]

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1 MR. FALK: So moving on to other issues we would
2 like to call -- I'd like to call Mr. Rowland to the
3 stand.

4 THE COURT: All right. Mr. Rowland, if you'll go
5 ahead and come on up.

6 [Whereupon, Mr. Joseph Rowland comes forward]

7 [Whereupon, the witness is duly sworn by the Clerk
8 of Court]

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Joseph T. Rowland v State of S.C.
Post-Conviction Relief-Joseph Rowland-Direct Examination by Mr. Falk
September 30, 2019

1 JOSEPH ROWLAND,
2 Having been first duly sworn,
3 Was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. FALK:
6 Q. Mr. Rowland, I'm going to ask you a couple of
7 questions. Did you -- well, first of all were you
8 present when the search warrant was served on the
9 residence?
10 A. No sir, I was down the street. I was pulled over in
11 a traffic stop a couple of blocks away from my mother's
12 residence, which I have exculpatory evidence in the
13 documentary evidence within the Rule 5 Motion for
14 Discovery to prove that, which I want entered to the
15 Clerk.
16 And I also have preliminary hearing transcript to
17 prove I was not at the house during the time the search
18 warrant was being excluded.
19 Q. Was being executed ---
20 A. --- executed. Yes, sir.
21 Q. Okay. And was that your residence?
22 A. Yes, sir.
23 Q. So the 31 was your residence?
24 A. Yes, sir.
25 Q. Did you have conversations with your trial lawyer

1 about witnesses that you wanted to testify on your
2 behalf?

3 A. Yeah. I wanted my brother to testify because
4 Officer Ratliff omitted false alleged facts in the search
5 warrant affidavit in his oral supplement claiming my
6 brother spoke with him in the past saying that he had
7 reliable tips of him saying that I was involved in drug
8 activity in the past, which was a total lie which he is
9 here to testify to refute those matters. And then ---

10 Q. --- so you believe that part of Officer Ratliff's
11 justification for the search warrant was the fact that he
12 said that he had conversations with your brother about
13 your drug activity, is that correct?

14 A. Yeah. That was based upon yeah, that was his
15 reasons for his investigative purposes I guess but he
16 used that as a material fact in establishing his probable
17 cause for the search warrant.

18 Q. And did you tell him to go and speak with -- what's
19 your brother's name?

20 A. John Rowland; that's my twin brother.

21 Q. And y'all aren't -- you look an awful lot alike but
22 y'all aren't twins.

23 A. Yeah, we twins.

24 Q. Okay. And you asked Mr. Runyon to speak with John?

25 A. Yes, sir.

Joseph T. Rowland v State of S.C.
Post-Conviction Relief-Joseph Rowland-Direct Examination by Mr. Falk
September 30, 2019

1 Q. And did you ask him to be present so that John could
2 testify at the suppression hearing?

3 A. Yes, sir.

4 Q. Do you know why he was not there?

5 A. I don't know sir. He was supposed to call him as a
6 witness to testify on my behalf.

7 Q. And what else did you want him to testify to?

8 A. My brother?

9 Q. Yes.

10 A. That they were his drugs because he was present at
11 the house during the time of the search warrant. And I
12 was down the street. And he's here today to tell you the
13 truth that those drugs are his, which I got charged for.

14 Q. And so you had this conversation with Mr. Runyon?

15 A. Yes, sir.

16 Q. Okay. And what about the gun that was found inside
17 the house?

18 A. The gun was my father's gun.

19 Q. Did you have that discussion with Mr. Runyon?

20 A. Yes. He had a written statement that he never even
21 introduced as evidence at trial.

22 Q. And what do you think the statement said? It was
23 your father's statement it was his gun ---

24 A. --- yeah, he claimed ownership of the gun.

25 Q. Okay.

1 A. My fingerprints were not found on that gun. I had
2 no right to access dominion and control over that gun. I
3 was not at the premises.

4 They fraudulently put me at the scene at the
5 premises two hours later after the search was conducted
6 to place me at the scene to try to link constructive
7 possession and link dominion and control.

8 That's what Detective Ratliff did. And Stephanie
9 Bianco Linder engaged further in the fraud by allowing
10 him to do that; staying silent on the issue, which
11 resulted in prosecutor misconduct.

12 Q. So it's your belief is that when Doctor -- when
13 Officer Ratliff testified and I believe it's on
14 transcript page 66 line 10 through 67 -- excuse me.

15 Starting at line 10 and carrying on to page 67 line
16 16 where he was testifying there and he was saying that
17 you were present at the house but you were not.

18 A. No. I have the preliminary hearing transcript of
19 the same officer, Detective Ratliff testimony at
20 preliminary hearing when Andy Savage was my lawyer where
21 he said I was not present at the house.

22 And I wanted that introduced as evidence to prove
23 the fact of the matter I was not there. And I have Rule
24 5 exculpatory evidence proving by the officer that pulled
25 me over at the traffic stop that I was down a couple of

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1 streets over.

2 Q. Let me -- I'm going to show you a copy of what I
3 believe is the preliminary hearing transcript.

4 MR. FALK: Your Honor, we're going to want to make
5 the copy of the preliminary hearing transcript a part of
6 the record in this appeal.

7 THE COURT: Okay.

8 [Whereupon, the witness is shown document]

9 Q. [Mr. Falk] Now, if you would look at page 6, line 6
10 through 12 ---

11 THE COURT: --- are you submitting it now as
12 evidence?

13 MR. FALK: I want him first to ---

14 THE COURT: Okay.

15 Q. [Mr. Falk] First of all what are you looking at
16 right now?

17 A. I'm looking at page six.

18 Q. I'm sorry; the document I handed you what is that?

19 A. It's the preliminary hearing transcript.

20 Q. And look at the cover page it will tell you the
21 dates of the hearing.

22 A. It's dated June 27, 2011.

23 Q. Okay.

24 A. State of South Carolina versus Joseph Todd Rowland
25 preliminary hearing transcript.

1 Q. And you said Andy Savage was representing you at
2 that time.

3 A. Andy Savage was my lawyer.

4 Q. Okay. And if you're reading over it is that your
5 recollection of the testimony that was said at the
6 preliminary hearing? I mean you think this is an
7 accurate representation of the transcript?

8 A. Well, this is the certified transcript.

9 Q. Okay, fair enough.

10 MR. FALK: Your Honor, we would ask to admit this I
11 guess as our Applicant's Exhibit 1.

12 THE COURT: Alrighty. Any objection?

13 MR. LIMBAUGH: No objection, Your Honor.

14 THE COURT: All right, without objection.

15 THE COURT REPORTER: Can I mark it Mr. Falk?

16 MR. FALK: Yes.

17 A. --- pertaining to the question you asked me
18 regarding ---

19 Q. [Mr. Falk] --- stop for just a second.

20 [Whereupon, Applicant's exhibit number 1 is marked
21 by the court reporter]

22 [Whereupon, Applicant's exhibit number 1 is entered
23 into evidence by the Court]

24 Q. [Mr. Falk] Okay. You're looking at what now has
25 been marked as our exhibit number 1; Applicant's exhibit

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1 number 1.

2 [Whereupon, the witness reviews document]

3 Q. Now, if you look at line 12 there is a discussion on
4 whether or not -- first of all, who is testifying there?

5 A. Well, it's Andy Savage and Officer Detective
6 Ratliff.

7 Q. Okay. And does he not, does Ratliff not say that he
8 was -- that you were not present at the time the search
9 warrant was served?

10 A. You're on the wrong page. You need to be looking at
11 page 7 which says when I'm not at the house. You're
12 looking at the part six where it says the affidavit was
13 not left at the residence.

14 Q. Okay. I'm sorry.

15 A. Okay. Page 7 pertains to that matter. And it says
16 line 4 when you searched the house did you identify who
17 occupied the house at that time? Detective Ratliff at
18 line 6 says yes sir. We knew that the defendant from
19 information we had gathered we knew the defendant lived
20 there along with his parents.

21 All right. And Andy Savage asked him, prior to
22 obtaining the arrest warrant were any other parties
23 residing at the house interviewed? No, sir. The Court
24 said, interview? Mr. Savage says yes. Line 15
25 specifically Andy Savage asked Detective Ratliff was

1 anybody present at the house? Line 16, yes his, It just
2 says line line at the time the search warrant was
3 executed Mr. Savage says yes.

4 During the search warrant his brother, John, his
5 girlfriend Jennifer and the two children. They were
6 present at the house? Yes, sir.

7 My neighbors never mentioned any of it because I was
8 not present at the house during the time the search
9 warrant was executed ---

10 Q. --- okay. So that's what -- so his -- based on the
11 preliminary hearing testimony Officer Ratliff testified
12 that you were not present at the house.

13 A. Correct, sir.

14 Q. And he also testified that he did not leave a copy
15 of the warrant affidavit, is that correct?

16 A. Yes. On page 5 Detective Ratliff admitted he did
17 not leave an affidavit for the search warrant at the
18 house.

19 Q. Okay.

20 A. But the reason which we're establishing prejudice
21 because of that the reason why he said he didn't leave
22 the search warrant affidavit at the house was because he
23 was protecting an informant, a witness. So, that's on
24 page, let me see...

25 Q. But it's still I mean, your point is still that

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1 under the statute he's required to leave both the
2 affidavit ---

3 A. --- yes, under statute 17-13-150 he's required by
4 law to leave the affidavit at the house to give the
5 people of the search as reasons in scope of probable
6 cause to inform me, the Applicant, of my rights and my
7 parents' rights of the scope of probable cause of the
8 warrant and its reasons for search.

9 Q. And that would be directly in conflict with his,
10 Officer Ratliff's testimony at trial on page 66 lines 10
11 continuing on to 67 line 16 where he said that you were
12 present.

13 A. What page are you on now?

14 Q. I'm on now the trial transcript.

15 A. Oh, the trial transcript yes, he said I was present
16 at the house to place me at the scene.

17 Q. And he also during his trial transcript page 62
18 lines two through five is where he said, Officer Ratliff
19 testified that he said that he left the affidavit.

20 A. Correct.

21 Q. And that's in conflict with the testimony that he
22 gave ---

23 A. --- with his testimony given at preliminary hearing
24 matters.

25 Q. And your trial counsel did not object to that.

1 A. My trial counsel did not object to that. And I
2 discussed this matter with him but he stayed silent on
3 the issue and waived my Fourth Amendment constitutional
4 right.

5 And by that act alone was an act of fraud. And
6 fraud vitiates everything because he had knowledge of
7 that material fact that affidavit was not incorporated
8 into the search warrant and left at that residence.

9 Q. And also he did not cross-examine Officer Ratliff
10 regarding his prior inconsistent statement.

11 A. No, sir.

12 Q. The documents that you wanted to introduce that you
13 have ---

14 A. --- yes, sir ---

15 Q. --- can you describe them?

16 A. Well, for the matter I want my preliminary hearing
17 transcript.

18 Q. Well, then you already have that.

19 A. Yeah, I understand that. I've got the informant
20 Larry Adams written statement, which does establish the
21 reliability of an informant.

22 Q. So that's part of your Rule 5 that you were ---

23 A. --- part of my Rule 5, yeah. I've got exculpatory
24 evidence in the case supplemental report proving that I
25 was down the street detained in a traffic stop. It says

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1 on June 6, 2011 at approximately 17:27 hours radio
2 initiated traffic stop intersection of Palmetto Park
3 Drive and Woodleaf Court on a 2001 Cadillac bearing South
4 Carolina tag EYB 592 on the request of CPD SIU.

5 The driver offender Joseph Rowland, date of birth
6 12-16-1983 was detained and turned over to Investigator
7 Ratliff of the SIU. I was turned over two hours later
8 after the search was finished.

9 Q. Right.

10 A. I was brought down the street in a police vehicle.
11 I was not at the house.

12 Q. And that was part of your Rule 5 materials, is that
13 correct?

14 A. Yes, this is my Rule 5 motion for discovery ---

15 Q. --- and ---

16 A. --- Rule 5, page 46.

17 Q. And you got that prior to?

18 A. Andy Savage gave me this discovery.

19 Q. Okay.

20 A. I have another important crucial case supplemental
21 report that establishes during when this person in the
22 blue car, the informant got pulled over in the traffic
23 stop before he made his written statement, which was used
24 as probable cause proving the informant not to be
25 trustworthy because when the officers first pulled him

1 over he asked him do you have any drugs in the car.

2 Q. Is this the operator of the blue Honda Accord?

3 A. Yes sir, the informant. He never came up to trial
4 as a undeclared declarant. But he said he did not. Vice
5 versa admission in engagement with law enforcement he
6 lied because later on allegedly they found drugs in his
7 console.

8 Q. On what page of the discovery is that?

9 A. In this Rule 5 page 46. This specific page proves
10 this informant not to be trustworthy, which Bill Runyon
11 could have brought up at trial on the probable cause for
12 the search warrant on the search warrant's affidavit on
13 the face establishing this person which has used as the
14 key factor obtaining the search warrant not to be
15 trustworthy ---

16 Q. --- yes ---

17 A. --- and could have gotten it thrown out.

18 Q. Okay.

19 A. When establishing and raising an issue regarding the
20 reliability of the informant. What else you got to ask
21 me?

22 Q. How much time did you spend with Mr. Runyon
23 preparing for trial?

24 A. Well, Your Honor, I mean sir, I spent two years in
25 county jail with no bond because this same dirty Officer

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1 Detective Ratliff who got demoted and kicked off
2 narcotics for his criminal misconduct and illicit
3 behavior lied and got my bond revoked. I think it was in
4 front of Judge Dennis or somebody; I don't even remember.

5 But I sat in county jail two years and Andy Savage
6 filed for a motion to be relieved as counsel and I
7 obtained Bobby Howe and got rid of him and then I
8 obtained Runyon.

9 But me and Runyon I had Runyon for about a year and
10 some change. And I probably saw him two or three times.
11 And when I finally got out on bond and went by his office
12 and talked to him a couple of times.

13 But since day one I was telling him all this stuff
14 regarding the search warrant's probable cause and the
15 affidavit and the no physical proof of chain of custody
16 forms from the seizing officers, which that violated my
17 due process. And it was a crucial missing link with no
18 foundation of the seizing officers.

19 I explained all of this to him and that there was no
20 -- since day one I explained to him that there was no
21 physical proof of chain of custody forms from these
22 seizing officers in my Rule 5 discovery, which was the
23 head of the chain of custody.

24 Q. You're saying the officers who seized the ---

25 A. --- who allegedly found these drugs there was no

1 chain of custody forms in my Rule 5, which violated South
2 Carolina Rules of Criminal Procedure Rule 6(b) and also
3 violated statute 44-53-485, Article 6, Rule 7 -- duties
4 of a seizing officer which violated my due process
5 because they allowed those officers to come in there and
6 testify to a broken chain of custody, which he objected
7 to the chain of custody.

8 But he never objected to that there was no physical
9 proof of chain of custody forms to support and validate
10 the testimony that they were giving. And he should have
11 objected to and raised the issue that the Courts have
12 been abusing their discretion by allowing officers to
13 give testimony alone to a broken chain of custody without
14 having these essential forms that were put in place by
15 the legislature and the South Carolina Supreme Court and
16 South Carolina Rules of Criminal Procedure.

17 These forms are mandatory because without these
18 forms these officers don't know what even the description
19 of the drugs are and don't have no signature that is
20 supposed to be notarized. It's a chain of evidence that
21 goes from A, B, C, D, E. And without these forms it's
22 irrelevant. It's a broken chain of custody. Go on, sir.

23 Q. So were you present at the house when this alleged
24 hand to hand transaction occurred with the blue Honda?

25 A. No. This person was never even produced at trial.

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1 I asked my lawyer to produce the informant at trial so I
2 would have my constitutional right to cross-examine him
3 so we can establish on the record during the search
4 warrant's probable cause that he was not trustworthy;
5 that he had reason to lie.

6 He had an incentive to lie. He could have already
7 had these drugs on him because the car was not searched
8 prior to coming to my residence. This was no controlled
9 buy. This was hearsay.

10 Q. And as far as the newly discovered evidence is that
11 a reference to your brother's affidavit that he gave you
12 that he owned the cocaine that was found in the Gucci
13 bag?

14 A. Yeah, my brother's affidavit of facts giving
15 judicial notice to the courts that is pertaining to the
16 cocaine found in the Gucci handbag.

17 Q. And were you aware that those were your brother's
18 drugs prior to this trial?

19 A. I mean I wasn't aware but he told me after the fact.
20 I wasn't aware at the time, but I found out later on.

21 Q. You just knew that the drugs weren't yours.

22 A. I knew they weren't mine because I wasn't present at
23 the house so I had no knowledge at the time before trial
24 that these drugs were actually his. I didn't know before
25 trial that these drugs were actually his. I had no

1 knowledge.

2 MR. FALK: Your Honor, I have no further questions.

3 THE COURT: Alrighty. Mr. Limbaugh?

4 MR. LIMBAUGH: I have nothing for this witness,
5 Your Honor.

6 THE COURT: All right. Mr. Rowland, you may step
7 down.

8 THE WITNESS: I still need to ask Runyon some
9 questions later.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: All right. Mr. Falk?

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1 MR. FALK: We'll call John Rowland to the stand.

2 THE COURT: All right.

3 [Whereupon, Mr. John Rowland comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Sir, please have a seat. And for
7 the record please state your full name and spell your
8 last name.

9 THE WITNESS: John Mark Rowland, R-O-W-L-A-N-D.

10 - - - - -

11 JOHN ROWLAND,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. FALK:

16 Q. Mr. Rowland, so you are Joseph Rowland's twin
17 brother?

18 A. Correct.

19 Q. And where do you reside?

20 A. Folly Beach, South Carolina.

21 Q. And did you ever reside at 31 Woodleaf?

22 A. Yes, sir.

23 Q. Okay.

24 A. Sure did.

25 Q. I'm going to show you a document that I was given.

- 1 A. All right.
- 2 [Whereupon, the witness is shown document]
- 3 Q. Do you recognize that document?
- 4 A. Yes, sir.
- 5 Q. And what is that document?
- 6 A. It's my declaration.
- 7 Q. So that's an affidavit that you gave, is that
- 8 correct?
- 9 A. Yes sir, that's mine. Yes, sir.
- 10 Q. And what's the date on it?
- 11 A. 2-26 -- down at the bottom, sir?
- 12 Q. Yeah.
- 13 A. 2-26.
- 14 Q. Wait a minute, wait a minute. That's probably the
- 15 date ---
- 16 A. --- oh, August 21, 2015.
- 17 Q. Okay.
- 18 A. Yes, sir.
- 19 Q. And so you gave that statement and there was a
- 20 notary there who watched you sign this affidavit, is that
- 21 correct?
- 22 A. Yes, sir.
- 23 Q. And that affidavit is really not necessary since
- 24 you're here ---
- 25 A. --- correct.

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1 Q. So why don't you tell the Court what you say in that
2 affidavit.

3 A. Read it aloud, sir?

4 Q. That's fine.

5 A. Yes, sir. [Reading] Herein, affiant --

6 Q. Affiant.

7 A. Affiant John Rowland does herewith swear and declare
8 and affirm that the affiant issues an affidavit of the
9 facts with sincere intent that the affiant is competent
10 to state the matters set forth herein that the contents
11 are true, correct, certain admissible as evidence and
12 reasonable and just in accordance with affiant's best --
13 and knowledge and understanding. And if called upon to
14 testify as a witness the affiant shall state I declare
15 John Rowland ---

16 Q. --- let me just stop you right there.

17 A. Yes, sir.

18 Q. Just because I'm guessing maybe somebody helped you
19 with the legalese at the beginning of that. But, so what
20 you're saying is that you were not under any kind of
21 drugs at the time you gave that statement, right?

22 A. No, I don't do drugs.

23 Q. And what you're saying is that is your truthful
24 statement, is that correct?

25 A. Yes, sir.

1 Q. And you've just sworn an oath to tell the truth, is
2 that correct ---

3 A. --- correct, yes sir. I feel real guilty about what
4 happened ---

5 Q. --- and had you been called as a witness at trial
6 would you have testified to what was in this?

7 A. Hands down, yes sir.

8 Q. Okay. Now read what you...

9 A. [Reading] Declarant John Rowland, the brother of
10 Joseph Todd Rowland who was present at home during the
11 execution of the search warrant at 31 Woodleaf Court on
12 June 3rd, 2011 comes forth and makes a statement of my
13 own free will, not under any duress, hereby claim and
14 accept full responsibility and ownership of the cocaine
15 found in the Gucci bag and elsewhere in the room upstairs
16 in the chest of drawers.

17 The reason why I did not come forward here earlier
18 or at trial was that I was scared of losing my kids to
19 the Department of Social Services.

20 Q. So there was a quantity of cocaine that was found in
21 what they were calling bedroom number 2, is that correct?

22 A. Yes, sir.

23 Q. And your testimony is that that was yours, is that
24 correct?

25 A. Yes, sir.

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1 Q. And there is a quantity of cocaine found in what was
2 described as a Gucci bag ---

3 A. --- yeah ---

4 Q. --- and your testimony is that was yours also?

5 A. Yeah, it was my bag. It was mine. To be honest
6 with you it was mine; it was.

7 Q. Okay. Did you have any conversation with Mr. Runyon
8 about this?

9 A. Yeah, I did.

10 Q. And what were your conversations with Mr. Runyon?

11 A. I told him it was mine. And he told me basically
12 you know John the court is going to last about a week,
13 the trial is going to last about a week. I'll call you
14 in. He never called me in or nothing.

15 Q. But you had a conversation -- it's your testimony
16 that you had a conversation with Mr. Runyon prior to the
17 trial ---

18 A. --- yes sir ---

19 Q. --- and you were going to tell him that the drugs in
20 the house were yours.

21 A. Yes, sir.

22 Q. And he told, and it's your recollection that he told
23 you the trial is going to be about a week. I'll call you
24 when I need you, is that correct?

25 A. Correct. Yes, sir.

1 Q. And the record shows that you never testified at
2 trial.

3 A. No, sir.

4 Q. Were you in town?

5 A. Yes, sir.

6 Q. Did Mr. Runyon have, do you think Mr. Runyon had
7 contact information for you?

8 A. Oh yes sir, he sure did. We had three properties at
9 the time; Folly Beach, North Charleston, and 31 Woodleaf
10 Court.

11 Q. And you had, did you have a cell phone?

12 A. He had my number.

13 Q. Okay.

14 A. And my wife's number too, Jennifer.

15 Q. Okay.

16 A. Correct. Sure did.

17 Q. There was also another affidavit that you gave me.

18 A. Uh Huh. And I am dealing with DSS right now --

19 THE COURT REPORTER: I'm sorry; I didn't understand
20 ---

21 THE WITNESS: --- I'm kind of dealing with DSS
22 right now.

23 Q. [Mr. Falk] I'm sorry. So your testimony is you were
24 concerned that had you -- you were concerned about how
25 this might affect the DSS case that you've got.

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- 1 A. Correct. What parent wouldn't be?
- 2 Q. Okay. Now, I'm showing you another affidavit ---
- 3 A. --- okay ---
- 4 Q. --- that I was given.
- 5 [Whereupon, the witness is shown document]
- 6 Q. And what is the date of that one? Again, it's going
- 7 to be on the back.
- 8 A. Okay.
- 9 [Whereupon, the witness reviews document]
- 10 Q. Here, let me show you.
- 11 A. I don't see a date on here.
- 12 [Whereupon, Mr. Falk assists the witness]
- 13 Q. Do you recall making -- that affidavit is not dated.
- 14 Do you recall making it?
- 15 A. Yes, sir.
- 16 Q. And about what time was that just in reference to
- 17 the one you gave about the ownership of the drugs? Was
- 18 it a couple of months before, a couple of months after,
- 19 the same day?
- 20 A. Something like that, yes sir.
- 21 Q. Within a couple of months?
- 22 A. Yes, sir.
- 23 Q. Okay.
- 24 A. Sure it is.
- 25 Q. And did you, this relates to that. So did you have

1 any conversations with Officer Ratliff?

2 A. Who sir? Sure didn't.

3 Q. So did you have any conversations about drug
4 activity that was going on at the house at 31 Woodleaf?

5 A. No, sir.

6 Q. Did you ever say that your brother was involved,
7 did you tell Officer Ratliff that your brother was
8 involved in drugs?

9 A. No, sir.

10 Q. Is that what you're telling me in that affidavit
11 right there?

12 A. Correct. Yes, sir.

13 Q. Is there anything else that you want to tell me
14 about that?

15 A. You mean signing the search warrant when I was
16 there?

17 Q. Yes.

18 A. I'm going to tell you I'll be honest with you. I
19 will talk out and speak out; I will speak out. I was
20 there in the house.

21 Officer Ratliff basically you know told -- I heard
22 him say something to my wife that Joseph can go away for
23 a very long time. And that's all I heard basically ---

24 Q. --- but your brother wasn't there, is that correct?

25 A. No, he was not. He was pulled over down the street.

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1 Q. And did you see a copy of the affidavit for the
2 search warrant?

3 A. No, sir.

4 Q. Is there any chance Officer Ratliff confused you
5 with your brother or?

6 A. I think so. I think he did because we're twins.
7 Look at him, look at me. It's the truth.

8 Q. So sir did you have a conversation with Mr. Runyon
9 about Officer Ratliff and whether or not you were one of
10 the -- you provided Officer Ratliff the additional
11 information about drug activity?

12 Did you have a conversation with Mr. Runyon about
13 any conversations you had with Officer Ratliff?

14 A. No, sir.

15 Q. Okay.

16 A. I mean he's always pulled us over all the time you
17 know what I mean. But that day I never talked to him one
18 time.

19 Q. Okay. But as far as in preparation for the trial
20 and with respect to the suppression motion did you have
21 any conversations with Mr. Runyon about your knowledge of
22 Officer Ratliff's probable cause to search the house?

23 A. Yes, sir.

24 Q. You did have that conversation?

25 A. I asked a few questions here and there and stuff you

1 know. He told me you know he would call me as a witness
2 and stuff and he never did. He never even -- like I said
3 he told me it would be a week.

4 It was a day and a half, two days I think and I was
5 in shock and horror when I heard my brother got 31 years
6 because I never -- to tell the truth you know I'm going
7 to be honest with you sir. I feel really guilty about my
8 brother being in prison because those are my drugs.

9 I'm going to be real with you man to man to the
10 Judge and everybody in this courtroom right now. I've
11 been living with this burden for so long and I have to
12 come out and get it off my chest. Those are my drugs,
13 you know, and my brother got charged for it. And that's
14 not right, you know.

15 I didn't live a good life in the past. I changed my
16 life around but at the same time I just have to get this
17 off my chest, I had to tell the truth. It was my drugs.
18 I'm sorry. I'm sorry, Joseph. I truly am. I'm sorry.

19 MR. FALK: I have no further questions.

20 THE COURT: All right. Mr. Limbaugh?

21 MR. LIMBAUGH: Just briefly, Your Honor.

22 [Whereupon, the witness stands to leave the stand]

23 THE COURT: Have a seat. They're not finished with
24 you just yet, okay.

25 THE WITNESS: Oh, I'm sorry. I apologize.

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THE COURT: That's okay.
MR. LIMBAUGH: Just briefly.

1 CROSS-EXAMINATION

2 BY MR. LIMBAUGH:

3 Q. So you're Mr. Rowland's brother, correct?

4 A. Correct. Yes, sir.

5 Q. I see the resemblance.

6 A. Yes, sir.

7 Q. I think you just mentioned a life of crime. Do you

8 have a criminal history?

9 A. Yes, sir.

10 Q. Okay.

11 A. It's not bad though.

12 Q. Okay. But still there is something there, correct?

13 A. Yes, I mean it's something there. I'm being honest

14 with you, yes sir. Everything I'm saying is the truth.

15 Q. I appreciate that.

16 A. Yes, sir.

17 Q. What room if you remember did the police find the

18 drugs in at the house?

19 A. Well, I was in the house. Me and my wife were in

20 the house. It was found, actually it was found, they

21 said it was found you go upstairs there is one room and

22 there is a bathroom and there is another room right here

23 [indicates].

24 This is my room. See, I was there all the time

25 every single day. You see what I'm saying. The drugs

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1 were found I mean personally I think they were found in
2 my room actually.

3 Q. Okay. Your room wasn't locked though. I believe
4 when the police came in your room it was locked?

5 A. Both doors were locked.

6 Q. Both doors were locked?

7 A. They kicked them in.

8 Q. Okay.

9 A. That's how they got that confused. That's what
10 happened. You're right.

11 MR. LIMBAUGH: That's all I have for this witness,
12 Your Honor.

13 THE COURT: All right. Anything else pertaining to
14 that?

15 MR. FALK: No redirect.

16 THE COURT: All right. You're free to step down.
17 Thank you so very much.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Yes, sir.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 THE COURT: All right. Yes sir, Mr. Falk?
23
24
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1 MR. FALK: I'll call Leroy Rowland to the stand.

2 THE COURT: Okay.

3 MR. JOHN ROWLAND: Thank you, sir.

4 THE COURT: Yes, sir.

5 MR. JOHN ROWLAND: I feel a lot better I came clean.

6 [Whereupon, Mr. Leroy Rowland comes forward]

7 [Whereupon, the witness is duly sworn by the Clerk
8 of Court]

9 CLERK OF COURT: Sir, if you would please have a
10 seat and then for the record please state your full name.

11 THE WITNESS: Leroy John Rowland.

12 CLERK OF COURT: And spell your last name.

13 THE WITNESS: R-O-W-L-A-N-D.

14 - - - - -

15 LEROY ROWLAND,

16 Having been first duly sworn,

17 Was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FALK:

20 Q. Mr. Rowland, are you the father of Joseph Rowland?

21 A. Yes, sir.

22 Q. You live at 31 Woodleaf?

23 A. We did.

24 Q. Or you did at the time?

25 A. Yes, sir.

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1 Q. The gun that was recovered were you there when the
2 search warrant was executed?

3 A. I tell you sir it's been so long ago you can forget
4 things now but I...

5 Q. Do you know a gun was taken from there?

6 A. Well, I tell you what at the time I had a house on
7 Folly Beach and the gun I went over to Folly to collect
8 some rent and the two guys that were renting, there were
9 three people there, but one of the guys were taking care
10 of my property for me.

11 And he said look here, the guy left he said but he
12 left this gun. I said what? His name was Dick Moore and
13 I said yeah Dick what? And so that's how I got the gun.

14 So I said well, Dick and he said yeah, and I said
15 well, I'm going to take that gun because I'm not going to
16 have no gun around here with people coming and going from
17 this place.

18 Q. So you took that gun back with you to 31 Woodleaf?

19 A. Yes, sir.

20 Q. And is that the gun that was taken?

21 A. Yes, sir. I'll tell you the truth I don't even
22 remember what the gun was because I never even shot a gun
23 in my life. I always fished; never shot guns.

24 Q. But that gun was yours and it became yours because
25 it was left abandoned at a piece of real estate?

1 A. And I put in up in the house and I forgot about it
2 because at the time -- I'm 78 now, I was 68 then you
3 know. And I just stopped -- and I had a lot of other
4 things on my mind too because I was losing a lot of
5 friends left and right.

6 I had ten friends die within five years. And it was
7 just -- it was people who worked with me at my business
8 back then, my rubber company, and also friends that I
9 went to school with at Bishop England and Sacred Heart.

10 Q. Did you have any conversations with Mr. Runyon prior
11 to the trial?

12 A. Bill Runyon and I went to school together at Bishop
13 England. Yes, I did have conversations.

14 Q. Did the subject of the gun ever come up in your
15 conversations?

16 A. Well, I said what I said then I believe. Sir,
17 that's been awhile you know. But that's exactly what
18 happened. The gun was at my beach house.

19 And I took the gun with me because I had three guys
20 renting the place and they didn't need no guns around.
21 They drank too much to have any guns around them. So I
22 took the gun back to West of the Ashley.

23 Q. And you believe you gave Mr. Runyon that
24 information?

25 A. I believe so, sir. But you know I'm doing the best

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1 of what I can.

2 Q. And do you recall whether or not you were there when
3 the search warrant was executed, when the police showed
4 up and broke into your house or walked into your house?

5 A. I believe I was there, sir.

6 Q. Okay. Do you recall ever seeing the search warrant
7 ---

8 A. --- no sir. All I saw was them break into a double
9 locked door.

10 Q. And whose locked door was that? Was that...

11 A. It was a three-bedroom apartment. We had an
12 apartment downstairs, me and my wife, and there was two
13 upstairs you know.

14 MR. JOSEPH ROWLAND: It was a house.

15 A. In the house, I mean the house; not apartment.

16 Q. [Mr. Falk] Yes. And your son was not there at the
17 time, is that correct?

18 A. No, sir.

19 Q. Joseph Rowland was not there at the time, is that
20 correct?

21 A. No, sir.

22 MR. FALK: I have no further questions.

23 THE COURT: All right. Mr. Limbaugh?

24 MR. LIMBAUGH: Nothing for this witness, Your
25 Honor.

1 THE COURT: Alrighty. Mr. Rowland, you can step
2 down. You're excused.

3 THE WITNESS: Thank you very much.

4 THE COURT: You're more than welcome.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

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Post-Conviction Relief-Janis Rowland-Direct Examination by Mr. Falk
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1 MR. FALK: One last brief witness.
2 THE COURT: Okay.
3 MR. FALK: Janis Rowland.
4 [Whereupon, Ms. Rowland comes forward]
5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]
7 CLERK OF COURT: Have a seat. And for the record
8 please state your name.
9 THE WITNESS: Janis Rowland.
10 CLERK OF COURT: And spell your last name.
11 THE WITNESS: R-O-W-L-A-N-D.
12 MR. FALK: And Janis is J-A-N-I-S?
13 THE WITNESS: Yes. It's not I-C-E.
14 THE COURT REPORTER: Spell it again.
15 MR. FALK: J-A-N-I-S.
16 - - - - -
17 JANIS ROWLAND,
18 Having been first duly sworn,
19 Was examined and testified as follows:
20 DIRECT EXAMINATION
21 BY MR. FALK:
22 Q. Ms. Rowland, were you at your house at 31 Woodleaf
23 when the search warrant was executed?
24 A. Sir?
25 Q. When the police came to your house were you there?

1 Were you at 31 Woodleaf ---
2 A. --- yes, yes.
3 Q. Okay. Was Joseph Rowland there?
4 A. No. No, he wasn't. My husband and I, John and his
5 wife and three -- two kids; two girls.
6 Q. Did they leave a copy of the search warrant?
7 A. I think so; I'm not sure about that. It's been a
8 very long time ago. Joseph was not there at the time;
9 that's all I know to tell you.
10 Q. But Joseph was not there?
11 A. Joseph was not at the house at all.
12 Q. When did he ---
13 A. --- for hours you know. We were but he wasn't.
14 Q. How did he get to the house?
15 A. Sir?
16 Q. How did he get to the house?
17 A. I think he was at some traffic stop but I don't know
18 how far away. So it was like an hour or two before he
19 came to the house. That's my recollection of everything
20 and how it really happened you know. So...
21 MR. FALK: Your Honor, I have no further questions.
22 THE WITNESS: Sir?
23 THE COURT: All right.
24 MR. FALK: I have no further questions.
25 THE WITNESS: Oh, okay.

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THE COURT: Mr. Limbaugh?

MR. LIMBAUGH: Nothing from the State.

THE COURT: All right. Ms. Rowland, you may be excused. You're free to step down.

THE WITNESS: Yes, sir. Thank you.

THE COURT: You're welcome.

[Whereupon, the witness is excused and exits the witness stand]

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1 MR. FALK: I'd like to call Mr. Runyon to the
2 stand.

3 THE COURT: Give me one second. It's already 12:45
4 and no one has had any breaks or had an opportunity to
5 eat. This will take a little bit longer than an hour
6 wouldn't you assume?

7 MR. FALK: Probably.

8 THE COURT: So, we're probably going to need to
9 take a break for lunch aren't we? If it's going to take
10 over an hour to an hour and a half for this ---

11 MR. FALK: --- Your Honor, could I approach?

12 THE COURT: Sure.

13 [Whereupon, an off the record bench conference is
14 held]

15 THE COURT: So its 12:45 so what we'll do is can
16 everybody do it in 45 minutes?

17 MR. FALK: 1:30?

18 THE COURT: Its 12:45 so yes, 1:30 is that good?

19 Does that give everybody enough time? I know the
20 deputies can circle in and out but we can't. We'll start
21 back at 1:30, okay?

22 MR. FALK: Thank you.

23 THE COURT: Real quickly for the record. I don't
24 know if he's noticed me and maybe he would say something
25 during the break but Mr. Rowland on Folly whenever I was

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1 a judge there for some reason I just remember him he had
2 a driving under suspension if I'm not mistaken. I told
3 him about five times to get a driver's license; I don't
4 know if he ever did because I got this role.

5 But I didn't want him to say oh yeah by the way I
6 know him and you not -- from where he knew me from. I
7 assume it's him; I don't know ---

8 MR. FALK: --- which Mr. Rowland; Joseph or Leroy?

9 THE COURT: That one [indicates].

10 MR. FALK: I have no problem with that.

11 THE COURT: Okay.

12 MR. JOSEPH ROWLAND: He's right, he's right.

13 THE COURT: I don't know anything about it. I just
14 recognize him and I thought maybe he would recognize me
15 and say something so I just wanted to put on the record
16 just so y'all would know.

17 MR. LIMBAUGH: Thank you.

18 THE COURT: Okay. See y'all at 1:30.

19 [Whereupon, Court is in recess from 12:45 p.m. until
20 1:45 p.m.]

21 THE COURT: All right. Call your next witness.
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1 MR. FALK: I call Mr. Runyon.
2 THE COURT: All right. Mr. Runyon, if you'll come
3 on up please.
4 [Whereupon, Mr. Runyon comes forward]
5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]
7 CLERK OF COURT: If you would please have a seat
8 and for the record please state your full name and spell
9 your last name.
10 THE WITNESS: My name is William L. Runyon, Jr.,
11 R-U-N-Y-O-N.
12 THE COURT: All right. Mr. Falk?
13 - - - - -
14 WILLIAM RUNYON,
15 Having been first duly sworn,
16 Was examined and testified as follows:
17 DIRECT EXAMINATION
18 BY MR. FALK:
19 Q. Mr. Runyon, can you hear me if I stand here?
20 A. I'm old but I'm not that old. Yes, I can hear you.
21 MR. FALK: Can the court reporter hear me if I
22 stand here? Your Honor, is it okay if I stand ---
23 THE COURT: --- absolutely.
24 Q. [Mr. Falk] So you were the second or third lawyer
25 involved in this case?

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1 A. I was the third lawyer involved in the case, yes.

2 Q. Okay. And so approximately when did you start your
3 representation?

4 A. It was a few months before the trial, the actual
5 trial. Mr. Savage had been representing him and there
6 was some decision to change.

7 Mr. Howe had represented him for a while. And then
8 that came to an impasse and then I came in I'm totally
9 guessing at this point but it was about six months before
10 the trial.

11 Q. Prior to the trial did you have any conversations
12 with his brother John Rowland?

13 A. Yes, I did.

14 Q. And what were those conversations about?

15 A. He came to my office one day. My recollection is
16 subject to being corrected it was within four weeks of
17 the trial date. And we had a conversation about what if
18 he were the one to testify that it was his drugs.

19 I advised him at that time, I didn't really advise
20 him because I said look, this would constitute a conflict
21 for me that if this is the truth my advice to you is to
22 go get you a lawyer, talk it over with him because these
23 are some serious charges.

24 There are serious consequences with the charges.

25 And this isn't television where you can just walk in and

1 announce you're guilty and you'll walk out because they
2 can very well charge you. And to go get a lawyer, maybe
3 have the lawyer call me and I'll be more than happy to
4 put him on the stand if that was the truth. And after
5 that I didn't hear from anybody.

6 Q. Did you have a conversation about a week before the
7 trial saying the trial would last about a week or so and
8 for you -- for him to stay in touch with you?

9 A. I didn't...

10 Q. Mr. John Rowland testified that at least from his
11 testimony that it appeared that he had a conversation
12 with you pretty close to the start of the trial and he
13 said you told him the trial would last about a week or so
14 and that you would call when you needed him.

15 A. I don't, I told him I would call him if he was
16 prepared to testify. Like I said it was within four
17 weeks of the trial.

18 I think it was within a month of the trial. If he
19 says it's within a week of the trial then maybe it was
20 within a week of the trial. I can't pin down that time.

21 Q. Okay.

22 A. But I would be prepared to put him on the stand if
23 he was prepared to maybe go to prison for a long period
24 of time. I mean I put it that way and I said now you
25 need to go talk to a lawyer and then have your lawyer

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1 call me and I'll be more than happy to put you on the
2 stand if you're prepared to testify to the truth that
3 these were your drugs and it was your drug operation,
4 etcetera etcetera. And I never got a call back.

5 Q. Did you ever put him on a witness list?

6 A. No.

7 Q. Did you have a conversation with Leroy Rowland prior
8 to the trial about the ownership of the gun?

9 A. Yes, sir. I'd known Mr. Leroy Rowland since high
10 school. And we had several conversations. He would come
11 by the office quite regularly during the representation
12 and we had many conversations about the gun.

13 And I think the transcript reflects that we got a
14 directed verdict on the gun. So it wasn't necessary to
15 put him on the stand about the gun.

16 Q. But the jury heard the testimony; the jury heard the
17 testimony that the gun was found in proximity to where
18 the drugs were found is that not right?

19 A. I'm sure -- yes sir, I'm sure that would be
20 reflected in the transcript.

21 Q. And so the jury would make the inference of here's
22 another case of guns and drugs found together.

23 A. Yes, sir. You know we're all realistic here in what
24 juries would conclude even with a directed verdict.

25 Q. So even though you got a directed verdict on the gun

1 charge would you not admit that the jury hearing
2 testimony about the gun and thinking it was Joseph
3 Rowland's gun was prejudicial?

4 A. Realistically yes it would be prejudicial in my
5 mind.

6 Q. And what was your decision then not to call Leroy
7 Rowland to the stand to testify how the gun got there?

8 A. Well first of all by the time our case started we
9 had already gotten the directed verdict of not guilty.
10 Now, in November of 1999 I actually served on a civil
11 jury.

12 And that experience together with my previous legal
13 practice I just felt that the jury would in fact do what
14 the judge told them when it came to their instructions
15 about what they were to find him guilty of etcetera,
16 etcetera. And we got a directed verdict of not guilty.
17 The judge -- unanimously it was a directed verdict of not
18 guilty.

19 And I didn't want to you know hammer on the fact
20 that the gun was found in a particular location because
21 you've got to remember if I recall the transcript, and I
22 haven't seen the file since I turned it over to Mr. Peper
23 for the appeal.

24 But the gun was found in some proximity to Mr.
25 Joseph Rowland's living quarters or what have you. And I

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1 didn't want to emphasize that and belabor that when we
2 got a directed verdict of not guilty.

3 Q. Did you have any conversations with Mr. Savage about
4 the case prior to you taking over?

5 A. I think I briefly discussed it with him but not in
6 great detail. The file was the file.

7 Q. Did you; did the file include the transcript of the
8 preliminary hearing?

9 A. I'm sure it did.

10 Q. Had you reviewed the preliminary hearing transcript
11 prior to the suppression hearing?

12 A. Yes sir, I'm sure I did.

13 Q. There were some inconsistencies in Officer Ratliff's
14 testimony at the preliminary hearing from his testimony
15 during the suppression hearing. Is that accurate?

16 A. That would be accurate, yes sir.

17 Q. For example on page 6, lines 10 and 12; here I'm
18 reading what has now been marked as Applicant's exhibit
19 number 1.

20 The question was, but the affidavit for the search
21 warrant was not left and the answer was no, sir. And
22 this is a question of Mr. Ratliff.

23 So the search warrant affidavit wasn't left. That's
24 what his testimony was at the preliminary hearing.

25 A. That's what his testimony was, yes.

1 Q. Okay. And you would agree that his testimony was
2 different at the suppression hearing would you not?

3 A. Yes, sir.

4 Q. Did you make an effort to impeach him with his prior
5 inconsistent statement? Did you challenge him with the
6 prior statement about whether or not the affidavit was or
7 was not left?

8 A. No sir, I did not because I didn't see any value in
9 trying to make the jury think he was an absolute liar or
10 something of that sort.

11 It's been my experience that unless you've really
12 got malfeasance upon the part of a police officer it's
13 not always wise to attack the police in front of a jury
14 because the jury might hold that against your client.

15 Q. I understand that. However, what I'm talking about
16 is during the suppression hearing ---

17 A. --- right ---

18 Q. --- which was prior to the jury, the jury was not
19 present during the suppression hearing and ---

20 A. --- I understand that. But at the same time I would
21 imagine I would have, I would imagine that we would be --
22 if assuming that we were not going to win the suppression
23 hearing, which I always assume quite frankly, that I
24 didn't think it was necessarily wise to set it up as a
25 you know the police officer is a liar type of theme to

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1 continue throughout the trial.

2 Q. I can appreciate that as a trial strategy decision I
3 think. But as far as convincing the trial judge whether
4 or not there was in fact probable cause for the issuance
5 of the search warrant and whether or not the information
6 provided to the Magistrate was sufficient would that not
7 have been a time to draw that, to show the inconsistency
8 in the police officer's testimony at that time; just
9 before the judge and nobody else present?

10 A. The fact that, the fact that the affidavit
11 supporting the search warrant was possibly not left at
12 the scene after the search ---

13 Q. --- yes ---

14 A. --- no, I don't think it would be.

15 Q. You don't think it would be what?

16 A. I don't think it would impress the bench that the
17 officer was mistaken or that there was some inconsistency
18 in the issuance of the search warrant.

19 Q. Because the statute does say that the warrant and
20 the affidavit must be left, is that not correct?

21 A. Yes, sir.

22 Q. And would you not agree that that raises a Fourth
23 Amendment if the arresting officer or the investigating
24 officer doesn't comply with the requirements for issuance
25 of search warrants in his failure to comply with that

1 requirement would you not agree that that is a Fourth
2 Amendment violation?

3 A. It's a Fourth Amendment question. Yes, there is no
4 question about that.

5 Q. Okay. And so by not questioning whether or not the
6 affidavit was left did you not just then waive his claim
7 to assert that?

8 A. No, sir.

9 Q. And why is that?

10 A. Well, we were, we went through the suppression
11 hearing and they were trying to establish and they had to
12 establish there was a proper search more so than just the
13 affidavit not having been left. And there were more
14 issues in the suppression hearing than just the affidavit
15 not being left.

16 And quite frankly that question was kind of up in
17 the air because in talking to his mother and father who
18 were in fact there during the search as I recall you know
19 there was some question as to whether or not you know
20 what was in fact left quite frankly after they finished
21 the search.

22 Q. Now, during the search, during the suppression
23 hearing Judge Ratliff -- excuse me Officer Ratliff
24 testified that he provided the Magistrate with some
25 additional information, is that correct?

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1 A. If that's what the transcript ---

2 Q. --- okay, so ---

3 A. --- says that's what the transcript says. I haven't
4 read the transcript ---

5 Q. --- so I'm looking at page 61 of the transcript and
6 the question was asked, I guess this is direct
7 examination by the Solicitor; did you supplement the
8 written affidavit with oral testimony? And then the
9 answer was from Officer Ratliff, yes ma'am I did.

10 Now I'm reading lines 16 through 22, I basically
11 explained a question answer session with the Magistrate,
12 the background I've had with the defendant, the different
13 calls I've gone to involving the defendant at that
14 residence and elsewhere, and numerous complaints that we
15 had received and the fact that I had spoken with the
16 sibling of his.

17 A. Yes, sir. Okay.

18 Q. Now, that's also different from his testimony at the
19 preliminary hearing, is it not?

20 A. Yes ---

21 Q. --- as far as numerous complaints in the area and a
22 conversation with the sibling that was not raised as part
23 of the, of his testimony during the preliminary hearing,
24 is that not correct?

25 A. That's correct.

1 Q. Now, were you aware that Officer Ratliff said that
2 he had had a conversation with John Rowland prior to the
3 execution of the search warrant?

4 A. In all candor I think I was aware of his prior
5 investigation. Insofar as whether or not that included
6 conversations with John Rowland I'm not sure.

7 Q. I guess the question now is when the officer is now
8 saying that he had a conversation with the sibling and
9 that -- would that not be something that you would have
10 expected to see in the Rule 5?

11 So this is a police officer having a conversation
12 with his brother. His brother supposedly says that yeah,
13 Joseph Rowland is involved with drugs. That would
14 clearly be something that you would expect to see in the
15 Rule 5 would it not?

16 A. Frankly, I would -- yes sir, I would agree that it
17 should be in the Rule 5. And I can't tell you it wasn't
18 in the Rule 5 because I haven't seen that file since Mr.
19 Peper took the case after I perfected the right to
20 appeal.

21 Q. But if it's not in the Rule 5 is that not a Brady
22 violation? Would that not have been a moment to stop
23 that hearing at that point to try and get a copy of this
24 of the transcript of the statement between John Rowland
25 and Officer Ratliff?

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1 A. It might be a Brady violation, yes sir.

2 Q. Would that not have -- did you consider at the time
3 possibly interrupting the hearing asking to stand down so
4 that you would have an opportunity to investigate this
5 piece of evidence?

6 A. I would have no problem with asking the Court to
7 interrupt the proceeding, to stand down ---

8 Q. --- I'm just wondering why -- I'm just -- why you
9 did not. But you didn't.

10 A. I didn't do that and you asking me why I didn't and
11 I can't answer that question at this point in time
12 because I haven't reviewed the file.

13 Q. Okay. Thank you. Would you admit or would you
14 consider that as the person making the decision about
15 whether or not there was adequate probable cause for the
16 search was relying in fact on testimony from the
17 executing officer saying that yeah, I talked to his
18 brother and his brother said he is involved in drugs.

19 Would you think that would be very persuasive
20 evidence before the judge making that determination? I
21 mean that's not just a mere fact. That's a pretty big
22 thing is it not?

23 A. Oh certainly it is a big thing. And having
24 witnessed search warrant applications waiting for my turn
25 before a Magistrate there are plenty of things police

1 officers tell an issuing Magistrate to try to convince
2 them to issue the search warrant that maybe not are not
3 in the affidavit in support of the application for the
4 search warrant.

5 Q. And you're not aware of any statement that the
6 brother made about that John Rowland made about Joseph
7 Rowland's drugs.

8 A. The only statement that I'm aware that John Rowland
9 was possibly prepared to make was the statement when he
10 alluded to the fact that he might be prepared to testify
11 that it was his drugs; and that colloquy I had with him
12 ---

13 Q. --- right, yes. I'm just talking about you said
14 you're not sure if it was in the Rule 5.

15 I mean would that not be -- but if Officer Ratliff
16 had issued a supplemental report saying that I had a
17 conversation with John Rowland and John Rowland said that
18 Joseph Rowland is involved in the drug trade that would
19 be something that you would remember from the Rule 5,
20 would you not?

21 A. Yes, sir. And I don't recall it being in the Rule
22 5.

23 Q. Now my client is concerned that there was no
24 documents regarding the chain of custody as required
25 under I guess South Carolina Rules of Criminal Procedure

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1 6 paragraph B as far as affidavits from the officers it's
2 his word the seizing officer and the other officers
3 during the chain that none of those affidavits were in
4 the Rule 5.

5 A. I'm not so sure about the -- I think the chain of
6 evidence was in the Rule 5. And I think the testing was
7 done at SLED, not at the City lab as I recall.

8 And my recollection, and of course I've handled lots
9 of drug cases so you've got to bear with me on whether or
10 not my recollection is totally accurate as it relates to
11 this case. But I thought that the chain of evidence
12 complied with the Rule as we saw.

13 Q. Were you aware prior to the suppression hearing that
14 Officer Ratliff had been disciplined by the police force
15 and he had been demoted from the narcotics unit?

16 A. Yes, sir.

17 Q. Did you consider whether or not you should have, you
18 could have possibly have impeached his testimony both at
19 the trial and at the suppression hearing regarding his
20 creditability for somebody who had been demoted from the
21 narcotics unit?

22 A. My recollection of that whole background issue was
23 once again it's fraught with peril if you're going to
24 ultimately be arguing that matter before the jury. And
25 so no, I didn't think that we should get that deep into

1 that because ultimately we'd have to be arguing that for
2 a jury and you'd have the same result of calling a police
3 officer a liar, etcetera.

4 Q. But what was your understanding for the reason why
5 he was demoted from the narcotics unit? Was it for
6 misconduct?

7 A. I don't recall the exact reason, I really don't. I
8 haven't seen that file since like I said since I turned
9 it over to Mr. Peper for the appeal.

10 Q. So your testimony, just so I understand, so your
11 testimony is the reason why you didn't challenge Officer
12 Ratliff's testimony, and I guess there are really two
13 bases, one is his prior inconsistent statements at the
14 preliminary hearing and then again with the possible for
15 his demotion from the narcotics force was because you
16 were you thought that issue would -- could you then just
17 characterize your answer.

18 You had some grounds to attack Officer Ratliff at
19 the suppression hearing, and those being his prior
20 inconsistent statements and his demotion from the
21 narcotics force. But you didn't impeach him at that time
22 and the reason was?

23 A. As a matter of trial strategy I didn't feel it was
24 appropriate to drag a red herring through that really
25 wasn't a fresh red herring so to speak. It was a thought

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1 out process; not a ---

2 Q. --- okay ---

3 A. --- not just an error.

4 Q. Now, you will admit that you raised the issues about
5 the lawfulness of the search at the suppression hearing
6 but you did not object you did not preserve that
7 objection while that information was introduced at trial.

8 A. Quite frankly I haven't read the transcript so I
9 don't know if I didn't preserve it or not. I don't know
10 if there was a colloquy between myself and the bench
11 about subject to prior motions or what have you. I don't
12 know what the transcript says.

13 Q. So we'll rely on what the transcript says.

14 A. Whatever the transcript says the transcript says.

15 Q. And did you have a chance to see the Court of
16 Appeals opinion based on the appeal?

17 A. No, sir.

18 Q. If the Court of Appeals opinion as I indicated
19 earlier and is part of the record in this file says that
20 the issues were not preserved for review.

21 A. If that's what the Court of Appeals says far be it
22 from me to suggest the Court of Appeals didn't write it.

23 Q. Did you make any efforts to secure the presence --
24 let me back up. You will recall that as part of the
25 search warrant application there was -- Officer Ratliff

1 testified about somebody who drove the blue Honda Accord.

2 A. Yes.

3 Q. And there was an allegation that there was a hand-
4 to-hand buy, a hand-to-hand transaction that was
5 witnessed.

6 A. That there was an observation of a hand-to-hand
7 transaction, yes sir.

8 Q. And then that Honda accord was eventually then
9 pulled over.

10 A. Yes, sir.

11 Q. And that person made a statement.

12 A. Yes, sir.

13 Q. Now that -- do you recall that statement?

14 A. I don't recall specifically the statement other than
15 the fact that he told the police something with regards
16 to the origins of the drugs; that's all I recall.

17 Q. There is a statement that first starts off with him
18 once he is immediately stopped in saying that he has no
19 drugs in the car, is that correct?

20 A. That's right.

21 Q. And then he admits to having drugs?

22 A. Yes, sir.

23 Q. Okay. So he starts off his confrontation with law
24 enforcement by lying to law enforcement, is that correct?

25 A. Yes, sir.

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1 Q. And also we're relying on this witness who wasn't a
2 witness. We're relying on the Honda Accord driver that
3 he didn't have those drugs prior to.

4 A. That's absolutely correct.

5 Q. And what efforts did you make to get the presence of
6 or to interview or to investigate the driver of the Honda
7 Accord?

8 A. I personally did not make an effort to interview the
9 driver of the Honda Accord. I think that matter by the
10 time the file or the case got to me there had been some
11 review of that issue and I relied upon prior counsel's
12 review of that issue.

13 Q. Because I'm not sure that these issues were raised
14 as part of your argument on the lawfulness of the search
15 warrant application but then you would admit that
16 certainly the driver of the Honda Accord would have
17 possibly a reason to lie.

18 A. No question about that.

19 Q. And you would admit that the driver of the Honda
20 Accord started off his confrontation with the police by
21 telling a lie?

22 A. Absolutely.

23 Q. And we are then having to rely on the driver of the
24 Honda Accord his testimony that the drugs weren't there
25 prior to.

1 A. That's correct.

2 Q. Okay. But those, that questioning of part of the
3 search warrant application and the basis for the probable
4 cause you did not raise that in your argument to try and
5 suppress.

6 A. Whatever the transcript says the transcript says.
7 If it is silent on that issue then I didn't raise it, yes
8 sir.

9 Q. But you would agree that those would be good issues
10 to raise?

11 A. I'm not going to suggest that wouldn't be a good
12 issue for possible argument.

13 Q. Because they are, because the whole search warrant
14 application is also based on the fact that there are as
15 Officer Ratliff testified that there were other people in
16 the neighborhood talking about drug activity at the
17 house.

18 A. Yes sir, and quite frankly ---

19 Q. --- anonymous tips.

20 A. Yes, sir. And quite frankly all those issues which
21 you raised was the basis for my colloquy and my
22 conversation with the Solicitor in leading up to the
23 offer that we had which Mr. Rowland rejected, to plead to
24 five years with credit for time served. When I got the
25 case he was in jail and had served I think a 1,000, over

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1 1,000 days. And our offer was for five years, of course
2 credit for time served which meant he would probably be
3 out in a year. And that colloquy as I understand it is
4 probably in the trial transcript; I don't know.

5 MR. FALK: May I have a moment, Your Honor?

6 THE COURT: Absolutely.

7 [Whereupon, Mr. Falk confers with his client]

8 Q. [Mr. Falk] And along with those other issues that I
9 raised regarding the problems with the driver of the blue
10 Honda Accord there is also no testimony or no statement
11 that once that blue Honda Accord left 31 Woodleaf that
12 that car was in constant observation.

13 There was no -- it was never under constant
14 surveillance by police officers, is that correct? The
15 car could have made another stop before it was stopped.

16 A. I think it made another stop. I don't recall
17 specifically but if you say that's the way it is then
18 that's the way it may be.

19 Q. And there would have been another issue too that you
20 could have argued as part of your argument that during
21 the suppression hearing as why Officer Ratliff did not
22 have probable cause for the search.

23 A. Yes, sir.

24 [Whereupon, Mr. Falk confers with his client]

25 Q. And you would -- there really is no doubt that based

1 on the discovery that Joseph Rowland was not at the house
2 when the search warrant was executed, is that not
3 correct?

4 A. There was no question about the fact that he was not
5 at the house at the time the search warrant was executed.
6 He was down the street having been stopped in a traffic
7 stop.

8 Q. So the inconsistency with his testimony at trial
9 that he was there that still goes with your other answers
10 as far as challenging Officer Ratliff's inconsistent
11 statements when he says that he was there but he wasn't
12 there.

13 A. Yes, sir. That could be an issue for argument.
14 Yes, I'm not going to suggest it's not.

15 MR. FALK: Your Honor, no further questions.

16 THE COURT: All right.

17 MR. LIMBAUGH: May it please the Court, Your Honor?

18 THE COURT: Yes sir, Mr. Limbaugh.

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1 CROSS-EXAMINATION

2 BY MR. LIMBAUGH:

3 Q. So Mr. Runyon, you testified earlier that you did in
4 fact speak to his brother about testifying at trial, is
5 that correct?

6 A. I did speak to his brother, yes sir.

7 Q. Okay. And essentially, and correct me if I'm wrong,
8 your testimony was that you told him if he's telling the
9 truth go get a lawyer. I'll put you up but you'll be
10 looking at hard time, is that correct?

11 A. That's correct. And quite frankly I had not heard
12 from my client that his brother was really the
13 malefactor.

14 Q. So there is no indication from Joseph Rowland that
15 his brother, that they were his drugs, is that correct?

16 A. That's correct.

17 Q. Okay. And did you tell them to get in contact with
18 you if he did, in fact, decide he wanted to testify?

19 A. My directions to him, my advice to him or however
20 you want to say it was go get you a lawyer and you're
21 getting ready to get yourself in a bunch of trouble.
22 Get your legal advice and either you or your lawyer
23 call me and tell me whether or not you're going to
24 testify.

25 Q. Okay. Would a consideration in putting him up as a

1 witness in this case also have been his criminal history
2 and the fact that he is the twin brother of Mr. Rowland?

3 A. Well, yeah he had some; he had some problems in his
4 past. He also had a pending DSS matter, which may or may
5 not be admissible, at the time.

6 But I wouldn't have hesitated to put him up if he
7 had said I'm perfectly willing to get up and say I'm
8 guilty verses my brother. And he never said that.

9 Q. So you also had a conversation with his father about
10 the gun ownership, is that correct?

11 A. I beg your pardon?

12 Q. You had a conversation with Mr. Rowland's father
13 about the gun ownership, is that correct?

14 A. I had numerous conversations with Mr. Rowland's
15 father because as I said we went back to high school and
16 he came to the office on numerous occasions.

17 I had a conversation with him about the ownership of
18 the gun as well as other issues. And of course we got a
19 directed verdict on the gun.

20 Q. And I believe you testified that you believed and
21 trusted the jury is going to listen to the judge's
22 instructions in cases you try, is that correct?

23 A. Yes, sir.

24 Q. Okay. And that would have been to not consider that
25 charge against Mr. Rowland during trial, is that correct?

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1 A. Yes, sir.

2 Q. So from your memory what evidence or what did the
3 officers have to support their search warrant?

4 A. They had, they had this investigation basically
5 headed up by Mr. Ratliff. They had for probable cause
6 they had their so called complaints.

7 They had the observation of the alleged transaction
8 with the blue Honda if it was in fact a transaction. And
9 I really don't have the balance of the Rule 5 at my
10 disposal, it's been years.

11 But they had, it was not just a flippant kind of
12 we'll go get a search warrant. They had some
13 investigation of Mr. Rowland.

14 Q. I believe the search warrant or in the request for a
15 search warrant it said that they had been investigating
16 for over a year, does that sound correct?

17 A. Yes, sir. They had a quite lengthy investigation.
18 They had been trailing him.

19 Q. So it wasn't just a conversation with his brother
20 that may or may not have happened or it wasn't just the
21 officers seeing this hand-to-hand transaction. They had
22 numerous elements that they had in their affidavit, is
23 that correct?

24 A. Yes, sir. They had been after Mr. Rowland for quite
25 some time. Frankly, I think they tried, in their mind

1 they had Mr. Rowland bigger than what he may have been in
2 the circumstances.

3 Q. Okay. Now, just going back to the inconsistent
4 statements of Officer Ratliff just for clarification
5 purposes what again was your reasons for not addressing
6 those in the suppression hearing in front of the judge?

7 A. Well, you can look at inconsistent statements and
8 you can raise the issue of inconsistencies but basically
9 if you're going to stand up there and ultimately argue
10 that the inconsistencies are quote lies you're going to
11 have to have some pretty strong evidence that the officer
12 is lying. Otherwise, that usually sours the matter with
13 the jury.

14 And like I said my one time I served on it I was
15 totally amazed at what goes on in a jury room. But the
16 simple fact is that it bore out my feeling that you've
17 got to be very cautious with attacking police officers
18 unless you have a real good reason.

19 Q. And so you believe that the records for the chain of
20 custody were provided to you?

21 A. I believe -- well, I think I believe that the entire
22 record was given to me. I got the record from the, I
23 think I even, I could be mistaken but I think he even
24 filed some supplemental Rule 5 requests, Brady requests,
25 once I got into the case to make sure that if it was

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1 anything else they would send it to me. But you know the
2 file was the file and it was fairly thick when I turned
3 it over to Mr. Peper for him to take the case up on
4 appeal.

5 Q. And just again if the record does reflect that you
6 didn't make contemporaneous objections or renewed your
7 objections to the ruling on the suppression hearing you
8 would just concede to the record on that?

9 A. The record is the record. These court reporters are
10 far more accurate than we lawyers usually.

11 Q. Was there any particular reason that you recall for
12 not making those objections or did you just, were you
13 just relying on the Court's ruling on the motion in
14 limine?

15 A. I think I would be relying on the Court's ruling.
16 We, we...

17 Q. So you said in reference to the driver of the Honda
18 Accord you didn't personally try to investigate that
19 matter yourself?

20 A. Well, quite frankly the person that is supposed to
21 have had a hand-to-hand transaction with somebody you
22 don't want to call them into court and put them on the
23 stand and have them say yeah, I had a hand-to-hand
24 transaction with Mr. Rowland because that would be the
25 ultimate upshot. You can go through and say well you

1 lied about not having drugs; you lied about a lot of
2 things when you were stopped by the police.

3 Then you're left with once he says if he testifies
4 that Mr. Rowland did in fact give him or sell him some
5 drugs then you're left with asking jurors to decide
6 whether or not you know which of his lies to believe.

7 And if they believe the wrong lie then you're still
8 in big trouble. So that's something that you kind of
9 should want to avoid usually.

10 MR. LIMBAUGH: A moment's indulgence, Your Honor?

11 THE COURT: Absolutely.

12 [Whereupon, Mr. Limbaugh reviews documents]

13 Q. [Mr. Limbaugh] So in your opinion do you think the
14 Magistrate even without or even if you had brought up the
15 inconsistent statements by Officer Ratliff do you still
16 think there would have been enough evidence there to
17 support the probable cause for the warrant?

18 A. Most probably, yes sir. It's been my experience
19 with all due respect to the Magistrates they don't do
20 these things in a cursory fashion.

21 But I've seen a lot of search warrant affidavits in
22 my day and I don't know if I were the Magistrate would I
23 have issued them and they stood up in court, yes sir.

24 Q. Okay. And the issuance of a warrant has a pretty
25 low bar, is that correct?

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1 A. Oh, it's -- the only lower arc is getting an
2 indictment. At least the Magistrate you've got a
3 judicial officer who is going to at least think about it
4 verses, you know getting an indictment against somebody
5 you could almost get a loaf of bread indicted if you try.

6 Q. I believe there is case law that says it deals in
7 probabilities and induced suspicion of officers. That
8 seems like a fairly low bar to me. Is that correct?

9 A. It is a very low threshold.

10 Q. And again there had been a previous prolonged
11 investigation of Mr. Rowland prior to this incident, is
12 that correct?

13 A. Yes, sir. Like I said my recollection is that they
14 had Mr. Rowland in their mind bigger than what he
15 actually was if he in fact was what the jury said.

16 MR. LIMBAUGH: That's all I have for this witness,
17 Your Honor.

18 MR. FALK: Redirect briefly?

19 THE COURT: Absolutely.

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REDIRECT EXAMINATION

BY MR. FALK:

Q. I believe your testimony on cross-examination was you did not review John Rowland's conversation with you that the drugs were his.

You did not tell your client -- you did not tell Joseph Rowland than John Rowland was going to admit to taking possession of the drugs.

A. No sir, I didn't say that.

Q. Well, then did -- so John Rowland had a conversation with you one to four weeks before the trial, is that right?

A. Yes, sir.

Q. And he said something to the effect that the drugs were his, is that correct?

A. The upshot of it was yes, sir.

Q. And did you share that with Joseph Rowland? Did Joseph Rowland ---

A. --- yes, sir.

Q. Okay.

A. We talked. You know I told him I said if John is telling the truth and is gonna tell the truth we can put him up. But don't get us caught in a switchback.

MR. FALK: No further questions.

THE COURT: Alrighty.

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EXAMINATION

BY THE COURT:

Q. Real quickly Mr. Runyon, is there anything in the record that you recall as to why Mr. or Officer Ratliff was demoted for misconduct?

Did you ever find out what the true reason was or is there anything in the record that indicates it?

A. My recollection was that it was some violation of some departmental policies or regulations. It wasn't anything to do with real malfeasance as I recall. Now I'm subject to being corrected about that if we can review the file.

But Officer Ratliff -- and I really don't, I really don't know what departmental regulation it was but it had something to do with internal departmental regulations; not a violation of a statute or anything like that.

Q. Right. Basically driving his car home and using county gas when he wasn't supposed to as opposed to hiding evidence.

A. Well, maybe city gas ---

Q. --- city gas ---

A. --- I think it was city case, Judge.

THE COURT: All right. Any other questions? I just didn't know if that was in the record or if anybody had ever said anything. All right. You can be excused.

1 Thank you very much.

2 THE WITNESS: Thank you.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: All right. Mr. Falk, anything further?

6 MR. FALK: I have nothing further but I have a
7 rebuttal witness.

8 THE COURT: Okay.

9 MR. LIMBAUGH: The State rests, Your Honor.

10 THE COURT: Okay.

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1 MR. FALK: I'll call my client back to the stand.

2 THE COURT: Sure. Mr. Rowland?

3 MR. ROWLAND: I'm coming now, sir.

4 THE COURT: If I take those handcuffs off a few
5 seconds are you going to give me a hard time about it?

6 MR. ROWLAND: Oh, no sir. I won't escape ---

7 THE COURT: --- will you take them off him just so
8 he can -- he's having a hard time with all his papers;
9 just for a second please.

10 MR. ROWLAND: Thank you, Your Honor.

11 [Whereupon, Mr. Joseph Rowland comes forward]

12 THE COURT: All right. Mr. Rowland, have a seat.
13 For the record you're still under oath, okay.

14 [Whereupon, the witness retakes the witness stand]

15 THE COURT: All right. Mr. Falk?

16 - - - - -

17 MR. JOSEPH ROWLAND,

18 Having been previously duly sworn,

19 Was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. FALK:

22 Q. Mr. Runyon testified that it was his understanding
23 that there was sufficient documentation in the Rule 5 to
24 show a complete chain of custody. Is that your
25 understanding?

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1 A. No sir, it wasn't. In my Rule 5 discovery all they
2 had was a subsequent chain of custody under Rule C
3 regarding the chemical analysis of the chain of custody.

4 They never had the actual physical proof of chain of
5 custody forms; that is the head of the chain of custody
6 required by law ---

7 Q. --- so there was no affidavit -- so it's your
8 understanding -- you reviewed your Rule 5, is that
9 correct?

10 A. Say it one more time.

11 Q. You reviewed your Rule 5?

12 A. Yes sir, I have my Rule 5. I forgot to bring it but
13 there is proof of my assertion, what I'm claiming at
14 trial because when I stood before the trial court before
15 sentencing I raised the issues that my lawyer showed
16 deficient performance and was ineffective for failing to
17 make the claim that there was no physical proof of chain
18 of custody forms and that they violated Rule 6(b).

19 And that's on page 271 through 275 on trial record
20 of the trial transcript, sir. And I also alleged to the
21 Court that he failed to raise the issue regarding the
22 affidavit and the reliability of the informant in the
23 search warrant's probable cause.

24 All that's on record when I stood before the trial
25 court prior to sentencing and asked for a new trial,

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1 proving him to be ineffective. All of that's on record
2 already and I've already proved him to be ineffective at
3 trial, sir.

4 And on page 277 that's when I asserted to the trial
5 Court to Judge Young that my father was here to testify
6 about the gun and he failed to call him as a witness.
7 That's on page 277 of the trial transcript.

8 Regarding the chain of custody though I discussed
9 this with Mr. Runyon when he first came to see me. That
10 was one of the first things; that and the search
11 warrant's probable cause.

12 And I clearly said that there was no physical proof
13 of chain of custody forms to coincide or validate the
14 officer's testimony to find these drugs, which resulted
15 in a broken chain of custody and a crucial missing link
16 because there was no foundation and it violated my due
17 process.

18 Therefore, when he made his objection to object to
19 the chain of custody he was supposed to specifically make
20 his objection on that there was no chain of custody forms
21 for the evidence being presented at trial.

22 Q. So there is no compliance with Rule 6(b)?

23 A. It violated Rule 6(b) and it also violated South
24 Carolina Criminal law Code 44-53-45 article 6, Rule 73(a)
25 duties of a seizing officer that requires all of this as

1 aforementioned as a matter of law, all right. And the
2 Court's have been abusing their discretion by allowing
3 officers to testify without these physical proof of chain
4 of custody forms.

5 And I even mentioned that in my writ of cert on the
6 Supreme Court. That's a part of my brief in my Supreme
7 Court issue. But it never got adjudicated or ruled upon.

8 But I raised this issue at trial regarding the chain
9 of custody, sir; there was a broken chain of custody and
10 crucial missing link.

11 Q. And you said that you've reviewed your Rule 5 and
12 you don't recall seeing any statement that your brother
13 made?

14 A. No, sir. If I would have observed that statement
15 that would have been very -- that would have brought
16 forth -- I would have ---

17 Q. --- you would have remembered that ---

18 A. --- yeah, I would have remembered that. That's
19 crazy ---

20 THE COURT REPORTER: --- y'all don't talk over one
21 another, please.

22 A. Yes sir, that's crazy. But I do believe that is a
23 Brady violation for not just making him ineffective for
24 failing to address the matter but the prosecutor for
25 failing to bring forth this information. She is required

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1 under Brady to disclose this information; all information
2 provided by officers. That's a United States Supreme
3 Court case law. I've read plenty of cases on that.
4 That's obviously a Brady violation.

5 Q. [Mr. Falk] And you believe that the Court relied
6 on...

7 A. My brother's testimony?

8 Q. Officer Ratliff's characterization of your brother's
9 testimony?

10 A. Yeah. That false alleged material fact, which was
11 omitted in the search warrant's probable cause and his
12 oral supplement was used as a key factor as a reliable
13 tip in establishing probable cause because on a totality
14 of circumstances that was used to validate the search
15 warrant.

16 Q. Could you recall -- you actually sent me a copy of
17 the transcript from the preliminary hearing.

18 A. Yes, sir.

19 Q. And I don't see any reference in that transcript
20 that Officer Ratliff testified at that time about any
21 conversation he had with your brother.

22 A. No sir, he just came out of nowhere at trial with it
23 so it blew me off the hinges like it -- it's a Brady
24 violation; it's unrefutable definitively. There is no
25 doubt it's a Brady violation.

1 Q. And you never told Mr. Runyon that you were going to
2 waive any objection you had that the affidavit for the
3 search warrant wasn't left, is that correct?

4 A. No, sir. I never consented to my waiver of that
5 affidavit not being present incorporated attached to the
6 search warrant affidavit.

7 And I give judicial notice that this search warrant
8 right here [indicates] is the original search warrant
9 that was left at the residence where you see there is no
10 affidavit present. I forgot to give these to the Clerk
11 to introduce them as evidence.

12 MR. FALK: Your Honor, the original warrant is
13 actually in the file; it's in the record of appeal.

14 THE COURT: Okay. It's already in the record.

15 A. So I did not consent to his waiver of my Fourth
16 Amendment right. And me and him discussed it so by him
17 waiving my Fourth Amendment right and staying silent on
18 that issue he engaged in fraud because I didn't consent
19 to that.

20 I mean as -- have you reviewed United States verses,
21 no McGrew v United States? It's a 1997 9th Circuit case
22 law. Hold on sir. I don't mean -- all these papers.
23 I'll find it for you right now.

24 [Whereupon, the witness reviews document]

25 A. It must be over there [indicates]. But back to

Joseph T. Rowland v State of S.C.
Post-Conviction Relief-Joseph Rowland (recalled)-Direct Examination by Mr. Falk
September 30, 2019

1 United States v McGrew, 9th Circuit case law; 1997 case
2 law clearly said that by the officer claiming the reason
3 why he did not leave the affidavit with the search
4 warrant at the time of the search was to protect the
5 government witness.

6 That's the same case that is identical to the facts
7 and circumstances in my case because in my case in the
8 preliminary hearing transcript, I think it's on page 6 or
9 7 Officer Ratliff admitted he did not leave the affidavit
10 at the house because he was protecting a witness.

11 In that case it was vacated and the search was
12 deemed unreasonable and invalid because all together as a
13 whole it failed to inform the residents of a scope of a
14 search and probable cause therefore the good faith
15 exception did not apply to that case law.

16 And the same thing applies to mine. The good faith
17 exception does not apply in my case so this case has to
18 be vacated alone, on that issue alone.

19 MR. FALK: Your Honor, I have no further questions.

20 THE COURT: All right. Any follow up Mr. Limbaugh?

21 MR. LIMBAUGH: Nothing from the State.

22 THE COURT: All right. You may step down.

23 [Whereupon, the witness is excused and exits the
24 witness stand]

25 THE COURT: All right. Mr. Falk?

1 MR. FALK: Your Honor, we have no further witnesses
2 but I'd like an opportunity to summarize.

3 THE COURT: Sure. And you've already rested. Yes
4 sir, I'll be happy to hear from you.

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Joseph T. Rowland v State of S.C.
Post-Conviction Relief-Closing Statements-Remarks by Mr. Falk
September 30, 2019

1 CLOSING STATEMENTS

2 BY MR. FALK:

3 Your Honor, we started off the day with the issue
4 about whether or not the issues were preserved for
5 appellate review.

6 And I think there is no question in this record that
7 any problems with the search warrant affidavit and any of
8 the issues that were raised at the suppression hearing
9 for the admission of the fruits from the search warrant
10 coming in none of that was preserved for the record. We
11 believe that the brief that Mr. Peper filed on that
12 behalf shows what the prejudice to my client was.

13 Also, we heard testimony from Mr. Runyon about why
14 he was reticent to challenge Officer Ratliff on some of
15 the issues where he could have been challenged as far as
16 testimony during the suppression hearing where there is
17 no jury present where you could have challenged Officer
18 Ratliff's creditability.

19 He had prior inconsistent statements and there are
20 the issues about the demotion. He chose not to challenge
21 his creditability there and we think that that is -- I
22 don't understand the trial strategy at that point because
23 that is certainly nothing that would have to cause any
24 possible prejudice with a jury as far as telling the
25 judge when the jury is not present why there is reason to

1 question the validity of the search warrant and the
2 validity -- because this is all relying on the subsequent
3 testimony. It's all relying on what he says that he told
4 the Magistrate because I mean you've got to ultimately
5 see the search warrant affidavit.

6 But his testimony at the suppression hearing was
7 talking about all this other stuff; the numerous
8 complaints in the neighborhood and the conversation with
9 the brother. That's all we have to rely on, his
10 creditability here; there is no other record of it. And
11 the fact that there was an opportunity to really
12 challenge his voracity there I'm not sure I understand
13 the trial strategy.

14 Mr. Runyon certainly acknowledged that there were
15 all kinds of potential problems with this search warrant
16 with the fact that this driver of the blue Honda wasn't
17 present. The driver of the blue Honda could have been
18 challenged for his own creditability. There were a lot
19 of issues that were not presented at that hearing, at
20 that suppression hearing and we think that's a critical
21 factor.

22 My client is fervent in his beliefs that there was
23 no compliance with Rule 6(b) so there were no affidavits
24 in the Rule 5 materials that would show the chain of
25 custody from this officer who seized the drugs on the way

Joseph T. Rowland v State of S.C.
Post-Conviction Relief-Closing Statements-Remarks by Mr. Falk
September 30, 2019

1 to the lab. He believes that Mr. Runyon waived those
2 claims on his behalf. He also waived any objections to
3 the fact that there was no compliance with the South
4 Carolina statute about leaving a copy of the affidavit at
5 the home. He believes that those are Fourth Amendment
6 violations that were waived without his consent.

7 THE COURT: All right. Thank you very much. Mr.
8 Limbaugh?

9 MR. LIMBAUGH: May it please the Court, Your Honor?

10 THE COURT: Yes, sir.

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1 CLOSING STATEMENTS

2 BY MR. LIMBAUGH:

3 So as to the objection preservation issues the State
4 does not challenge the record on these issues. The
5 record is what it is in terms of whether or not Mr.
6 Runyon did make contemporaneous objections to preserve
7 those issues and I believe the Court of Appeals opinion
8 answers that.

9 The failure to challenge the officer Mr. Runyon
10 explained his trial strategy as to why he did not want to
11 do that in front of the jury. And even if he had
12 challenged the officer there is still plenty of evidence
13 in statements and other things that were used to try and
14 get the search warrant from the Magistrate.

15 In terms of the yearlong investigation there are
16 multiple complaints from the people that are all in the
17 search warrant; things of that nature that don't require
18 necessarily Mr. Ratliff being consistent in his
19 statements.

20 Mr. Runyon testified that he believes that the chain
21 of custody was complete and it was in his Rule 5. And
22 actually in the rebuttal case the Applicant admitted that
23 that was the original affidavit that was left at the
24 residence. So that kind of answers that question Your
25 Honor. Finally, the State would like to make the same

Joseph T. Rowland v State of S.C.
Post-Conviction Relief-Closing Statements-Remarks by Mr. Limbaugh
September 30, 2019

1 argument in terms of prejudice as it did in Milledge that
2 the Court in looking at these things on collateral issue
3 is looking to see if -- basically you're looking at them
4 as the Court of Appeals would. So even if Mr. Runyon had
5 made a contemporaneous objection to the evidence coming
6 into court would the trial court have denied that motion?

7 The State argues yes. If that were to be appealed
8 properly with the appellate court and withheld the trial
9 court's decision, the State is arguing that it would have
10 and that there would have been a sufficient probable
11 cause basis for the issuance of the search warrant.

12 Thank you, Your Honor.

13 THE COURT: All right. Yes, sir?

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1 MR. FALK: Just for clarification he admitted that
2 the warrant was left but not the warrant affidavit.
3 That's the issue and I was just -- and then what I should
4 have raised initially also is what to do with John
5 Rowland's testimony here today where he testified that he
6 owned the drugs and he had a conversation with trial
7 counsel saying that yeah, those drugs were mine.

8 Why trial counsel didn't call him as a witness that
9 certainly would be highly prejudicial the fact that he
10 wasn't called as a witness to testify when he had
11 somebody who was going to testify that the drugs were
12 his. He came in here today saying that the drugs were
13 his.

14 Obviously, he puts himself in significant jeopardy
15 by making that admission that the Court has to kind of
16 give some credence to that if it is, in fact, true.

17 THE COURT: All right.

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Joseph T. Rowland v State of S.C.
Post-Conviction Relief Hearing
September 30, 2019

1 THE COURT: All right. Where is a copy of the
2 actual search warrant itself? You said it was already in
3 the record.

4 MR. FALK: It's in the ---

5 MR. JOSEPH ROWLAND: --- Your Honor, I have one more
6 valuable issue.

7 THE COURT: Talk to your attorney.

8 MR. JOSEPH ROWLAND: I need him to raise.

9 [Whereupon, Mr. Falk confers with his client]

10 MR. FALK: Your Honor, his comment was, his comment
11 is that on page 157 Officer Ratliff testified ---

12 MR. JOSEPH ROWLAND: --- no, 57.

13 MR. FALK: Excuse me, 57 during the preliminary
14 hearing that Officer Ratliff ---

15 MR. JOSEPH ROWLAND: --- no, no, no sir. You want
16 me to read it to you, sir?

17 THE COURT: No.

18 MR. FALK: The testimony was that he observed what
19 appeared to be a hand-to-hand transaction; not that it
20 was a hand-to-hand transaction. And then Officer Ratliff
21 kind of bootstrapped that into saying that it was a hand-
22 to-hand transaction.

23 THE COURT: Okay.

24 [Whereupon, Mr. Falk confers with his client]

25 MR. FALK: And then his further point is that he

1 would have required testimony from the person in the blue
2 Honda.

3 [Whereupon, Mr. Falk confers with his client]

4 THE COURT: Well, we already agree that the
5 informant wasn't called to testify, correct?

6 MR. FALK: Yes ---

7 MR. JOSEPH ROWLAND: --- it was all by an
8 affidavit.

9 THE COURT: Okay.

10 MR. FALK: Your Honor, the record on appeal I
11 looked at this the search warrant is on page 240 of the
12 record of appeal. And the affidavit is on 241. It's the
13 affidavit that wasn't left.

14 THE COURT: Are you going by the bottom or the top
15 number?

16 MR. FALK: Actually I got two documents so you
17 might not have -- there is also a document that is
18 entitled record on appeal.

19 THE COURT: That's what I got.

20 MR. FALK: Okay.

21 THE COURT: But there are two, see there are
22 numbers at the bottom and then there is numbers at the
23 top.

24 MR. FALK: These handwritten numbers at the bottom.

25 THE COURT: Okay. So what number is it?

Joseph T. Rowland v State of S.C.
Post-Conviction Relief Hearing
September 30, 2019

1 MR. FALK: Search warrant is 240.

2 [Whereupon, the Court reviews documents]

3 THE COURT: Okay. I got it. That's what I wanted
4 to see. Okay, I got it. All right. Anything further?

5 MR. FALK: No, Your Honor.

6 MR. LIMBAUGH: No, Your Honor.

7 THE COURT: All right. I'm going to take it under
8 advisement and you'll have my answer by the end of the
9 week.

10 MR. FALK: Thank you.

11 MR. LIMBAUGH: Thank you, Your Honor.

12 *****END OF TRANSCRIPT OF RECORD*****

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15 [The Court resumes this case on October 2, 2019 to
16 give the ruling to the attorneys]

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Joseph T. Rowland v State of S.C.
Certificate of the Court Reporter
September 30, 2019

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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 30th day of September, 2019.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

January 31, 2021



Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-CP-10-4545
)	
)	
JOSEPH T. ROWLAND)	
)	
Applicant)	
)	
vs.)	
)	
STATE OF SOUTH CAROLINA)	
)	
Respondent)	
)	
)	
)	
	)	TRANSCRIPT OF RECORD

October 2, 2019
Charleston, South Carolina

B E F O R E:

THE HONORABLE BENTLEY PRICE, JUDGE

A P P E A R A N C E S:

JAMES K. FALK, ESQ.
Attorney for the Applicant

BENJAMIN LIMBAUGH, ESQ.
Attorney for the State

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

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No exhibits were introduced

Joseph Rowland v State
Post Conviction Relief Hearing-Ruling by the Court
October 2, 2019

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PROCEEDINGS

[This hearing was reconvened from September 30, 2019
for the Court to give the ruling]

THE COURT: Alrighty. So for the record after
careful review and discussion as to Joseph Rowland I feel
that the fact that the attorney was ineffective in the
sense that he was unable to procure any type of
objections that could be reviewed by the Court of Appeals
and obviously in doing so the Court of Appeals reviewed
nothing based on that trial.

And I find that to be ineffective and obviously the
second prong but for that ineffectiveness that Mr.
Rowland potentially could have had an appeal where he
could have brought up the issues concerning the search
warrant and other things.

Therefore, I am granting his petition for a PCR.
I'm going to ask that the Applicant's counsel submit an
order within the next 30 days and obviously you could
appeal if you feel the need, all right.

MR. FALK: Thank you, Your Honor.

THE COURT: All right. Thank y'all so very much.

*****END OF TRANSCRIPT OF RECORD*****

Joseph Rowland v State
Certificate of the Court Reporter
October 2, 2019

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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Charleston County, South Carolina on the 2nd day of October, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 31, 2021



Joyce C. Rueger, CVR-M
Court Reporter

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STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF COLLETON)	FOR THE 9th JUDICIAL CIRCUIT
)	
Joseph T Rowland 290065)	
Applicant	)	2018-CP- ¹⁰ 09 -4545
Vs.)	
State of South Carolina	)	ORDER GRANTING POST-
Respondent,)	)	CONVICTION RELIEF
_____))	

2020 JUN -8 PM 1:42
 JUDGE STEPHEN RYAN
 CLERK OF COURT
 FILED

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court On June 3, 2011, Applicant Joseph Todd Rowland was arrested following a narcotics investigation that led to the discovery of cocaine and marijuana in his residence. On April of 2012, Applicant was indicted by the Charleston County Grand Jury for one count of trafficking in cocaine, one count of possession of marijuana with intent to distribute, one count of possession of a firearm during the commission of a violent crime, and one count of unlawful possession of a stolen pistol.

On May 12, 2014, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Roger M. Young, Sr., circuit court judge, presiding. At the close of the State's case Applicant's counsel moved for a directed verdict on all four charges. The Court directed a verdict of not guilty on the charge of Possession of a Stolen Firearm S.C. Code Ann § 16-23-30 but denied the Appellant's directed verdict motion regarding the remaining three (3) charges. The jury returned a verdict of guilty on the three remaining charges and the trial judge sentenced Applicant to concurrent terms of imprisonment of twenty years for trafficking in cocaine, five years for possession of marijuana with intent to distribute, and five years for possession of a firearm during the commission of a violent crime.

Applicant filed a timely notice of appeal. Mark Peper, Esquire, of the Peper Law Firm perfected the appeal. On appeal Applicant alleged that the trial court erred in denying Applicant's

motion to suppress the drug evidence on the ground the search warrant was not supported by probable cause. Additionally Applicant alleged that the trial court erred in denying its motion for directed verdict when the evidence presented by the state did not suffice to create a jury issue as to constructive possession of the contraband. The South Carolina Court of Appeals affirmed Applicant's conviction on May 24, 2017. State v. Rowland, Op. No. 2017-UP-225 (S.C. Ct. App. filed May 24, 2017). The remittitur was returned to the circuit court on April 17, 2018.

Applicant filed his application for post-conviction relief on September 19, 2018. Thereafter on January 31, 2019 the State filed its Return, Partial Motion to Dismiss, and Motion for More Definite Statement. Applicant then filed an amendment to his PCR application and asserted the following grounds supporting his claim of ineffective assistance of counsel:

1. Trial counsel provided ineffective assistance of counsel by failing to argue the following issues in support of his motion to suppress the results of Charleston Police Department's SIU search of 31 Woodleaf Court.
 - a. The SIU officer executing the search warrant failed to leave a copy of the search warrant affidavit in violation of S.C. Code Ann § 17-13-150. Additionally the SIU officers executing the warrant were not in possession of the Affidavit when the warrant was executed.
 - b. SIU Officer Ratliff premised the probable cause to search the premises in part upon a statement provided by the driver of a blue Honda Accord who allegedly was seen to have been involved in a hand to hand transaction at the location before being stopped by CPD after leaving the residence; and, upon "numerous complaints" from unidentified individuals over the past six months.
 - i. Other than the statement by the driver, there was no proof offered that there were no drugs in the blue Honda Accord prior to its arrival at the residence. Moreover, the driver had an incentive to fabricate his statement in order to escape criminal liability for being caught in possession of both marijuana and cocaine.
 - ii. The numerous complaints about drug activity amounted to more than anonymous tips and Officer Ratliff offered no proof as to the reliability of the tipsters. Moreover, Officer Ratliff offered no proof to show that the six month old tips were not stale.

2. Trial counsel was ineffective for not renewing the objections he raised during the pre-trial suppression hearing by making a contemporaneous objection when the drug evidence was introduced at trial. By failing to make this contemporaneous object, the issues regarding the warrant's inaccurate address and the lack of probable cause were not preserved for appellate review.

3. Trial counsel was ineffective for failing to call John Rowland, Janis Rowland and Leroy Roland as witnesses at the suppression hearing. On information and belief these three individuals would have testified to inaccuracies in the testimony offered by Officer Ratliff during the suppression hearing.

4. The 9th Circuit Solicitor's office engaged in reckless conduct by allowing Officer Ratliff to testify that Applicant was at the residence when the search warrant was served; and that Applicant was given a copy of the search warrant affidavit. This testimony directly conflicts with CPD Officer Keith Summer's testimony that Applicant was not at the residence when the search warrant was served. Additionally the testimony conflicts with Officer Ratliff's testimony at the preliminary hearing that he left a copy of the search warrant affidavit at the residence.

5. Trial counsel was ineffective for not calling Leroy Roland as a witness in the defense's case in chief. On information and belief Leroy Roland would have testified that he owned the gun found at the residence.

6. As an additional ground for relief, Respondent is in possession of newly discovered evidence namely an affidavit by John Rowland in which he claims ownership of the cocaine found in the residence. The affidavit further states that the reason the affiant did not come forward with this information sooner because he feared that DSS would have sought to remove his children from his custody based on his possession of cocaine while his children were present.

An evidentiary hearing was held September 30, 2019 in the Charleston County Courthouse before the Honorable Bentley Price. Applicant was present at the hearing and represented by James Falk, Esquire. The Respondent was represented by Benjamin Limbaugh of the South Carolina Attorney General's Office. Applicant's trial counsel William D Runyon, Esquire testified along with Applicant, Applicant's father Leroy Rowland and Applicant's brother John Rowland. The Court had the opportunity to consider the witnesses' testimony along with their demeanor and candor. Additionally the Court had the benefit of the arguments of counsel on the issues raised at the hearing.

For the reasons set forth herein, Joseph Rowland's application for post-conviction relief is hereby granted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

A criminal defendant has a Sixth Amendment right to counsel which includes a right to the effective assistance of counsel. McMann v Richardson 397 U.S. 759, 771, 90 S.Ct. 1441, 1449, 25 L.Ed 2d. 763 (1970). A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id Strickland, 466 U.S. at 689. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Under the second prong of the Strickland test, Applicant must show that his trial 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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the

trial cannot be relied upon as having produced a just result. Id., Strickland, 466 U.S. at 694; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Trial Counsel's failure to raise all potential issues in support of Applicant's Motion to suppress.

On June 3, 2001 Investigator Ratliffe of the Charleston Police Department obtained a search warrant for 31 Woodleaf Court, Charleston SC 29407. The warrant affidavit contained the following probable cause description:

Over the past 6 months, the Charleston Police Department Special Investigations Unit has received numerous complaints of narcotic activity from citizens, in reference to illegal narcotics being sold from 31 Woodleaf Ct. SIU has been conducting an investigation on this residence and Joseph Rowland for more than a year for narcotic activity.

In response, within the past 72 hours, the CPD Special Investigations Unit utilized established a fixed surveillance location in which Inv. Ratliffe and Inv. Sumner observed Joseph Todd Rowland, a registered resident at this location, conduct a hand to hand narcotics transaction. At approx 1440hrs. Joseph Rowland was observed exiting the residence via the front door and walk up to a vehicle which parked in front of the residence. Joseph Rowland approached the door of the vehicle and conducted a hand to hand transaction with a person inside the vehicle (SC CWM-343). Within 1 minute of making contact with the driver of the vehicle Joseph Rowland then walked back into the above residence. The vehicle (SC CWM-343) then immediately left the area. Inv. Ratliffe and Inv. Sumner then corroborated this by having a CPD patrol unit conduct a traffic stop on the above vehicle (SC C'NM-343) and locate an amount of illegal narcotics. The driver of the vehicle then wrote a statement confirming the above mentioned transaction of illegal narcotics...

Based on Inv. Ratliffe's experience and the current investigation, there is probable cause to believe that illegal narcotics, and/or the proceeds of, are being stored at 101 A Pamlico Terrace, Charleston, SC 29455. (Record on Appeal p. 241-242).

At the suppression hearing Investigator Ratliffe testified that he supplemented his search warrant affidavit by advising the magistrate that he had spoken with a sibling of Applicant. (Transcript 61

l. 21-22). Previously Investigator Ratliff testified he spoke to John Rowland, and that John Rowland did not specifically say that Applicant was selling drugs but [John Rowland] *alluded to his drugs was consistent with him continuing to do so and that he had prior knowledge of him doing that in the past.* (Transcript 56 l 14-17).¹

a. Probable Cause to Search Residence

Trail counsel argued that the search warrant had at least one² error it. Additionally trial counsel argued that the two incidents the officers observed, namely the one with the man on the bicycle and the one with the man in the blue Honda was insufficient to establish probable cause. The trial court held that the one error in the address description was merely a scrivener's error. The trail court held that since the officers had a reason to be observing Applicant; the officers witnessed at least and maybe two drug transactions; and the driver of the Honda gave a statement, that the officers provided sufficient probable cause for the issuance of the search warrant. (Transcript 74 l. 12- p. 75 l. 6).

The Court finds that trial counsel provided ineffective assistance of counsel by failing to address additional deficiencies in officer Ratliffe's probable cause application. The Fourth Amendment guarantees "[t]he right of the people to be secure . . . [from] unreasonable searches and seizures." U.S. Const. amend. IV. "In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10. Evidence obtained in violation of the Fourth Amendment is inadmissible in both state and federal court. Forrester, 343 S.C. at 643, 541 S.E.2d at 840. A magistrate may issue a search warrant only upon

¹ Investigator Ratliff also testified about a hand to hand transaction between Applicant and an individual that rode to the location on a bicycle. (Transcript 57 l. 4-13). There is no indication that this information was provided to the magistrate that issued the search warrant.

² The last paragraph of the warrant described the location as 101 A Pamlico Terrace, Charleston, SC 29455.

a finding of probable cause. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). "This determination requires the magistrate to make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." State v. King, 349 S.C. 142, 150, 561 S.E.2d 640, 644 (Ct. App. 2002). "The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued." State v. Dupree, 354 S.C. 676, 684, 583 S.E.2d 437, 441 (Ct. App. 2003) (citations omitted). To determine probable cause, the Court looks to the totality of the circumstances test set forth in Illinois v. Gates, 462 U.S. 213 (1983). The totality of the circumstances test establishes: [t]he task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Id.* at 238; see also State v. Jones, 342 S.C. 121, 536 S.E.2d 675 (2000) (stating that under totality of circumstances test, reviewing court considers all circumstances, including status, basis of knowledge, and veracity of informant, when determining whether or not probable cause existed to issue search warrant).

Both the Fourth Amendment of the United States Constitution and Article I, § 10 of the South Carolina Constitution require an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued. U.S. Const. amend. IV; S.C. Const. art. I, § 10. Additionally, the South Carolina Code mandates that a search warrant "shall be issued only

upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record" S.C. Code Ann. § 17-13-140 (1985). Oral testimony may also be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause. See State v. Weston, 329 S.C. 287, 494 S.E.2d 801 (1997). However, "sworn oral testimony, standing alone, does not satisfy the statute." State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). State v. Jones, 342 S.C. 121, 128, 536 S.E.2d 675, 678-79 (2000). In terms of a court's review of the magistrate's decision, "[t]he duty of the reviewing court is to ensure the issuing magistrate had a substantial-basis upon which to conclude that probable cause existed." State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). "In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention." State v. Thompson, 363 S.C. 192, 200, 609 S.E.2d 556, 560 (Ct. App. 2005).

In the instant case Investigator Ratliffe's affidavit and his supplemental testimony did not provide a neutral and detached magistrate with sufficient information upon which to find probable cause. There is no record that Investigator Ratliffe provided any that corroborated the statements from the neighbors or information regarding the neighbors' reliability. Additionally, there was no testimony corroborating the statement of the driver of the blue Honda nor any information regarding his reliability. See State v Johnson, 302 S.C. 243, 247 305 S.E.2d 167, 169 (1990) (remanding for a hearing to determine the exact information supplied to magistrate where affidavit did not set forth information as to the reliability of the informant nor was the information corroborated).

b. Failure to comply with SC Code § 17-13-150

At Applicant's preliminary hearing Investigator Ratliffe testified that he did not leave a copy of the search warrant affidavit at the Woodleaf Road Residence. (June 27, 2011 Preliminary

Hearing Transcript p. 5 l. 11-13). The South Carolina General Assembly has imposed stricter requirements than federal law for executing search warrants. S.C. Code § 17-13-150 expressly states: *When any person is served with a search warrant, such person shall be furnished with a copy of the warrant along with the affidavit upon which such warrant was issued.* In determining the validity of a search warrant South Carolina Courts have required compliance with the relevant statutory provisions. See State v Covert, 382 S.C. 205, 675 S.E.2d 740 (2009). (holding that an unsigned search warrant was invalid and thus the evidence obtained under the warrant should have been suppressed). In holding that the search in Covert could not be saved by the “good faith” exception, the court stated:

We consider also whether the unsigned warrant can be upheld in the face of § 17–13–140, the general search warrant statute. The statute contains requirements different from those mandated by the Fourth Amendment, and is in some ways “more strict” than the federal constitution. State v. McKnight, 291 S.C. 110, 352 S.E.2d 471 (1987). While we have recognized a “good faith” exception to the statute's requirements where the officers make a good faith attempt to comply with the statute's affidavit procedures, McKnight, *supra*, explaining State v. Sachs, 264 S.C. 541, 216 S.E.2d 501 (1975), we have left open the question whether a good faith exception would be applied where “the officers reasonably believe the warrant is valid when the search is made, but is subsequently determined to be invalid.” McKnight, *supra*. Here, we do not reach the question whether there exists a good faith exception to the statute where a defective warrant is issued, since under South Carolina law an unsigned warrant is not a warrant, and is not capable of being issued within the meaning of § 17–13–140.

Id. Covert 382 S.C. at 209

The Court finds that Applicant was prejudiced by the deficiencies in trial counsel’s efforts to suppress the evidence seized from the residence. Absent trial counsel’s deficient performance, there is a reasonable likelihood that the trial court would have granted the Applicant’s suppression motion.

Trial counsel's failure to preserve appellate issued neglecting to renew objection to the introduction of evidence obtained from the search of the residence.

Although trial counsel sought to suppress the introduction of the evidence obtained through the search of the residence, trial counsel did not renew his objection when the state sought to introduce that evidence at the trial. State's exhibits 2 through 20 were photographs that were admitted without objection. (Transcript p. 124 l. 7-10). These photographs depicted the contraband seized during the search: a handgun, (Exhibits 12 & 13); cocaine found in a bag in a chest of drawers (Exhibit 7); a Gucci bag found behind a door containing an amount of cocaine Exhibit 15) and marijuana (Exhibits 16, & 18). Additionally the photographs depicted paraphernalia and other items frequently associated with drug trafficking: scales (exhibits 8 & 9); ledger (exhibit 6); baggies (exhibit 14); and currency (exhibit 20). Trial counsel did not renew his objection regarding the lawfulness of the search when the lab report for the drugs was admitted into evidence. (Transcript p. 170 l 6-12. Special Investigations Unit officer William Olson then testified, without objection, that while executing the search warrant of the residence, he collected the items depicted in the photographs. (Transcript p. 175 l. 18 – p. 178 l. 6).

Appellate counsel challenged the sufficiency of the magistrate's probable cause determination on appeal. However, trial counsel's failure to make contemporaneous objections to the introduction resulted in the issue not being preserved for appellate review. A ruling in *limine* is not final; unless as objection is made at the time the evidence is offered and a final ruling procured. State v Smith, 337 S.C. 27, 32, 522 S.E.2d 598, 600 (1999). Trial counsel did not have a reasonable explanation for his failure to renew his objection, and therefore his performance was deficient McHam v State, 404 S.C. 465, 746 S.E.2d 41 (2013) abrogated on other grounds State v Smalls, 422 S.C. 174, 810 S.E.2d 836 (2018). Other than the evidence seized during the search

warrant there was little other evidence of guilt. The court therefore finds that had trial counsel properly preserved the issue for appellate review there is a reasonable probability the Applicant's appeal would have been successful.

Trial counsel's failure to call witnesses.

a. Leroy Rowland

Applicants' counsel called Leroy Rowland, Applicant's father to testify at the evidentiary hearing. Leroy Rowland testified that he was present throughout the trial and available to testify. At the suppression hearing Charleston City Police Officer Brandon Ratliff testified that Applicant was at the residence when Ratliff was at the residence to execute the search warrant. (Transcript p. 66 l. 10 – p. 67 l. 16). Additionally Investigator Ratliffe testified CPD attempted to have Applicant stopped prior to getting to the residence; that he refused to stop and Applicant then drove straight into the driveway where he was then detained. (transcript 67 l 13-16). At evidentiary hearing Leroy Rowland testified that when the CPD executed the search warrant, he and his wife were at the residence along with their son John Rowland. Applicant was not at the residence when CPD arrived at the residence. Leroy Rowland testified that it was more than an hour later that a CPD patrol car arrived at the residence with Applicant in their custody. Leroy Rowland also testified that he and his wife lived at 31 Woodleaf Ct at that he owned the .45 caliber gun that was seized from his home. Trial counsel failed to provide sufficient explanation for his failure to call Leroy Rowland to testify. This court finds that had Leroy Rowland testified at the suppression hearing his testimony would have impeached Officer Ratliff's testimony and it is likely that the court would have suppressed the evidence seized from the residence. Additionally, the Court finds had Leroy Rowland testified before the jury that the he was the owner of the gun found at his residence, there is a reasonable probability that the jury would have acquitted Applicant on the

indictment under S.C. Code § 16-23-490 (possession of a weapon during the commission of a violent crime).

b. John Rowland

Applicant's brother John Rowland testified at the PCR evidentiary hearing. John Rowland stated that he was present at his brother's trial and was available to testify. Had he been called to testify at the suppression hearing, John Rowland would have stated that that never spoke with Investigator Ratliffe regarding his brother and his any drug activity. At the evidentiary hearing trial counsel failed to provide a sufficient explanation for not calling John Rowland to testify during the suppression hearing. The court finds that trial counsel was deficient for not calling John Rowland to testify; and, had he testified at the hearing, his testimony would have impeached Investigator Ratliff's testimony and it is likely that the trial court would have suppressed the search.

After-discovered evidence

At the evidentiary hearing John Rowland testified that the cocaine found in the Gucci bag along with the other cocaine located in the residence was his. He testified that he had not revealed this information earlier because there was in a pending investigation with the South Carolina Department of Social Services, and he feared that had he come forward before his brother's trial that he would have lost his children.

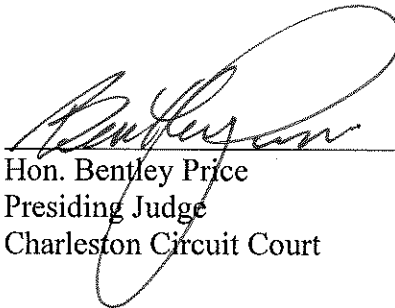
A party requesting a new trial based on after-discovered evidence must show that the evidence:(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching. Hayden v State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983); State v South, 310 S.C. 504, 427 S.E.2d 666 (1993).

John Rowland's testimony is credible because he is admitting guilt to a felony with a sentencing range of 7 to 25 years and a fine of \$50,000. S.C. Code § 44-53-370(e) (2) (b) 1. Moreover, the court finds credible John Roland's explanation for his failure to come before Joseph Roland's trial. Applicant testified that prior to his trial is was unaware that his brother was willing to truthfully testify regarding the ownership of the cocaine found in the Gucci bag and elsewhere throughout the house. John Rowland's testimony is material to the issue of Applicant's innocence. The court finds that John Rowland's testimony meets the criteria set forth in Hayden for consideration at a PCR hearing. Had the jury heard John Rowland's testimony it is reasonably likely that the jury would have acquitted Applicant of the cocaine trafficking charge.

For the reasons set forth above the Court finds that Applicant successfully met his burden on both prongs of the Strickland test. Therefore the application for Post-Conviction Relief is granted and Applicant's case is remanded back to the Charleston County Solicitor's office.

IT IS SO ORDERED!

Time Exp, 2020
Charleston, SC


 Hon. Bentley Price
 Presiding Judge
 Charleston Circuit Court

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
)
 Joseph T. Rowland, #2900065,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2018-CP-10-4545

RESPONDENT'S MOTION TO
 RECONSIDER, ALTER, OR
 AMEND PURSUANT TO RULE
 59(e), SCRPC

2020 JUN 18 AM 9:43
 CLERK OF COURTS
 CHARLESTON, SC
FILED

This matter comes before this Court by way of an application for post-conviction relief filed on September 19, 2018, by Joseph Rowland (Applicant). A hearing on this application was held in the Charleston County Courthouse before the Honorable Bentley Price, presiding judge, on September 30, 2019. By written order signed June 2, 2020, and received by Respondent on June 8, 2020, this Court granted post-conviction relief and remanded the matter to the Charleston County Court of General Sessions for a new trial.

Respondent, by and through undersigned counsel, making its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRPC, would respectfully show unto this Court:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. On June 3, 2011, Applicant Joseph Rowland was arrested following a narcotics investigation that led to the discovery of cocaine and marijuana in his residence. On April of 2012, Applicant was indicted by the Charleston County Grand Jury for one count of trafficking in cocaine, one count of possession of marijuana with intent to distribute, one count of possession of a firearm during the commission of a violent

crime, and one count of unlawful possession of a stolen pistol.

On May 12, 2014, a jury trial was commenced in the Charleston County Court of General Sessions with the Honorable Roger M. Young, Sr., circuit court judge, presiding. At the close of the State's case Applicant's counsel moved for a directed verdict on all four of the charges. The Court directed a verdict of not guilty on the charge of Possession of a Stolen Firearm S.C. Code Ann. §16-23-30 but denied Applicant's directed verdict motion regarding the remaining three charges. The jury returned a verdict of guilty on the three remaining charges and the trial judge sentenced Applicant to concurrent terms of imprisonment of twenty years for trafficking in cocaine, five years for possession of marijuana with intent to distribute, and five years for possession of a firearm during the commission of a violent crime.

Applicant filed a timely notice of appeal. Mark Peper, Esquire, of the Peper Law Firm perfected the appeal. On appeal, Applicant alleged that the trial court erred in denying Applicant's motion to suppress the drug evidence on the ground the search warrant was not supported by probable cause. Additionally, Applicant alleged that the trial court erred in denying his motion for directed verdict when the evidence presented by the State did not suffice to create a jury issue as to constructive possession of the contraband. The South Carolina Court of Appeals affirmed Applicant's conviction on May 24, 2017. *State v. Rowland*, Op. No. 2017-UP-225 (S.C. Ct. App. filed May 24, 2017). The remittitur was returned to the circuit court on April 17, 2018.

Applicant filed his application for post-conviction relief on September 19, 2018. Thereafter on January 31, 2019, the State filed its Return, Partial Motion to Dismiss, and Motion for More Definite Statement. Applicant then filed an amendment to his PCR application and asserted the following grounds supporting his claim of ineffective assistance of counsel:

1. Trial counsel provided ineffective assistance of counsel by failing to argue the following issues in support of his motion to suppress the results of Charleston

Police Department's SIU search of 31 Woodleaf Court.

- a. The SIU officer executing the search warrant failed to leave a copy of the search warrant affidavit in violation of S.C. Code Ann. § 17-13-150. Additionally the SIU officers executing the warrant were not in possession of the affidavit when the warrant was executed.
 - b. SIU Officer Ratliff premised the probable cause to search the premises in part upon a statement provided by the driver of a blue Honda Accord who allegedly was seen to have been involved in a hand to hand transaction at the location before being stopped by CPD after leaving the residence; and, upon "numerous complaints" from unidentified individuals over the past six months.
 - i. Other than the statement by the driver, there was no proof offered that there were no drugs in the blue Honda Accord prior to its arrival at the residence. Moreover, the driver had an incentive to fabricate his statement in order to escape criminal liability for being caught in possession of both marijuana and cocaine.
 - ii. The numerous complaints about drug activity amounted to more than anonymous tips and Officer Ratliff offered no proof as to the reliability of the tipsters. Moreover, Officer Ratliff offered no proof to show that the six month old tips were not stale.
2. Trial counsel was ineffective for not renewing the objections he raised during the pre-trial suppression hearing by making a contemporaneous objection when the drug evidence was introduced at trial. By failing to make this contemporaneous object, the issues regarding the warrant's inaccurate address and the lack of probable cause were not preserved for appellate review.
 3. Trial counsel was ineffective for failing to call John Rowland, Janis Rowland, and Leroy Rowland as witnesses at the suppression hearing. On information and belief the three individuals would have testified to inaccuracies in the testimony offered by Officer Ratliff during the suppression hearing.
 4. The 9th Circuit Solicitor's Office engaged in reckless conduct by allowing Officer Ratliff to testify that Applicant was at the residence when the search warrant was served; and that Applicant was given a copy of the search warrant affidavit. This testimony directly conflicts with CPD Officer Keith Summer's testimony that Applicant was not at the residence when the search warrant was served. Additionally the testimony conflicts with Officer Ratliff's testimony at the preliminary hearing that he left the copy of the search warrant affidavit at the residence.
 5. As an additional ground for relief, Respondent is in possession of newly discovered evidence namely an affidavit by John Rowland in which he claims ownership of the cocaine found in the residence. The affidavit further states that the reason the affiant did not come forward with this information sooner because he feared that DSS would have sought to remove his children from his custody based on his possession of cocaine while his children were present.

The Court signed an order on June 2, 2020 granting post-conviction relief and remanding the matter to the Charleston County Court of General Sessions for a new trial. This motion to reconsider, alter, or amend pursuant to Rule 59(e), SCRCRCP, follows.

ARGUMENT IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief because Applicant failed to meet his burden of establishing counsel was constitutionally ineffective and prejudice resulted, as well as failing to meet his burden as it relates to newly discovered evidence.

In every criminal case tried in South Carolina, the defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); *see State v. Harris*, 340 S.C. 59, 63, 530 S.E.2d 626, 627 (2000) (“The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors.”). Pursuant to that right, the defendant is entitled to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, n. 14 (1970); *see Strickland v. Washington*, 466 U.S. 668, 685 (1984) (“An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.”). Significantly, effective assistance of counsel does *not* mean perfect representation. *See Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”); *see also Burt v. Titlow*, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. Strickland, 466 U.S. at 687-688. Meanwhile, counsel’s assistance is considered to be constitutionally ineffective when “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.” Id. at 686.

When faced with a claim of ineffective assistance of counsel, a reviewing court must conduct a two-pronged analysis. Franklin v. Catoe, 346 S.C. 563, 570, 552 S.E.2d 718, 722 (2001). Pursuant to that two-pronged analysis, an applicant raising an ineffective assistance of counsel claim must establish: (1) counsel’s representation fell below an objective standard of reasonableness; *and* (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel’s deficient performance. Williams v. State, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005). Thus, the applicant has the burden of establishing both deficiency and prejudice in order to be entitled to post-conviction relief. Hughes v. State, 364 S.C. 554, 558, 552 S.E.2d 315, 317 (2001). Significantly, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” Strickland, 466 U.S. at 696.

Regarding the deficiency prong of the analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). When analyzing counsel’s performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for overcoming that presumption. Id.; see Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Furthermore, the reviewing court will scrutinize counsel’s performance in a highly deferential manner, will make every effort “to eliminate the distorting effects of hindsight,” and will “evaluate the conduct from counsel’s perspective at the time” in light of the then-existing

circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Thus, counsel's performance will be considered to be deficient only when it objectively amounted to incompetence under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to post-conviction relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment."¹ Strickland, 466 U.S. at 691. In order for that burden to be met, counsel's deficient performance must have prejudiced the applicant to such an extent there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989); see Strickland, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112 (emphasis added).

Probable Cause to Search Residence

Applicant alleges trial counsel was ineffective for failing to address additional deficiencies in officer Ratliffe's probable cause application. However, trial counsel was not deficient in his suppression argument and Applicant cannot prove prejudice where ample probable cause existed

¹ Notably, "a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Strickland, 466 U.S. at 697. In fact, a reviewing court ordinarily should dispose of an ineffective assistance of counsel claim on the grounds of lack of sufficient prejudice "[i]f it is easier" to do so. Id.

in support of issuing the search warrant and the additional “issues” Applicant contends should have been argued would not have been meritorious.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. “The touchstone of the Fourth Amendment is reasonableness.” Florida v. Jimeno, 500 U.S. 248, 250 (1991). Thus, only unreasonable searches and seizures are prohibited. State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977); see Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”).

Generally, in order for a search to be reasonable under the Fourth Amendment, a law enforcement officer must obtain a search warrant prior to conducting the search. Robinson v. State, 407 S.C. 169, 185, 754 S.E.2d 862, 870 (2014). In South Carolina, an officer seeking to obtain a search warrant must present a sworn affidavit to a judge presenting grounds sufficient to establish probable cause in order to justify the issuance of the warrant. State v. Bellamy, 336 S.C. 140, 143, 519 S.E.2d 347, 348-349 (1999); see S.C. Code Ann. § 17-13-140 (“A warrant issued hereunder shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record establishing the grounds for the warrant.”); see also Illinois v. Gates, 462 U.S. 213, 238 (1983) (identifying probable cause as “a fair probability that contraband or evidence of a crime will be found”). In State v. Williams, 262 S.C. 186, 189, 203 S.E.2d 436, 437-438 (1974), the South Carolina Supreme Court explained probable cause as it relates to the issuance of a search warrant:

In order to justify the issuance of a search warrant, probable cause must be shown, but the term ‘probable cause’ does not import absolute certainty. In determining whether there is sufficient evidence to sustain a finding of probable cause, each case stands on its own facts. The evidence need not be sufficient to support a conviction, or a verdict of guilty, or to establish guilt beyond a reasonable doubt; nor need the proof be positive, it being enough if it is such as to induce in the mind

of the issuing officer an honest belief that the facts set forth exist, or as would lead a man of prudence to believe that the offense has been committed.

(citing State v. Bennett, 256 S.C. 234, 182 S.E.2d 291 (1971)).

In deciding whether to issue a search warrant, the issuing judge must “make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” Gates, 462 U.S. at 238. In making the probable cause determination, “[issuing judges] are concerned with probabilities and not certainties.” State v. Sullivan, 267 S.C. 610, 617, 230 S.E.2d 621, 624 (1976). Furthermore, the issuing judge must view the warrant affidavit in a common-sense and realistic fashion and give consideration to the fact such affidavits are typically prepared by non-lawyers in the haste of criminal investigations. State v. Arnold, 319 S.C. 256, 260, 460 S.E.2d 403, 405 (Ct. App. 1995); see United States v. Ventresca, 380 U.S. 102, 108 (1965) (“Technical requirements of elaborate specificity once exacted under common law pleadings have no proper place [when evaluating the sufficiency of search warrant affidavits].”).

When reviewing a decision to issue a search warrant, a reviewing court should decide whether the issuing judge had a substantial basis for concluding probable cause existed. State v. Dupree, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003). Applying the same standard as the issuing judge, the court should base its determination on the totality of circumstances and afford great deference to the issuing judge’s probable cause determination. State v. Keith, 356 S.C. 219, 223, 588 S.E.2d 145, 147 (Ct. App. 2003). Significantly, “[s]earches based on warrants will be given judicial deference to the extent that an otherwise marginal search may be justified if it meets a realistic standard of probable cause.” Dupree, 354 S.C. at 683-684, 583 S.E.2d at 441; see Ventresca, 380 U.S. at 106 (“[I]n a doubtful or marginal case a search under a warrant may be

sustainable where without one it would fall.”). “Suppression is appropriate in only a few situations, including when an affidavit is ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.’ ” State v. Weston, 329 S.C. 287, 293, 494 S.E.2d 801, 804 (1997) (quoting United States v. Leon, 468 U.S. 897, 923 (1984)).

In State v. Kinloch, 410 S.C. 612, 613-614, 767 S.E.2d 153, 153-154 (2014), the South Carolina Supreme Court considered whether the information contained in a search warrant affidavit was sufficient to establish a probable cause basis for the search of a residence. In that case, the officer who sought the search warrant included the following details in the search warrant affidavit: (1) officers conducted surveillance of a particular residence after receiving numerous tips about drug transactions taking place at that location; (2) during their surveillance, officers saw a man in a red shirt leave the residence and engage in hand-to-hand transactions with other individuals while a man in a black jacket stood nearby; (3) officers observed the man in the red shirt count money after the transactions; (4) later on, officers saw the man in the black jacket approach another individual and exchange a plastic bag for money; and (5) after that, officers approached the person who made the exchange with the man in the black jacket and recovered a plastic bag containing heroin when it was dropped to the ground. Id. at 614-615, 767 S.E.2d at 154. Based on those facts, the magistrate issued a search warrant for the targeted residence, drugs and other incriminating evidence were discovered during the ensuing search, and Kinloch subsequently successfully moved to suppress that evidence during trial. Id. Thereafter, the State appealed, and the Court of Appeals affirmed the trial judge’s ruling. Id. at 614, 767 S.E.2d at 155. Ultimately though, the Supreme Court granted certiorari and reversed. Id. at 618, 767 S.E.2d at 156. In reversing, the Supreme Court concluded the search warrant affidavit provided the magistrate with a substantial basis for reaching his probable cause determination based on the

information contained within it regarding the numerous tips received by the officers and the officers' subsequent observation of "seemingly drug-related behavior." Id. at 618, 767 S.E.2d at 156.

In Applicant's case, the information included in the search warrant affidavit established the officers – much like the officers in Kinloch – had received numerous tips in regard to drug activity taking place at 31 Woodleaf Court. See id. (finding the receipt of numerous tips regarding drug activity to be relevant under the totality of the circumstances towards establishing a probable cause basis for a search). Additionally, the information in the search warrant affidavit established the officers – much like the officers in Kinloch – corroborated those tips by conducting surveillance and observing Appellant engaged in what appeared to be drug transactions to the trained and skilled officers. See id. (finding a substantial basis for probable cause existed where the officers observed "seemingly drug-related behavior" (emphasis added)); State v. Adams, 291 S.C. 132, 134, 352 S.E.2d 483, 485 (1987) ("[T]he evidence of a contemporaneous drug deal cited in the warrant's supporting affidavit was a sufficient basis for the determination of probable cause under the totality of the circumstances."); see also United States v. Cortez, 449 U.S. 411, 418 (1981) ("[A] trained officer draws inferences and makes deductions – inferences and deductions that might well elude an untrained person."). Furthermore, the information in the search warrant affidavit established the officers stopped the driver of a vehicle who had just engaged in a hand-to-hand transaction with Applicant, discovered marijuana and cocaine during that stop, and were informed by the driver he had just purchased the drugs from Appellant at 31 Woodleaf Court.²

² In arguing the trial judge erred in denying the suppression motion, Appellant contends the discovery of drugs in the possession of the driver who had just been observed engaging in the transaction with Appellant did not establish probable cause because the officers did not search the driver and his vehicle before the driver met with Appellant. Appellant further contends the driver's incriminating admission to the officers did not establish probable cause because no evidence was presented in regard to the driver's reliability. Contrary to Appellant's contentions, the officers' failure to search the driver and his vehicle before the driver met with Appellant did not eliminate the probable cause basis for the search because the probable cause standard does not require officers to exclude every

See Keith, 356 S.C. at 224, 588 S.E.2d at 147 (“We find the portion of the affidavit related to the investigative surveillance, stop, and seizure of illegal drugs from Keith’s car standing along sets forth sufficient information to support a probable cause finding in this case.”); see also State v. Jenkins, 790 So. 2d 626, 627 (La. 2001) (holding a search warrant authorizing a search of a residence was properly issued and supported by probable cause where the investigating officers included information in the search warrant affidavit establishing they observed what appeared to be a hand-to-hand transaction take place on the porch of the targeted residence, they stopped a person involved in the transaction after that person left the residence, and they seized a plastic bag containing vegetable matter from that person).

Based on the information contained in the search warrant affidavit, the magistrate reasonably concluded – and had a substantial basis to conclude – there was a fair probability drugs and other incriminating evidence would be found at Appellant’s residence. See Kinloch, 410 S.C. at 618, 767 S.E.2d at 156 (“We find based on these facts that the Court of Appeals erred in affirming the circuit court’s suppression ruling as the magistrate had a substantial basis for reaching his probable cause determination.”); cf. United States v. Rose, 321 F. App’x 324, 326-327 (4th Cir. 2009) (finding probable cause for the issuance of a search warrant existed where officers conducted surveillance at the targeted residence, observed traffic consistent with drug

possibility a suspect could be engaged in innocent behavior before they can obtain a search warrant. See Gates, 462 U.S. at 243 (finding probable cause existed under the totality of the circumstances even though those circumstances were as suggestive “of an ordinary vacation trip” as they were of Gates’ involvement in drug activity); see also Texas v. Brown, 460 U.S. 730, 741 (1983) (instructing probable cause is a flexible, common-sense standard); Ventresca, 380 U.S. at 107 (instructing probable cause “means less than evidence which would justify condemnation” (citation and internal quotations omitted)). Likewise, the driver’s admission he had just purchased the marijuana and cocaine from Appellant was particularly significant towards establishing probable cause – and was inherently reliable – in light of the fact that admission was decidedly against the driver’s penal interests since it constituted powerful evidence he was guilty of illegally possessing marijuana and cocaine. See United States v. Harris, 403 U.S. 573, 583-584 (1971) (“People do not lightly admit to a crime and place critical evidence in the hands of the police in the form of their own admissions. Admissions of crime, like admissions against proprietary interests, carry their own indicia of credibility – sufficient at least to support a finding of probable cause to search.”); see also State v. Driggers, 322 S.C. 506, 514, 473 S.E.2d 57, 61 (Ct. App. 1996) (“Klepp-Egge . . . acted against his best interests by providing the police with information that possibly linked him to the crime.”).

activity there, stopped an individual who left the residence shortly after arriving, and were advised by the individual he had just purchased crack cocaine from the residence). As a result, the magistrate was justified in issuing the search warrant for Applicant's residence, and the trial judge correctly denied Applicant's motion to suppress the evidence discovered during the search of the residence. See Dupree, 354 S.C. at 691, 593 S.E.2d at 445 ("The magistrate had ample probable cause to issue the warrant. Given all the circumstances set forth in the affidavit, there was a 'fair probability' that crack cocaine would be found in the mobile home."); see also Gates, 462 U.S. at 238 ("The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.").

Applicant's allegation that counsel was deficient for failing to address the reliability of the statements in the search warrant or contesting the fact that the statements were not corroborated, as addressed above, has no merit. The officers corroborated the statements from the neighbors by investigating Applicant and observing multiple apparent drug transactions. Further, as the above case law notes, numerous tips are relevant in a totality of the circumstances evaluation for the purposes of finding probable cause to issue a search warrant. Applicant has failed to establish that the additional "issues" he contends counsel should have argued were indeed issues and he has failed to establish prejudice where the jurisprudence shows the trial court would have denied the suppression motion even if counsel had argued the additional points. Therefore, this Court should reverse its decision and deny Applicant's allegation and dismiss the application.

Failure to comply with SC Code §17-13-150

Applicant contends that counsel was deficient for failing to raise the officer's failure to comply with §17-13-150 during the suppression, specifically requiring that a copy of the warrant along with the affidavit be furnished. First, there appears to be some question as to whether or not the search warrant and the affidavit was left at the residence. Although Officer Ratliff testified at the preliminary hearing that he did not leave a copy of the affidavit at the residence, he testified that Applicant would be given a copy of the affidavit at the conclusion of the search. Tr. p. 36, ln. 2-5. Further, Officer Habbestad testified at trial that the search warrant return is given to the person in the residence. Tr. p. 56, ln. 13-14. Along with this testimony, Officer Habbestad also swore an oath by signing the search warrant return stating that the search warrant was left at the place of searched. Even if this Court were to find that the search warrant affidavit was not left at the residence and counsel failed to argue this at the suppression hearing, there is no case law stating that this error was anything more than ministerial and certainly would not merit suppression of the evidence found through the execution of the search warrant.

In support of his argument, Applicant cites to State v. Covert, 382 S.C. 205, 675 S.E.2d 740 (2009), alleging it stands for the proposition that failure to leave the search warrant and the supporting affidavit is sufficient for suppressing the evidence. However, that is not at all the factual situation in Covert and the holding is wholly irrelevant to Applicant's allegation. Applicant correctly notes that the Court in Covert held that an unsigned search warrant was invalid and thus the evidence obtained under the warrant should have been suppressed. Covert is simply a completely different factual scenario than that of Applicant's case. The Court found that an unsigned warrant was not capable of being issued within the meaning of warrant (not the issue in the case at bar) and the unsigned warrant could not be saved by the "good faith exception" because

it was never a warrant due to it being unsigned (also not the issue in the case at bar). Citation to Covert in an attempt to conclusively state that the alleged failure to leave a copy of the search warrant and the supporting affidavit requires suppression of the evidence is simply incorrect. Respondent has not found a single South Carolina case with such a holding. Therefore, Applicant has failed to establish that counsel was deficient for failing to raise an argument that would not merit suppression of the evidence under current jurisprudence and has failed to establish prejudice where the trial court would not have granted the motion due to there being no case law to support the argument. This Court should reverse its finding as to this allegation and dismiss Applicant's application.

Trial counsel's failure to preserve appellate issue neglecting to renew objection to the introduction of evidence obtained from the search of the residence

Applicant argues that counsel was deficient for failing to preserve for appellate review the introduction of the evidence obtained from the search warrant. However, Applicant has failed to establish that had counsel properly preserved the issues for appellate review the issues would have been meritorious and there would be a reasonable probability that it would have resulted in a reversal and a new trial.

An issue that was raised on direct appeal but found to be unpreserved may be raised in the context of a post-conviction relief claim alleging ineffective assistance of counsel. McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 47 (2013) (citing McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003); Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999)). However, to be entitled to relief on such a claim, an applicant must establish the underlying claim is meritorious and would have resulted in a reversal on appeal to a reasonable probability. McHam, 404 S.C. at 475–76, 746 S.E.2d at 47 (“Since the Fourth Amendment issue was not considered on direct appeal because it

was unpreserved, an examination of the merits of the issue is appropriate in analyzing the prejudice prong in McHam's PCR claim."'). Therefore, before a post-conviction relief court can grant relief on a claim of ineffective assistance of trial counsel for failing to preserve a ground for appellate review, the court must determine the underlying claim was meritorious and a reasonable probability that it would have resulted in reversal and a new trial.

Trial counsel sought to suppress the introduction of the evidence obtained through the search of the residence, however, trial counsel did not renew his objection when the State sought to introduce that evidence at the trial. Numerous exhibits were introduced throughout the trial and counsel did not make contemporaneous objections to the evidence based on his objection to the validity of the search warrant. Applicant claims conclusively that since counsel did not have a reasonable explanation for his failure to renew his objections his performance was deficient. However, as argued extensively above in the section concerning other issues counsel could have argued during the suppression hearing, it is highly unlikely that had counsel properly preserved the issues for appellate review they would have been meritorious and likely to result in a reversal. As established above, there was ample evidence in support of the magistrate finding probable cause and issuing the search warrant. Applicant has failed to establish that an appellate court would find that the trial court erred in finding that there was sufficient probable cause to warrant the magistrate court issuing the search warrant. Other than the disputed issue of whether or not the search warrant and affidavit was left at the residence, which would not merit suppression of the evidence, Applicant has failed to allege any other meritorious reason for reversing the trial court's ruling on appeal. Therefore, this Court should reverse its decision as to this allegation and dismiss Applicant's application.

Failure to call witnesses

Applicant contends that counsel was deficient for failing to call Leroy Rowland and John Rowland to testify during the suppression hearing. However, Applicant has failed to establish that calling either of these witnesses would have resulted in the trial court granting the suppression motion or that the witnesses were willing to testify. Leroy Rowland testified that he was present throughout the trial and available to testify. At the suppression hearing Charleston City Police Officer Brandon Ratliffe testified that Applicant was at the residence when Ratliffe was at the residence to execute the search warrant. Tr. p. 66, ln. 10-p. 67, ln 16. Officer Ratliffe testified CPD attempted to have Applicant stopped prior to getting to the residence; that he refused to stop, and Applicant then drove straight into the driveway where he was then detained. Tr. p. 67, ln. 13-16. Leroy Rowland testified at the evidentiary hearing that when the CPD executed the search warrant, he and his wife were at the residence along with their son John Rowland. Applicant was not at the residence when CPD arrived at the residence. He testified that it was more than an hour later that a CPD patrol car arrived at the residence with Applicant in their custody. He further testified that he owned the .45 caliber gun that was seized from his home. Applicant has failed to show that this testimony would have changed anything if it were to have been presented at the suppression hearing. Leroy Rowland's testimony in no way impeaches the testimony of Officer Ratliffe. Officer Ratliffe testified that Applicant was at the residence when he went to execute the search warrant, but that Applicant left the residence before they could do so. Ratliffe then testified that the officers staged at the residence and executed the search warrant while Applicant was away. Leroy Rowland's testimony simply confirms the testimony of Officer Ratliffe that Applicant arrived after the execution of the search warrant and fails to impeach the testimony that Applicant was at the residence while CPD was conducting surveillance prior to executing the search warrant.

Further, Leroy Rowland's testimony concerning the weapon would not likely have acquitted Applicant of possession of a weapon during the commission of a violent crime charge. Counsel testified that he spoke to Leroy Rowland about testifying that the gun was his, however, counsel did not want to highlight the fact that the gun was found very near the premises where Applicant had control. Possession of a weapon during the commission of a violent crime does not contain an element that the weapon be owned by the person possessing the weapon, the jury still could have reasonably convicted Applicant of the charge under a theory of constructive possession. The weapon was found near or in an area where Applicant exhibited control, therefore, it could be inferred that he constructively possessed the weapon. Therefore, Applicant has failed to establish that failing to offer the testimony of Leroy Rowland at the suppression hearing was deficient or would have likely resulted in a different outcome at trial. This Court should reverse its decision as to this allegation and dismiss Applicant's application.

Applicant contends that counsel was deficient for failing to call John Rowland to testify during the suppression hearing. However, Applicant has failed to establish that counsel was deficient where he spoke to John Rowland about testifying prior to trial and he did not indicate that he was willing to testify, as well as failing to establish that the testimony would likely have resulted in a different outcome. John Rowland testified at the evidentiary hearing that he never spoke with Officer Ratliffe regarding his brother and any drug activity. However, counsel testified that he spoke with John Rowland prior to trial and told him that he needed to get a lawyer (relating to different potential testimony) and to call him if he was prepared to testify. Counsel testified further that John Rowland never contacted him indicating that he was willing to testify and that he would have been prepared to put him on the stand had he been willing to testify. Further, even if John Rowland had testified at the suppression hearing his testimony would not have likely changed

the result. Even if the trial court believed that John Rowland did not speak to Officer Ratliffe, there was still ample evidence to support the court's ruling that sufficient probable cause existed to warrant the magistrate judge issuing the search warrant. Therefore, Applicant has failed to establish any deficiency on the part of counsel or any resulting prejudice. This Court should reverse its ruling on this allegation and dismiss Applicant's application.

After-Discovered Evidence

Applicant contends that John Rowland's testimony that the cocaine found in the residence was his meets the requirements for after-discovered evidence and would reasonably result in the jury acquitting Applicant of the cocaine charge if the testimony were presented at trial.

The Uniform Post-Conviction Relief Act states a person may institute a post-conviction relief action if "there exists evidence or material facts. Not previously presented and heard, that requires vacation of the conviction or sentences in the interest of justice." S.C. Code Ann. §17-27-20(A)(4). If an applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence after a conviction must show that the evidence:

1. Is such as would probably change the result if a new trial was had;
2. Has been discovered since the trial;
3. Could not by the exercise of due diligence have been discovered before the trial;
4. Is material to the issue of guilt or innocence; and,
5. Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

John Rowland testified at the evidentiary hearing that he was present at his brother's trial and was available to testify. He testified he would have stated that the cocaine in the Gucci bag along with the other cocaine located in the residence was his. He testified that he had not revealed this information earlier because there was a pending investigation with the South Carolina Department of Social Services, and he feared that had he come forward before his brother's trial that he would have lost his children.

Applicant has failed to establish that John Rowland's testimony meets the requirements for after-discovered evidence and it was not reasonably likely the jury would have acquitted Applicant of the cocaine trafficking charge. First, the testimony is not such that it would change the result if a new trial were had. John Rowland admitting that the cocaine was his does not change the fact that the evidence presented at trial proved that Applicant had constructive possession of the drugs and that the officers surveilling the residence saw Applicant selling drugs on multiple occasions in front of the residence. John Rowland claiming "ownership" over the cocaine does not affect his culpability at trial. Therefore, the testimony is not material to Applicant's guilt or innocence or would likely change the result if a new trial were had. Further, the evidence was not discovered after the trial and was discovered with due diligence prior to trial. Counsel testified that John Rowland asked him about testifying at trial that the cocaine was his. Counsel informed John Rowland that he should get a lawyer and to call him if he were willing to testify as to ownership of the cocaine, counsel never received a phone call from him. Therefore, Applicant has failed to establish that the evidence has been discovered since trial and could not have been discovered prior to trial. Applicant has failed to meet the requirements set forth for granting post-conviction relief based on after-discovered evidence. This Court should reverse its ruling as to this allegation and dismiss Applicant's application.

CONCLUSION

For all the foregoing reasons, the State respectfully submits this Court reconsider its grant of relief and deny Applicant's post-conviction relief application. The State would respectfully request a hearing on this motion.

Respectfully submitted,

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June 18, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Joseph Rowland, #290065)
Applicant,)
v.)
State of South Carolina)
Respondent,)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2018-CP-10-4545

Certificate of Service by E

2020 JUN 18 AM 9:43
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

- 1. Undersigned is counsel of record for the Respondent in the above-captioned action.
- 2. Pursuant to the South Carolina Supreme Court’s Order “RE: Operation of the Trial Courts During the Coronavirus Emergency” (Appellate Case No. 2020-000447), dated April 3, 2020), “a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer’s primary email address listed in the Attorney Information System (AIS).”
- 3. Undersigned has served a copy of the Respondent’s Motion to Reconsider, Alter, or Amend Pursuant to Rule 59(e), SCRCP in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

James K. Falk, Esquire
jfalklaw@gmail.com

DATED this 18th day of June, 2020.

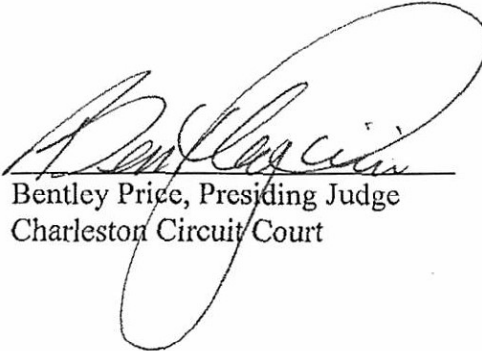
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STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
)	
Joseph T Roland 2900065)	
Applicant	)	2018-CP-10-4545
Vs.)	
State of South Carolina	)	ORDER DENYING RESPONDENT'S
Respondent,	)	MOTION TO RECONSIDER

This matter comes before the court upon RESPONDENT'S MOTION TO RECONSIDER, ALTER, OR AMEND PURSUANT TO RULE 59(e), SCRPC this Court' Order dated June 8, 2020. After considering the matters contained in said Motion I find no reason to alter or amend this order.

ACCORDINGLY, the Motion of Respondent is **HEREBY DENIED**.


 Bentley Price, Presiding Judge
 Charleston Circuit Court

2021 JAN -8 PM 1:09
 JOLIE J. AMSTUTZ
 CLERK OF COURT
 FILED

January 8th, 2021

Charleston, SC