APPENDIX

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 19-13238

TIMOTHY HOWARD SPRIGGS,

Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,

Respondent-Appellee.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket Nos. 2:13-cv-14189-JEM,
2:10-cr-14013-JFM-1.

(Filed June 29, 2022)

Before NEWSOM, MARCUS, Circuit Judges, and STORY, District Judge.

STORY, District Judge.

Timothy Howard Spriggs ("Spriggs") appeals the district court's denial of his Motion to Vacate, Set Aside or Correct Sentence ("Motion to Vacate") pursuant to 28 U.S.C. § 2255. Spriggs alleges ineffective assistance of counsel based on his trial attorney's decision not to

pursue a motion to suppress "core evidence" against him, specifically, statements Spriggs made to law enforcement and evidence of child pornography obtained from his laptop computer. The district court held that Spriggs failed to demonstrate ineffective assistance of counsel and denied relief.

For the reasons set forth below, we affirm.

I.

In January 2010, while conducting an internet investigation, Det. Brian Broughton of the Martin County Sheriff's Department identified an Internet Protocol ("IP") address from Hobe Sound, Florida flagged as a device involved in the transmission of child pornography on numerous occasions in December 2009. Det. Broughton matched the IP address to an internet subscriber account for Charlotte Roseman and subsequently confirmed that Roseman owned the real property associated with the suspect IP address—11501 Southeast Ella Avenue ("11501" or the "11501 property").

In preparation for applying for a search warrant, Det. Broughton visited 11501 to obtain pictures. While there, he discovered and photographed a *Bounder* recreational vehicle ("RV") parked "adjacent to the residence of 11501."

It is undisputed that the RV was, in fact, parked on a separate property from 11501 and had a street address of 11491. Following the post-remand hearing

in this case, the district court found "no evidence that law enforcement knew the RV was located on a lot with a different lot number" at the time the warrant was executed.

Det. Broughton subsequently applied for and secured a search warrant authorizing a search of the 11501 property. The search warrant defined the "premise[] to be searched" as "11501 SE Ella Ave, Hobe Sound, FL 33450" and described the "residence" as a "single family home" with the number 11501 "affixed to the house." The warrant did not mention the RV, and the pictures attached to the application and warrant likewise did not depict the RV. In the affidavit accompanying the application for the warrant, which the warrant incorporated, Det. Broughton stated his belief that "the Premises and the curtilage thereof" were being used for the possession of child pornography.

On January 13, 2010, Det. Broughton and his partner, Det. Patrick Colasuonno, executed the search warrant. Det. Broughton wore an audio recording device, which he activated when they arrived. Det. Broughton did not record the entire time, but only recorded his exchanges with witnesses.

Upon their arrival at 11501, the detectives encountered Garry Spriggs and Junice Spriggs, the parents of Defendant/Appellant Timothy Spriggs ("Spriggs"); Phillip Spriggs, the brother of Spriggs; and Spriggs himself in the front yard (together, the "Spriggs family"). The Spriggs family advised Det. Broughton that the property owners were not home. In

response to an inquiry from Det. Broughton whether the RV was "associated with the residence," Garry Spriggs answered in the affirmative and explained, "Yes, we park it in [Charlotte Roseman's] yard."

Det. Broughton explained the reason for his visit and that his investigation concerned "inappropriate material" such as "images of young children" being distributed from the IP address associated with the 11501 property. He asked if the property owners had Wi-Fi and learned that they had an available wireless internet connection but did not have a computer. Garry Spriggs explained that the Spriggs family purchased internet service from the property owners when in town. Det. Broughton explained to the Spriggs family that he was looking for a computer with peer-to-peer file sharing software on it that would allow for downloading materials from the internet.

At Det. Broughton's request, the Spriggs family contacted Ms. Roseman, and she was asked to return home for execution of the warrant. While awaiting Ms. Roseman's arrival, the detectives questioned the Spriggs family further about the presence of computers on the property. Spriggs said that he possessed a Dell laptop computer that was in the RV, that he normally lived in Valdosta, Georgia, and that he used 11501 Ella Avenue as his address. Spriggs admitted that his laptop computer had file-sharing software on it and that his computer "[p]robably" had all three types of software Det. Broughton mentioned. After learning that there were computers in the RV, Det. Broughton advised the Spriggs family that because

their computers were "on the property," they would also be subject to examination.

At some point after Det. Broughton explained with more specificity what he hoped to discover in the search, Spriggs asked to speak with the detectives privately, away from his family members. Spriggs told the detectives he was aware that there was "inappropriate" material on his laptop. Spriggs stated that the detectives needed only his computer and not the computers of his family members. When asked whether there was "a lot" on his computer, Spriggs stated that "it's going to look worse than it is." Spriggs was advised by both detectives several times that he was not under arrest but that they intended to collect and analyze all of the computers.

When Ms. Roseman arrived, Det. Broughton ended the conversation with Spriggs to speak with Ms. Roseman inside her house. Det. Colasuonno stayed outside with the Spriggs family, and Spriggs said he told his family that he had downloaded child pornography.

The detectives first conducted the search of the 11501 house and then the RV. Following remand, members of the Spriggs family supplied affidavits describing what occurred the day of the search. In the Spriggs family affidavits, they state that a deputy accompanying Det. Broughton placed his hand on his firearm in the "ready" position, which they perceived as a show of authority and coercion. The Spriggs family was asked to wait outside the RV during the search. According to

Spriggs and the Spriggs family, when asked about the ability to search the RV and seize the computers from the RV, Det. Broughton indicated that he had a warrant and that the Spriggs' RV "was included as `curtilage' on the 11501 property Warrant." Det. Broughton reportedly advised the Spriggs family that he could search "anything on th[e] property" while simultaneously motioning with his arms to encompass the RV and a storage shed. The Spriggs family averred that they did not believe they had any choice but to allow the detectives to search the RV.

Approximately ten minutes into the search of the RV, a deputy told Spriggs that Det. Broughton needed him inside. Det. Broughton recorded his communications with Spriggs inside the RV. Det. Broughton asked Spriggs to identify his laptop. According to Spriggs' post-remand declaration, Spriggs initially refused to answer, but eventually confirmed which laptop belonged to him and also confirmed that the files containing child pornography were downloaded to a separate hard drive. Spriggs identified his computer, various hard drives, and the computers of family members. The detectives seized the computers and hard drives.

Before examining the computers and hard drives seized from the RV, Det. Broughton obtained a separate search warrant authorizing a search of the contents and extraction of child pornography from the devices. From Spriggs' Dell computer, Det. Broughton extracted 120 video files that contained child pornography.

On February 25, 2010, Spriggs was indicted by a federal grand jury in the Southern District of Florida and charged with a single count of knowingly receiving, by means of a computer, visual depictions of minors engaged in sexually explicit conduct, in violation of 18 U.S.C. § 2252(a)(2).

On March 30, 2010, without the benefit of a negotiated plea agreement, Spriggs entered a plea of guilty to count one of the Indictment. Spriggs also signed and agreed to a Stipulated Factual Basis in Support of Guilty Plea admitting to knowingly receiving child pornography. He faced a statutory penalty range of five to twenty years in prison. On October 18, 2010, Spriggs was sentenced to 180 months of imprisonment, which was below the applicable guideline range.

Spriggs exercised his right to direct appeal and successfully challenged an enhancement to his sentence under the Sentencing Guidelines based on distribution of child pornography. *United States v. Spriggs* (*Spriggs I*), 666 F.3d 1284, 1289 (11th Cir. 2012). On April 13, 2012, Spriggs was resentenced to 126 months of imprisonment, with all other aspects of his original sentence remaining intact. Spriggs has since completed his custodial sentence.

In May 2013, with the aid of counsel, Spriggs filed his original Motion to Vacate under § 2255, alleging ineffective assistance of counsel. Specifically, Spriggs asserted that law enforcement violated his Fourth and Fifth Amendment rights by "improperly obtaining access to him" in order to record him illegally and search

areas outside the scope of the search warrant, that law enforcement violated *Miranda v. Arizona*, 384 U.S. 436 (1966), by obtaining involuntary statements from him without consent, and that trial counsel should have known that the search warrant was falsely obtained and did not cover the RV where his computer and other media were seized.

Without conducting an evidentiary hearing, the magistrate judge issued a report and recommendation opining that trial counsel's failure to move to suppress would not have affected Spriggs' decision to plead guilty. The district court adopted the report and recommendation in its entirety and denied Spriggs' motion to vacate. Spriggs appealed.

On August 9, 2017, a panel of this Court reversed the denial of Spriggs' original Motion to Vacate and remanded the case for additional proceedings. *Spriggs v. United States* (*Spriggs II*), 703 F. App'x 888, 892 (11th Cir. 2017). The Court observed that the merits of Spriggs' Fourth Amendment challenge were not fully explored and that the "inquiry into trial counsel's performance in advising a client to plead guilty cannot be unmoored from the merits of an alleged Fourth Amendment violation, particularly when, as here, [1] the defendant claims he is innocent of the offense he pled guilty to and [2] when a motion to suppress may have been outcome-determinative." *Id.* at 891. The Court explained as follows:

> The Supreme Court has said that, as far as performance goes, "[n]o reasonable lawyer

> would forgo competent litigation of meritorious, *possibly* decisive claims." *Kimmelman v. Morrison*, 477 U.S. 365, 382 n.7, 106 S. Ct. 2574, 91 L.Ed.2d 305 (1986) (emphasis added). And it recently clarified that to establish prejudice when the "decision about going to trial turns on [a defendant's] prospects of success and those are affected by the attorney's error—for instance, where a defendant alleges that his lawyer should have but did not seek to suppress [evidence]"—the defendant must show that "he would have been better off going to trial," a showing that unquestionably implicates (at least to some degree) the merits of the alleged Fourth Amendment violation. *Lee v. United States*, 137 S. Ct. 1958, 1965 (2017).

Id. at 891-92 (alterations in original). The Court continued, "[i]n cases like this one, where a [defendant] faults his lawyer for failing to pursue a motion to suppress prior to entering a plea, both the deficient performance and prejudice prongs of *Strickland* turn on the viability of the motion to suppress." *Id.* at 892 (alteration in original) (quoting *Arvelo v. Sec'y, Fla. Dep't of Corr.*, 788 F.3d 1345, 1348 (11th Cir. 2015)).

On remand, the district judge referred the case to a magistrate judge for an evidentiary hearing. Consistent with the instructions on remand, evidence was received at the hearing addressing the merits of the hypothetical motion to suppress. Det. Broughton, Spriggs' trial counsel, Robin Rosen-Evans, the Assistant Federal Public Defender who originally

represented Spriggs, and Spriggs testified at the hearing. Ms. Roseman and members of the Spriggs family provided affidavits in support of Spriggs' renewed Section 2255 motion.

Ms. Roseman, among others, supplied an affidavit averring that the 11501 and 11491 lots were separate and distinct, that she rented the property to the Spriggs family, that it was "common knowledge" there was no room on 11501 for a motor home given the narrow lots, that it was also known that she was trying to sell the 11491 lot, and that "For Sale" signs were posted.

As relevant to the issues presented, Det. Broughton testified that he believed the RV was parked on the same 11501 property or within the curtilage of 11501. He also testified about the voluntary, incriminating statements made by Spriggs.

In her testimony, Rosen-Evans explained her thought process and reasoning concerning the advice provided to Spriggs. She testified that her notes reflected that Spriggs admitted to her he had downloaded child pornography and intended to enter a guilty plea. Rosen-Evans explained that she had discussed whether to file a motion to suppress with Spriggs before his guilty plea. But she "determined that it would not be in his best interest to file" the motion. From her investigation, Rosen-Evans found that there was a "contradiction between the police and the [Spriggs family]" as to whether the officers were granted permission to search the RV. She was

concerned that if she filed a motion to suppress, then the court would have to take testimony, which could result in an adverse credibility determination against her client or his family. She believed that such a determination could hurt Spriggs at the sentencing phase. Not only could the pursuit of a suppression motion weaken Spriggs' chances of obtaining a downward variance, it could also result in him losing the benefit of an acceptance-of-responsibility reduction or exposing himself to an obstruction-of-justice enhancement. Rosen-Evans explained that her primary goal was to obtain the lowest sentence for her client, who was facing up to 20 years in prison. And she knew that Spriggs "need[ed] every break, every reduction [she] could get him." Moreover, Rosen-Evans thought that even if the officers did not have consent to search the RV, the suppression motion would have failed based on her belief that "there was probable cause for the issuance of a search warrant for the RV and that the evidence would have been inevitably discovered." In the end, Rosen-Evans determined that, because she thought a suppression motion would be unlikely to succeed and because there was significant downside risk, filing the motion would not be "consistent with getting [her client] the best possible resolution."

Spriggs testified that, had he been properly advised, he would not have pled guilty. Spriggs stated that Rosen-Evans had discussed her reasoning for not filing a motion to suppress with him prior to his plea and that her explanation was consistent with her hearing testimony. On cross-examination, Spriggs

identified a letter he wrote for purposes of his sentencing hearing corroborating Det. Broughton's testimony that Spriggs' statements to him on January 13, 2010 were voluntary and expressly stating that he "came forward to [Det. Broughton] willingly and of [his] own volition."

On February 28, 2019, the magistrate judge issued a report and recommendation that Spriggs' renewed Section 2255 Motion to Vacate be denied. The magistrate judge rejected Spriggs' contention that he need only show that a motion to suppress would have been "potentially meritorious." The magistrate judge noted that Spriggs had "the burden to show that his motion to suppress would have succeeded and that no competent attorney would have advised him otherwise." The magistrate judge agreed that Rosen-Evans had "erred in concluding that the inevitable discovery doctrine applied," because the police were "not in active pursuit of alternative legal means to obtain the evidence." *See United States v. Delancy*, 502 F.3d 1297, 1315 (11th Cir. 2007) ("[T]he prosecution must demonstrate that the lawful means which made discovery inevitable were being actively pursued prior to the occurrence of the illegal conduct." (citations and quotation marks omitted)). However, the magistrate judge explained that counsel's error was not dispositive and that, "[a]lthough [counsel] erred in the specific basis for her belief," she was "correct in believing and advising [Spriggs] that a motion to suppress could fail" and reasonably considered the downside risk to filing such a motion.

The magistrate judge deemed Rosen-Evans' testimony credible. He further found that her testimony was supported by contemporaneous and "detailed notes and documentation" in her case file. The magistrate judge acknowledged that Rosen-Evans met with Spriggs numerous times, met with and interviewed Spriggs' family as well as Ms. Roseman, investigated and researched potential defenses, and twice convinced the sentencing judge to vary below the guidelines based on mitigating circumstances.

The magistrate judge reasoned that the law was sufficiently unclear as to whether the curtilage doctrine, the automobile exception, or the good-faith exception to the warrant requirement would apply to these facts. Accordingly, the magistrate judge concluded that:

> An attorney cannot be deemed ineffective for failing to pursue a motion to suppress for which viable arguments existed on both sides, particularly where—as here—that attorney must balance important countervailing considerations about the potential impact of losing the motion.

The magistrate judge distinguished *Lee* by pointing out that "Lee did not have to establish deficient performance."

In the alternative, the magistrate judge recommended that Spriggs' motion could also be denied based on a failure to demonstrate prejudice from his counsel's alleged deficient performance. The magistrate

judge found that Spriggs failed to show that, but for counsel's error, he would not have pleaded guilty and would have elected to proceed to trial.

Having reviewed the record, we conclude that the factual findings in the report and recommendation are not clearly erroneous and incorporate them herein as necessary. *See Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985) ("Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." (quoting Fed. R. Civ. P. 52(a))).

Over Spriggs' objection, on June 21, 2019, the district court adopted the report and recommendation. Spriggs appealed and moved for a certificate of appealability ("COA"), which was denied by the district court.

Spriggs then filed a motion for COA with this Court. This Court granted the motion on the following issue: "Whether trial counsel was ineffective for failing to file a motion to suppress the statements made by Spriggs to law enforcement and the evidence of child pornography obtained from Spriggs's laptop computer."

II.

We evaluate the district court's denial of a motion to vacate under § 2255 by exercising *de novo* review over legal conclusions and reviewing factual findings for clear error. *Osley v. United States*, 751 F.3d 1214, 1222 (11th Cir. 2014). A claim of ineffective assistance

of counsel presents "mixed questions of law and fact" and, therefore, warrants *de novo* review. *Id.* The resolution of the issue in the present case turns on two questions: (1) Did *Lee* establish a different standard to be applied for the performance prong in a *Strickland v. Washington*, 466 U.S. 668 (1984), analysis in the context of giving advice concerning a plea? and (2) To prevail on a Sixth Amendment claim, must a defendant prove that a forgone motion to suppress would have been successful?

Spriggs urges the Court to find that, at the plea phase of a case, analysis of the performance prong under *Strickland* requires the Court to focus on whether there is a reasonable probability that the defendant would not have pled guilty based on the *actual* advice given by counsel, as opposed to viewing the issue from the perspective of a reasonably competent counsel. Spriggs asserts that the district court failed to limit its consideration to "counsel's actual decisionmaking and advice process," as required by *Kimmelman v. Morrison*. Appellant's Initial Br. at 44 (emphasis in original). Spriggs further asserts that the district court misinterpreted *Kimmelman* and *Zakrzewski v. McDonough*, 455 F.3d 1254 (11th Cir. 2006), by not focusing its inquiry on "whether there is a reasonable probability that the defendant would not have pled guilty, not whether the defendant would have won the case." Appellant's Reply Br. at 6. A review of the relevant cases shows that the district court properly applied the standards enunciated in *Strickland* and elucidated by this Court in *Chandler v. United States*, 218 F.3d 1305

(11th Cir. 2000) (en banc), to evaluate the performance prong of counsel's representation of the defendant.

A.

The Sixth Amendment guarantees criminal defendants the right to counsel. U.S. Const. amend. VI; *Gideon v. Wainwright*, 372 U.S. 335, 339-40, 343 (1963). As the Supreme Court has explained, "the right to counsel is the right to the effective assistance of counsel." *Strickland*, 466 U.S. at 686 (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). This right attaches not only during a criminal trial, but also when a criminal defendant is deciding whether to plead guilty. *See Lafler v. Cooper*, 566 U.S. 156, 162 (2012); *Hill v. Lockhart*, 474 U.S. 52, 57 (1985).

To succeed on a claim of ineffective assistance of counsel, a defendant must establish both that (1) his attorney's "performance was deficient" and (2) his attorney's "deficient performance prejudiced the defense." *Strickland*, 466 U.S. at 687; *Knowles v. Mirzayance*, 556 U.S. 111, 122 (2009). This Court has previously observed that cases in which a criminal defendant can satisfy both parts of the *Strickland* test "are few and far between." *Chandler*, 218 F.3d at 1313 (citation and quotation marks omitted).

Under *Strickland*'s performance prong, deficient performance requires a showing that "counsel's representation fell below an objective standard of reasonableness" given the "prevailing professional norms." *Strickland*, 466 U.S. at 688. A court's review of an

attorney's performance is "highly deferential." *Id.* at 689. "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* Because this is no easy task, a court considering a claim of ineffective assistance must apply a "strong presumption" that counsel's representation was within the "wide range of reasonable professional assistance." *Id.* "And because counsel's conduct is presumed reasonable, for a petitioner to show that the conduct was unreasonable, [he] must establish that no competent counsel would have taken the action that his counsel did take." *Chandler*, 218 F.3d at 1315 (citation omitted).

It is well established that counsel's performance and professional advice informs the voluntariness (and intelligence) of a defendant's decision to enter a guilty plea. *See McMann*, 397 U.S. at 770 ("a defendant's plea of guilty based on reasonably competent advice is an intelligent plea not open to attack on the ground that counsel may have misjudged the admissibility [of evidence]"); *see also McCarthy v. United States*, 394 U.S. 459, 466 (1969). "[T]he voluntariness of the plea depends on whether counsel's advice was within the range of competence demanded of attorneys in criminal cases[,]" *Hill*, 474 U.S. at 56 (citation and quotation marks omitted), because, in addition to constituting a waiver of certain constitutional rights, "a guilty plea is an admission of all the elements of a formal criminal

charge" and "cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts." *McCarthy*, 394 U.S. at 466; *see also Wofford v. Wainwright*, 748 F.2d 1505, 1508 (11th Cir. 1984).

As a result, when a defendant alleges that his counsel's "deficient performance led him to accept a guilty plea rather than go to trial, . . . we [] consider whether the defendant was prejudiced by the `denial of the entire judicial proceeding . . . to which he had a right.'" *Lee*, 137 S. Ct. at 1965 (last alteration in original) (quoting *Roe v. Flores-Ortega*, 528 U.S. 470, 483 (2000)); *Hill*, 474 U.S. at 59. The prejudice inquiry contemplates whether there is a "reasonable probability that but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." *Lee*, 137 S. Ct. at 1965 (quoting *Hill*, 474 U.S. at 59).

B.

Spriggs contends that the district court failed to focus its inquiry on whether there is a reasonable probability that the defendant would not have pled guilty. However, the report and recommendation adopted by the district court specifically found "Defendant has not shown a reasonable probability that but for Rosen-Evans' error he would not have pleaded guilty and would have insisted on going to trial." We agree with Spriggs that under *Lee* this is the proper prejudice standard,

and we find that the district court did, in fact, apply that standard.

Spriggs next contends that counsel's performance must be judged by counsel's actual decision-making and advice rather than what a reasonably competent attorney would have done, but the cases do not support that position. *Kimmelman* does not hold that the performance prong is to be decided based solely on consideration of counsel's actual decision-making and advice. In *Kimmelman*, the petitioner asserted ineffective assistance of counsel premised on failure to litigate a Fourth Amendment claim competently. 477 U.S. at 368-73. The lack of diligence in *Kimmelman* was blatant; trial counsel failed to conduct any discovery, failed to thoroughly investigate, was unaware that a search was conducted, and was unaware of evidence seized that the government sought to introduce at trial. *Id. Kimmelman* clarified the distinct interests protected by the Fourth and Sixth Amendments and identified the nature of the constitutional values reflected in each amendment, as well as the elements of proof. *Id.* at 374-75. Evaluating performance under *Strickland*, the Supreme Court stated, "[n]o reasonable lawyer would forgo competent litigation of meritorious, *possibly* decisive claims," at least not "on the remote chance that his deliberate dereliction might ultimately result in federal habeas review." *Id. at* 382 n.7 (emphasis added). The Supreme Court explained further that, "[a]lthough a meritorious Fourth Amendment issue is necessary to the success of a Sixth Amendment claim

. . . , a good Fourth Amendment claim alone will not earn a prisoner federal habeas relief." *Id.* at 382.

The Supreme Court indicated approval of the "no competent lawyer" standard in a more analogous case, albeit before *Lee* was decided. *Premo v. Moore*, 562 U.S. 115, 124 (2011). In *Premo v. Moore*, the Supreme Court reversed the Ninth Circuit for failing to properly apply *Strickland* within the context of § 2254 and specifically for failing to afford sufficient deference not only to the state court but also to trial counsel's advice concerning a guilty plea. 562 U.S. at 126. *Premo* relied, in part, on *Kimmelman* and considered the reasonableness of trial counsel's decision to seek out and recommend a guilty plea at an early stage of the case rather than move to suppress defendant's confession. *Id.* at 124. *Premo* framed the relevant question under the *Strickland* performance prong as whether "no competent attorney would think a motion to suppress would have failed." *Id.*. In doing so, the Supreme Court cited *Kimmelman.*

We find *Premo* instructive because the Court discussed the importance of "strict adherence" to the *Strickland* performance standard "when reviewing the choices an attorney made at the plea bargain stage" and the challenges unique to plea negotiations. *Id.* at 125. *Premo* acknowledged "certain differences between inadequate-assistance-of-counsel claims in cases where there was a full trial on the merits and those . . . where a plea was entered." *Id.* at 132. The Court suggested that the measure of deference might change at various stages of a criminal prosecution and discussed

the uncertainties posed to both sides in an early plea scenario, suggesting that the "added uncertainty that results when there is no extended, formal record and no actual history to show how the charges have played out at trial works against the party alleging inadequate assistance." *Id.* at 132.

Lee does not alter these holdings. *Lee*'s teachings inform the prejudice prong of the *Strickland* analysis, as opposed to the performance prong. While the two *Strickland* inquiries overlap to a degree, as we read *Lee*, its holding does not alter the *Strickland* performance analysis. In *Lee*, the government "concede[d] that Lee's plea-stage counsel provided inadequate representation" when he assured Lee that he would not be deported if he entered a guilty plea. 137 S. Ct. at 1964. The only issue for resolution was whether Lee could satisfy his burden to demonstrate prejudice. *Id.* at 1967. Regarding prejudice, the Court expressly noted the "unusual circumstances" presented in that both the defendant and trial counsel testified that "deportation was the determinative issue" to Lee, and there was undisputed evidence that, had Lee known that he could be deported if convicted, his attorney's advice would have been to run the risk of going to trial even if an acquittal was a long shot. *Id.* at 1967-68 ("But for his attorney's incompetence, Lee would have known that accepting the plea agreement would *certainly* lead to deportation" (emphasis in original) (quotation marks omitted)). But again, the performance prong wasn't at issue because it was conceded by the government. *Id.* at 1964.

The principles stated in *Chandler* hold true today. In *Chandler*, we found defense counsel's sentencing strategy objectively reasonable. Counsel chose to focus on lingering doubt at sentencing and did not actively pursue character witnesses for mitigation, other than defendant's wife and mother, out of fear of damaging cross-examination and rebuttal. 281 F.3d at 1320-21. Our language in *Chandler* is broad, and we discussed performance in two parts, both generally and relative to the specific facts. *Id.* at 1313-27. The "principles governing performance," *see id.* at 1313, are just that, overarching principles; and there is no indication that they vary when applied to a plea setting or that the *Strickland* performance standards depend on the stage of a case. *Chandler* is the preeminent authority in our circuit concerning the meaning and application of *Strickland.* And, since *Chandler*, we have continued to apply this standard, emphasizing that the *Strickland* performance prong sets "a high bar." *Butts v. GDCP Warden*, 850 F.3d 1201, 1207 (11th Cir. 2017) (quoting *Buck v. Davis*, 137 S. Ct. 759, 775 (2017)) (Section 2254).

Accordingly, Spriggs bears the burden to show that his attorney "made errors so serious that [she] was not functioning as the `counsel' guaranteed [him] by the Sixth Amendment." *Strickland*, 466 U.S. at 687. He must show "that no competent counsel" would have given advice consistent with Rosen-Evans' advice or adopted the same defense strategy. *Chandler*, 218 F.3d at 1315. And we consider whether counsel's advice was objectively reasonable at the time it was given to

Spriggs—not in hindsight. *Strickland*, 466 U.S. at 689; *Chandler*, 218 F.3d at 1316.

C.

In this case, counsel's professional advice to Spriggs was to forgo a motion to suppress and to tender a guilty plea. Spriggs contends that his attorney's performance fell below objectively reasonable standards because she misapplied the law to the facts in evaluating the merits of a potential suppression motion and gave unsound legal advice, which led Spriggs to enter a guilty plea. Specifically, counsel advised Spriggs that pursuing a motion to suppress evidence would not be in his best interest, that the inevitable discovery doctrine applied and any attempt to exclude the government from introducing Spriggs' laptop was likely to fail, and that she would not be filing a motion to suppress. The decision to move to suppress was for Spriggs' attorney to make. *See Jones v. Barnes*, 463 U.S. 745, 751 (1983).

Having reviewed the evidentiary record developed following *Spriggs II*, we find that counsel's performance did not fall below the applicable standard. We first note that Spriggs' trial counsel has served as a federal defender for more than thirty years. Her experience is a factor in determining the deference a court may give to her strategic decision and advice to her client. Indeed, with experienced trial counsel, "the presumption that [counsel's performance] was reasonable

is even stronger." *Chandler*, 218 F.3d at 1316; *accord Zakrzewski*, 455 F.3d at 1258.

In addition, Rosen-Evans' knowledge of Spriggs' admission and indication that he wished to enter a guilty plea influenced her defense strategy. Keep in mind that Spriggs volunteered to law enforcement that the offending laptop (the one containing child pornography flagged in Det. Broughton's investigation) was his and then made additional statements concerning his conduct and specifics of the underlying offense. According to Rosen-Evans' case file, Spriggs admitted downloading child pornography to her as well. The Supreme Court recognized in *Strickland* that "[t]he reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." 466 U.S. at 691 ("Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant.").

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable." *Strickland*, 466 U.S. at 689. Here, Spriggs argues that Rosen-Evans did not make a strategic decision, but rather provided advice based on a "misunderstanding of the law" or her "mistaken beliefs." Appellant's Reply Br. at 4, 13. It is undisputed that Rosen-Evans was mistaken about the inevitable discovery doctrine. Again, though, because the test we apply in evaluating counsel's performance is an objective test, *see Strickland*, 466 U.S. at 688, her error is

not determinative in this case. As explained in *Gordon v. United States,*

> [I]t matters not whether the challenged actions of counsel were the product of a deliberate strategy or mere oversight. The relevant question is not what actually motivated counsel, but what reasonably could have motivated counsel.

518 F.3d 1291, 1301 (11th Cir. 2008) (*citing Roe*, 528 U.S. at 481); *see also Chandler*, 218 F.3d at 1314 (performance is reasonable "as long as the approach taken might be considered sound trial strategy" (citation and quotation marks omitted)). The district court found that, despite the error "in the specific basis for her belief, AFPD Rosen Evans was correct in believing and advising [Spriggs] that a motion to suppress could fail." As we consider what "reasonably could have motivated counsel[,]" *see Gordon*, 518 F.3d at 1301, given the particulars of this case, we turn next to the potential merits of the forgone motion to suppress and the potential risks to Spriggs should the motion have failed.

1. Merits of Forgone Motion to Suppress

Spriggs contends that his hypothetical motion was "very likely to succeed." Oral Arg. at 34:51-53. We disagree. Although the police did not possess a warrant for the RV specifically, the district court, like Rosen-Evans, determined that probable cause to search the RV existed before execution of the warrant. Spriggs'

trial attorney testified that she believed law enforcement had probable cause to search the RV *before* Det. Broughton's erroneous statement that the warrant encompassed the RV.

In addition, three Fourth Amendment doctrines—curtilage, the automobile exception, and the good-faith exception—all cast doubt on the viability of a suppression motion.[1] Ultimately, though, the district court was correct that we need not definitively resolve these Fourth Amendment issues.

As suggested in *Chandler*, in nearly every case, there is something that a trial lawyer might have done differently. 218 F.3d at 1313. "But, the issue is not what is possible or `what is prudent or appropriate, but only what is constitutionally compelled.'" *Id.* (quoting *Burger v. Kemp*, 483 U.S. 776, 794 (1987)). And we conclude that an objectively reasonable defense lawyer would have recognized the obstacles to succeeding on a suppression motion and having the evidence excluded and could very well have offered Spriggs the same advice. Here is why.

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[1] Spriggs has abandoned any claim that his counsel was ineffective for failing to move to suppress voluntary statements he made to law enforcement prior to the search of the RV. Appellant's Reply Br. at 4 n.1. Spriggs clarifies that pre-search statements "would not be part of the relief resulting from suppression of the search itself." Id. He also points out that his statements concerning "ownership of the *offending* computer" occurred during the search of the RV. Id. It is also undisputed that Spriggs was not in custody at the time he made the incriminating statements to the detectives and was not subject to "custodial interrogation" for purposes of the Fifth Amendment and *Miranda.*

The Fourth Amendment prohibits law enforcement from conducting "unreasonable searches and seizures." U.S. Const. amend. IV. A warrant is generally required before law enforcement is authorized to conduct a search of "persons, houses, papers, and effects." *See Oliver v. United States*, 466 U.S. 170, 176-78 (1984) (citations omitted). The government bears the burden to establish the reasonableness of a warrantless search and the application of "one of the recognized exceptions to the warrant requirement, thereby rendering it reasonable within the meaning of the fourth amendment." *United States v. Freire*, 710 F.2d 1515, 1519 (11th Cir. 1983).

Following remand, the government asserted that the warrantless search of the RV could have been upheld on multiple grounds and that a motion to suppress would have failed. As discussed below, the district court subsequently determined that there were viable arguments both for and against application of exceptions to the warrant requirement. We agree with the district court and conclude that Spriggs has failed to demonstrate that "no competent attorney would think a motion to suppress would have failed." *Premo*, 562 U.S. at 124. We reach this conclusion primarily due to the good faith exception and law enforcement's reasonable belief that the search warrant for 11501 authorized the search of the RV.

a. Good Faith Exception

We find good faith to be the most compelling argument as to why a motion to suppress would have failed. The Supreme Court has repeatedly emphasized that the "use of evidence obtained in violation of the Fourth Amendment does not itself violate the Constitution." *Pa. Bd. of Prob. & Parole v. Scott*, 524 U.S. 357, 362 (1998). Rather, the exclusionary rule is a "prudential" judge-made doctrine, *id.* at 363, and its "sole purpose . . . is to deter future Fourth Amendment violations," *Davis v. United States*, 564 U.S. 229, 236-37 (2011) (citations omitted). Thus, when considering whether to apply the exclusionary rule, courts must keep in mind that it is a rule of "last resort, justified *only* where the deterrence benefits of suppression outweigh the substantial social costs of ignoring the reliable, trustworthy evidence bearing on guilt or innocence." *United States v. Green*, 981 F.3d 945, 957 (11th Cir. 2020) (cleaned up); *see Davis*, 564 U.S. at 237.

The good faith exception takes "the culpability of the law enforcement conduct" into account and the level of culpability factors into the exclusionary rule analysis. *Davis*, 564 U.S. at 238 (quoting *Herring v. United States*, 555 U.S. 135, 143 (2009)). There is a strong argument that the good-faith exception would have applied here when we consider Det. Broughton's culpability and what was known to law enforcement the day of the search. In short, it is a tough sell to say that a "reasonably well trained officer would have known that the search was illegal in light of all of the circumstances." *United States v. Taylor*, 935 F.3d 1279,

1289 (11th Cir. 2019) (citation and quotation marks omitted). Det. Broughton obtained a warrant based upon probable cause developed through a lawful investigation. With the benefit of live testimony from Det. Broughton, the district court found that "there is no evidence that law enforcement knew the RV was located on a lot with a different lot number." We credit this factual finding. *See Anderson*, 470 U.S. at 573. For as the district court explained, "[t]here was no sign with a different lot number, no fence between the two lots, and no one at the scene told the officers that the RV was on a different lot number." Therefore, in executing that warrant, "the officers made, at most, an `honest mistake' in interpreting the warrant to include the RV." *United States v. Houck*, 888 F.3d 957, 960 (8th Cir. 2018) (quoting *Maryland v. Garrison*, 480 U.S. 79, 87 (1987)).

We agree with the district court that, at best, Det. Broughton was mistaken in concluding that the search warrant for 11501 authorized a search of the RV. *See*, *e.g.*, *Utah v. Strieff*, 579 U.S. 232, 241 (2016). As a result, it would have been reasonable for competent counsel to doubt that the evidence would be excluded. *See Herring*, 555 U.S. at 146; *see also Davis*, 564 U.S. at 239 ("Isolated, nonrecurring police negligence . . . lacks the culpability required to justify the harsh sanction of exclusion." (cleaned up)).

For these reasons, we conclude that an objectively reasonable competent lawyer could have determined that it was likely that a suppression motion

challenging the warrantless search of the RV would be defeated pursuant to the good faith exception.

b. Curtilage

The district court found that although the language in the original search warrant did not expressly authorize a search "of anything other than the house designated as 11501[,]" the warrant "implicitly" authorized a search of the "curtilage" at the 11501 property. Notwithstanding that the RV sat on a separate lot with a different street address, the district court found there was a viable argument that the curtilage doctrine applied, bringing the Spriggs' RV within the scope of the search warrant for 11501.

On the day of the search, there were no statements made to law enforcement by Spriggs, his family members, or the property owners indicating that the RV was, in fact, sitting on a separate lot with a separate street address. After the fact, Ms. Roseman supplied an affidavit averring that the 11501 and 11491 lots were separate and distinct, and that a "For Sale" sign was on the 11491 lot, and implying that it was "common knowledge" there was no room on 11501 for a motor home given the narrow lots in the community, etc. Det. Broughton denied seeing a "For Sale" sign.

This Court has yet to address in a published opinion whether a search warrant that does not explicitly authorize a search of the curtilage of a residence subject to a search warrant implicitly does so. However, the majority of courts to decide the issue have held

that, when a warrant authorizes the search of a particular residence, the authorization to search also extends to the curtilage of the residence.[2] We are guided and bound by *United States v. Napoli*, 530 F.2d 1198 (5th Cir. 1976).[3] The Fifth Circuit held in *Napoli* that a warrant authorizing the search of the premises of a single-family dwelling was sufficient to encompass a camper parked in the driveway of the dwelling. *Id.* at 1200.

"[A]lthough the private property immediately adjacent to a home is treated as the home itself, this area is not unlimited." *United States v. Taylor*, 458 F.3d 1201, 1206 (11th Cir. 2006). Instead, curtilage "is limited to that property that the individual should reasonably expect to be treated as the home itself." *Id.* (citing *United States v. Dunn*, 480 U.S. 294, 300 (1987)). When resolving questions concerning curtilage, the Supreme Court has identified four factors to consider:

> the proximity of the area claimed to be curtilage to the home, whether the area is included

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[2] *See*, *e.g.*, *United States v. Asselin*, 775 F.2d 445, 446-47 (1st Cir. 1985) (warrant that authorized search of "single family trailer" found to include vehicle parked next to trailer and birdhouse hanging from tree fifteen feet from trailer); *United States v. Gottschalk*, 915 F.2d 1459, 1461 (10th Cir. 1990) (collecting cases holding that "[a] search warrant authorizing a search of a certain premises generally includes any vehicles located within its curtilage if the objects of the search might be located therein").

[3] *See Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc) ("We hold that the decisions of the United States Court of Appeals for the Fifth Circuit . . . handed down by that court prior to the close of business on [September 30, 1981], shall be binding as precedent in the Eleventh Circuit.").

> within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

Dunn, 480 U.S. at 301 (citations omitted).

Considering the *United States v. Dunn* factors, a motion to suppress evidence seized from the RV may have been defeated pursuant to the curtilage doctrine. As revealed by the photographs, the RV was parked within three or four yards of the 11501 residence. Det. Broughton testified that the RV was so close to the 11501 residence that he did not question whether it was parked on a different lot. The close proximity of the RV to the 11501 residence is the strongest evidence in favor of finding that the RV was within the 11501 curtilage. *Dunn*, 480 U.S. at 301. Also, the Spriggs family advised Det. Broughton that they were staying in the RV—which was situated on the 11501 owner's yard—and that they were using the Wi-Fi from 11501. So too was one member of the Spriggs family staying in a bedroom at 11501. And so too was an electrical power cable connecting the RV directly to the house.

We agree with the district court that while numerous factual issues existed concerning potential application of the curtilage doctrine, under these circumstances, consideration of the doctrine by counsel in deciding to forgo a suppression motion would be reasonable.

c. Automobile Exception

The district court found it "very likely that law enforcement's search of the Spriggs' RV would have been justified under the automobile exception" and agreed with the assessment of Rosen-Evans that probable cause to search the RV existed before the search occurred.

The automobile exception permits law enforcement to conduct a warrantless search of a vehicle if "(1) the vehicle is readily mobile; and (2) the [law enforcement officers] have probable cause for the search." *United States v. Lindsey*, 482 F.3d 1285, 1293 (11th Cir. 2007). Other exigent circumstances are not required for the exception to apply. *Id.* (citing *United States v. Johns*, 469 U.S. 478, 484 (1985)).

In *California v. Carney*, 471 U.S. 386 (1985), the Supreme Court considered application of the automobile exception to motor homes. *Id.* at 387, 393-94. Acknowledging that a motor home "possessed some, if not many of the attributes of a home," the Supreme Court recognized that the justifications for the automobile exception, namely, being "readily mobile" and "a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling," could also apply to a motor home depending on the circumstances. *Id.* at 393. In so ruling, the Supreme Court stated that if a motor home "is found stationary in a place not regularly used for residential purposes[,] temporary or otherwise," the automobile exception applies. *Id.* at

392-93. But the Court declined to decide whether that holds true where a motor home "is situated in a way or place that objectively indicates that it is being used as a residence." *Id.* at 394 n.3; *cf. also United States v. Adams*, 46 F.3d 1080, 1081 (11th Cir. 1995) (per curiam) ("The law regarding whether to apply to motor homes the established search and seizure principles applicable to motor vehicles, or those applicable to fixed places of residence has not been developed.").

In determining whether the automobile exception has application to a motor home, the Supreme Court considered the following facts potentially relevant: the vehicle's "location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road." *Carney*, 471 U.S. at 394 n.3; *see also Lindsey*, 482 F.3d at 1293 (explaining that a vehicle is "readily mobile" if it is "operational" (citation and quotation marks omitted)).

We find it less likely that the automobile exception would have applied here, particularly in light of the evidence that the Spriggs family was using the RV as a residence at that time. *See Carney*, 471 U.S. at 394 n.3. The Spriggs family was paying monthly rent to the property owners to park the RV on private property in a residential community. The RV was parked adjacent to the 11501 property—not in a driveway or on the street (though it did have ready access to the street). The photos reflect that an awning was extended on the RV as well. The fact that the Spriggs family was using

the internet connection from the 11501 property likewise supports Spriggs' claim that the RV was being lived in and more akin to a home than a motor vehicle for purposes of Fourth Amendment analysis.

At minimum, factual questions existed concerning how "readily mobile" the RV was. The RV was not elevated on blocks, yet it was reportedly "chocked" to prevent accidental movement. The RV was also connected to utilities and cable. There is no record evidence explicitly addressing whether the RV was licensed to operate and subject to regulation, registration, and inspection, though Garry had told officers that he and his wife had driven the RV down from Ohio a month or two prior. See Oral Arg. at 15:30-16:04.

More importantly, we agree with Spriggs that the cases relied upon by the government, referred to by Spriggs as "driveway cases," are inapposite because they involve instances where law enforcement either observed and/or could confirm mobility and the vehicle was not a fixed residence or being lived in. Appellant's Reply Br. at 11. As observed during oral argument, several of the factors that tend to support the government's curtilage argument tend to undermine the government's claim that the automobile exception would have applied. See Oral Arg. at 9:40-10:10.

While we find the applicability of this exception to be questionable, the fact that the district court found it to be potentially viable supports the conclusion that reasonably competent counsel could reach the same conclusion.

* * *

In conclusion, we need not decide, in hindsight, whether the exceptions to the Fourth Amendment's warrant requirement discussed by the district court would have applied here. For purposes of our analysis, the salient point is that it would have been objectively reasonable for competent counsel to decide that the existence of factual questions and the uncertainty surrounding the availability of one or more exceptions to the warrant requirement weighed against filing a motion to suppress.

2. Trial Counsel's Risk Analysis

In reaching a decision whether to pursue a motion to suppress, Spriggs' trial counsel had to weigh against the possibilities that the motion would fail, the consequences to her client if the motion did, in fact, fail. Specifically, counsel considered the impact of an adverse credibility finding in the suppression hearing if the witness later testified at the sentencing hearing and the effect of filing a suppression motion on acceptance of responsibility and obstruction of justice at sentencing. We turn now to consideration of those potential consequences.

a. Likelihood of Adverse Credibility Finding

Rosen-Evans feared that filing a suppression motion could result in an "adverse determination" by the

judge as to the "credibility or honesty" of Spriggs or his family members.

In the event a motion to suppress had been pursued, the parties disagree about the need for live-witness testimony from Spriggs and/or family members to supplement the audio recording provided by Det. Broughton. While the need for testimony is debatable, one need only review the affidavits of members of the Spriggs family submitted for the remand hearing to see significant conflicts in the testimony of the family and the detectives. It was not unreasonable for Rosen-Evans to believe she would need to use testimony from Spriggs and/or his family to counter testimony of the detectives. The magistrate judge found as a factual matter that the interactions between Det. Broughton and the Spriggs family after the search of the RV began were not recorded and that "[t]he only source of evidence about the conversation during [the search of the RV] comes from the Spriggs' Family members' affidavits." Rosen-Evans reasonably weighed the danger of such testimony in her analysis. She was concerned about the repercussions of suggesting that the detectives were not credible. She was also hoping to preserve the Spriggs' family members' testimony (i.e., credibility) in an attempt to secure mitigating factors at sentencing.

Attempting to avoid or minimize the risks associated with having to offer live witness testimony and preserve untainted witness testimony for mitigation at sentencing is a strategy that an objectively reasonable trial attorney could have chosen.

b. Likelihood of Adversely Affecting Guidelines Calculations

Rosen-Evans also testified that pursuing a motion to suppress could have cost Spriggs the benefit of receiving an adjustment to his offense level for acceptance of responsibility. *See* U.S.S.G. § 3E1.1. She was concerned that filing the proposed suppression motion would have put Spriggs at risk of not getting credit for acceptance of responsibility and conceivably receiving an obstruction-of-justice enhancement at sentencing. *See id.* § 3E1.1, n.4 (conduct supporting obstruction-of-justice enhancement under § 3C1.1 "ordinarily indicates that the defendant has not accepted responsibility for his criminal conduct"). If both risks materialized and Spriggs was ineligible for acceptance and received an obstruction enhancement, Spriggs could have faced a 5-level increase in his offense level under the Sentencing Guidelines.

We highlight two points. First, the burden belonged to Spriggs to "clearly demonstrat[e] acceptance of responsibility and [a defendant] must present more than just a guilty plea." *United States v. Sawyer*, 180 F.3d 1319, 1323 (11th Cir. 1999); *accord United States v. Wright*, 862 F.3d 1265, 1279 (11th Cir. 2017). Second, "[t]he determination of whether a defendant has adequately manifested acceptance of responsibility is a flexible, fact sensitive inquiry." *United States v. Smith*, 127 F.3d 987, 989 (11th Cir. 1997) (en banc).

Spriggs argues that the guidelines risks were not real and that he would not have jeopardized an

acceptance-of-responsibility reduction by electing to exercise his constitutional right to challenge the search. He correctly characterizes some of our precedent as holding, generally, that the mere exercise of constitutional rights by an accused is not a basis for denying a reduction for acceptance of responsibility. *United States v. Rodriguez*, 959 F.2d 193, 197 (11th Cir. 1992). *But see Smith*, 127 F.3d at 989 ("Our case law permits a district court to deny a defendant a reduction under § 3E1.1 based on conduct inconsistent with acceptance of responsibility, even when that conduct includes the assertion of a constitutional right.") (citing *United States v. Jones*, 934 F.2d 1199, 1200 (11th Cir. 1991); *United States v. Henry*, 883 F.2d 1010, 1011 (11th Cir. 1989)). Still, Spriggs cannot deny that pursuing a suppression motion and losing—whether he subsequently entered a plea or proceeded to trial—would have placed him at risk of losing *at least one* of the three potential reduction points for acceptance of responsibility, which are recommended by the government. *See* U.S.S.G. § 3E1.1(b), n.6 (explaining that the government is "in the best position to determine" eligibility for additional one-point reduction). The guidelines recognize that both timeliness of a plea and the conservation of resources—government resources and the court's—may be considered by the prosecution in deciding whether to award the additional one-point reduction. *Id.* In sum, this was an objectively reasonable consideration and certainly a matter that could affect the sentencing court's view of Spriggs' case in fashioning a sentence "sufficient, but not greater than necessary" under 18 U.S.C. § 3553(a).

With respect to § 3553(a) factors, Rosen-Evans requested a variance below the sentencing guideline range, and her argument highlighted Spriggs' admission, voluntary cooperation with law enforcement (alleviating the need for law enforcement to obtain a second search warrant for the RV), post-arrest statement, and efforts towards rehabilitation. Trial counsel's strategy to mitigate sentencing exposure on Spriggs' behalf was successful in obtaining a custodial sentence below the applicable guideline range.

Finally, the mitigation letter Spriggs proffered at his original sentencing tells a different story than his post-conviction filings and claims of ineffective assistance of counsel. In 2010, which is the relevant period of time for purposes of our *Strickland* analysis, Spriggs asserted (consistent with his inclination to plead guilty) that his cooperation with law enforcement early on was both intentional and redemptive. Spriggs represented that coming forward and volunteering the information to Det. Broughton about his laptop being in the RV and having child pornography on it was a step towards his recovery and rehabilitation. The same is true regarding Spriggs' contemporaneous statements at his original sentencing concerning satisfaction with trial counsel's representation.

In sum, Spriggs' trial counsel formulated a defense strategy that aligned with Spriggs' admission and voluntary statements to law enforcement, an evaluation of the merits of a potential motion to suppress, and an analysis of the attendant risks. Spriggs is unable to persuade this Court that "no competent counsel" could

have decided to forego moving to suppress the evidence seized from the RV. *Chandler*, 218 F.3d at 1315; *Strickland*, 466 U.S. at 689.

Having concluded that Spriggs' counsel's performance was not constitutionally deficient, we need not reach the question of prejudice. *See Brown v. United States*, 720 F.3d 1316, 1326 (11th Cir. 2013) ("If a defendant fails to satisfy either *Strickland* prong, we need not address both."); *accord Holladay v. Haley*, 209 F.3d 1243, 1248 (11th Cir. 2000).

IV.

Given that Spriggs is before us on a § 2255 Motion to Vacate, we are required to view his Fourth and Fifth Amendment arguments through an ineffective-assistance lens. The magistrate judge's opinion adopted by the district court correctly points out that this distinction is significant. As is borne out by our analysis, the difficulty in seeking to determine whether trial counsel's performance fell below an objectively reasonable standard, even in hindsight, is a valid reason for the stringent *Strickland* standard. Here, we do not find that counsel's advice was constitutionally deficient.

AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-41489-CIV-MARTINEZ/MAYNARD

TIMOTHY HOWARD SPRIGGS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent. /

REPORT AND RECOMMENDATION ON PETITIONER'S RENEWED MOTION FOR 28 U.S.C. § 2255 RELIEF (DE 46)

(Filed Feb. 28, 2019)

This matter is before the Court following remand from the Eleventh Circuit Court of Appeals. *Spriggs v. U.S.*, 703 Fed. Appx. 888 (11th Cir. 2017). For the reasons set forth herein, the undersigned recommends that Petitioner, Timothy Howard Spriggs, is not entitled to relief on his claim under 28 U.S.C. § 2255.

I. INTRODUCTION

In January 2010, Detective Brian Broughton of the Martin County Sheriff's Office was conducting an investigation into the online possession, receipt and distribution of child pornography. He identified a particular Internet Protocol (IP) address that downloaded files containing child pornography thirty seven times from December 26 through 31, 2009. Detective Broughton subpoenaed the internet service provider for

customer account information associated with the IP address. The internet service provider provided the requested information, including the street address that used the IP address between December 26 and December 31, 2009. Located at that street address was a single-family home assigned the number 11501 on the subject street. Based on this information, Detective Broughton secured a state search warrant to search the residence located at 11501 and to seize computer equipment located there.

On January 13, 2010, Detective Broughton and Detective Patrick Colasuonno went to the residence at 11501 to execute the search warrant. While at the residence, they encountered four individuals – Phillip Spriggs, Garry Spriggs, Junice Spriggs and Timothy Howard Spriggs (the Petitioner in this case) (together, the Spriggs Family). The Spriggs Family explained that they were staying in a Recreational Vehicle (RV) parked on the side of the house. The owners of the residence were not home at the time. The detectives told the Spriggs Family they had a warrant to search the property for evidence and computers relating to child pornography. The Spriggs Family responded that the owners did not have any computers and had internet only so the Spriggs Family could use it while they were staying there.

At some point during the encounter, the Petitioner spoke to the detectives separately and, admitted downloading child pornography on his laptop computer which was in the RV. The detectives searched the RV and seized three laptop computers, including

Petitioner's. Petitioner's laptop contained 120 child pornography video files. Several of the videos depicted the abuse of children under the age of five, as well as bondage and bestiality acts involving children. Many of the videos were downloaded from December 26 through December 31, 2009.

II. PROCEDURAL HISTORY

On February 26, 2010, Petitioner was charged by indictment with one count of receipt of child pornography in violation of 18 U.S.C. § 2252(a)(2). The statutory penalty ranged from five to twenty years in prison. Assistant Federal Public Defender (AFPD) Robin Rosen Evans was appointed to represent the Petitioner. On March 30, 2010, Petitioner pleaded guilty to the Indictment. As part of the plea, he signed a Stipulated Factual Basis in Support of Guilty Plea (found at DE 20 in 10-14013-CR). In the Stipulated Factual Basis, he admitted to the knowing receipt of illegal child pornography during the time frame of December 26 to 29, 2009.

Although the Movant was charged with and had pleaded guilty to the receipt of child pornography, at the sentencing stage the Government sought an enhancement for the distribution of child pornography. The District Court resolved this dispute in the Government's favor and imposed the full five level enhancement that the Government had sought. With this particular enhancement factored in, along with other enhancements accounting for other circumstances of

the offense, the U.S. Sentencing Guidelines range was 210 to 240 months. This brought the U.S.S.G. range to the 20-year statutory maximum. The District Court imposed a sentence of 180 months (or 15 years) of incarceration (thus sentencing the Movant below the U.S.S.G. range).

The Movant appealed his sentence. The Eleventh Circuit remanded the case back to the District Court for re-sentencing. See *U.S. v. Spriggs*, 666 F.3d 1284 (11th Cir. 2012). This time the District Court sentenced the Movant to 126 months (or 10 $^1/_2$ years) of imprisonment (again a downward departure from the U.S.S.G range). That period of incarceration ends in March 2019. This Court notes that the same Assistant Federal Public Defender from the Change of Plea and first Sentencing Hearing represented the Movant at this second sentencing proceeding. The Movant did not appeal the second sentence.

Petitioner filed a Motion under 28 U.S.C § 2255 to Vacate, Set Aside or Correct Sentence (DE 1) on May 2, 2013. His motion claimed that the government prosecuted him using evidence that was obtained illegally, and that his trial counsel rendered ineffective assistance by failing to challenge the admissibility of that evidence. On December 30, 2013, Chief U.S. Magistrate Judge Frank Lynch issued a Report and Recommendation [DE 17] addressing Petitioner's various claims for relief. The District Court adopted the recommendation and denied the § 2255 Motion. Petitioner appealed. The Eleventh Circuit reversed the denial and remanded the matter for further consideration. See

Spriggs v. United States, 703 Fed.Appx. 888 (11th Cir. 2017).

That brings the case before the undersigned who replaced Chief U.S. Magistrate Judge Lynch upon his retirement. The issue now pending before this Court is whether AFPD Rosen Evans rendered ineffective assistance of counsel because she failed to file a motion to suppress.

III. BACKGROUND

On June 28, 2018 an evidentiary hearing was held in this matter. AFPD Rosen Evans, Petitioner Spriggs and Detective Broughton testified. Detective Broughton and Petitioner Spriggs testified about what happened during the search of the Spriggs' Family RV and seizure of Petitioner's computer. AFPD Rosen Evans and Petitioner Spriggs testified about the advice Rosen Evans provided to Petitioner about filing a motion to suppress. In addition to the testimony adduced at the hearing, the undersigned has also considered the transcript[1] of the audio recording Detective Broughton

[1] Detective Broughton's audio recording of his interactions with the Petitioner and others during the execution of the search warrant is in the record in CD format as Government's Exhibit No. 7. At the Court's request the Government submitted a transcript of that audio recording. It is found in the record at DE 57. The Government also submitted it as its Exhibit No. 8 at the Evidentiary Hearing. The Petitioner disputes the accuracy of that transcript, and therefore he proffers his competing transcript of the audio recording as his Exhibit No. 1. Frustratingly the parties were not able to agree to a common transcript despite this Court's request for one. For present purposes this Court will use the

made of the encounter, the affidavits that the Petitioner and his family submitted,[2] the record of the underlying criminal case, those documents and materials that the Petitioner submitted after Judge Lynch's first Report and Recommendation, and the parties' supplemental briefings.

A. The Warrant and Search of the Spriggs Family RV

On January 13, 2010 Detective Broughton applied for a state warrant to search a specific address in Hobe Sound, Florida with the street number 11501. The application gave the driving directions to the specific street address; described in detail the house that sits there; and included a photograph of the house (and only of that house). The application also explained why Detective Broughton believed "that the Premises and the curtilage thereof" were associated with child

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Petitioner's transcript (Exhibit No. 1) as the primary source because it appears to this Court to be the most thorough transcript and because it provides a side-by-side comparison of both sides' transcript versions.

[2] The Petitioner's affidavit is found at DE 16. The affidavit of the Petitioner's brother is found at DE 25–2. The affidavit of the Petitioner's father is found at DE 25–3, and the affidavit of the Petitioner's mother is found at DE 25–4. In these affidavits the Petitioner and his family members recall the events of the search warrant's execution and of the criminal case proceedings. In light of their affidavits, the Spriggs Family members did not take the stand at the Evidentiary Hearing. Except where otherwise noted, this Court accepts as true and accurate the Spriggs' Family members recollections, representations, and statements for the purpose of this ruling.

pornography internet traffic and sought permission "to search the above described property . . . and to seize any and all of the aforesaid property found by virtue of such Search Warrant". A state court judge granted the application and issued the search warrant on January 13, 2010. The warrant repeated the application's description of the house and gave the detective the lawful authority to search it and seize computer equipment. The search warrant itself did not repeat the curtilage language from the application but did incorporate by reference the application's facts.[3]

The house to be searched at 11501 belonged to Mrs. R and Mr. W (the names are not needed for purposes of this Report and Recommendation). They owned the house as well as the lot on which the house sat. They also owned an adjoining lot where Petitioner and his family lived in an RV motor home. County property records show that the two lots are platted as distinct parcels.[4] County records identify the adjoining lot with its own street number of 11491. There is no indication that a sign was posted on the adjoining lot identifying it as having a different street number when the warrant was requested or executed.[5] Neither the

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[3] The application and the search warrant are found at DE 8–10. They also were entered into the record as evidence.

[4] See the Martin County Property Information Sheet found at DE 15–1.

[5] The parties dispute whether a "For Sale" sign was posted on the 11491 lot on the day of the encounter. In her affidavit at page 2 of DE 15–2 the properties' owners attest that she "was trying to sell the lot at 11491 and had posted FOR SALE signs on it. At the Evidentiary Hearing Detective Broughton denied seeing

search warrant application nor the search warrant itself made any reference to or indication of the 11491 lot, the RV parked there, or the Spriggs Family.

The record suggests the Spriggs Family members were both friends of the property's owners and renters who paid the owners to park and live in an RV there during the winter months. In other words, for purposes of the Fourth Amendment analysis there were two separate residences in the practical sense (the owners' house and the Spriggs Family's RV) and two separate lots in a technical sense (in terms of the county's property records). That is not to say that the existence of two distinct residences sitting on two distinct lots was readily apparent to the eye. The situation was not one of two houses with two separate yards and two separate mailboxes bearing two different street numbers divided by a fence, for example. The evidence[6] shows the 11491 lot was a small piece of land next to the owners' house where the RV and other vehicles were parked. For ease of reference, this Court will refer to the residence at the 11501 street number address as "the house" and the people who lived in the house and owned both lots as "the owners." The Court will refer to the residence at the 11491 lot as "the RV" and the people who lived in the RV as "the Spriggs Family." It

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anything like a "For Sale" sign at the subject property on the day of the search warrant's execution. See page 135 of DE 77.

[6] The Petitioner proffers a variety of county records, affidavits, and other demonstrative aids to describe the property and its two adjoining lots. These are found at DE. 15–1 through DE 15–11. Photographs of the RV lot also were proffered at the Evidentiary Hearing.

will refer to the two adjoining lots together as "the Property."

Detective Broughton was wearing an audio recording device during the search, and the recording starts at 5:30 PM. The officers approached the house and were met at the door by Petitioner's brother, Phillip Spriggs, who was on his way out when he found law enforcement at the door. Shortly thereafter, Petitioner's father, Garry Spriggs, joined the conversation. The brother explained that he had come down to Florida to celebrate his parents' wedding anniversary and was staying as a temporary guest in the property owners' house. The rest of the Spriggs' Family lived in the RV. This prompted Detective Broughton to ask: "Is this motor home associated with this house? Who is living there?" The recording did not capture the answer,[7] but Detective Broughton can be heard saying "Oh, you live in there, okay. All right." Detective Broughton explained that he had "a search warrant for the premises" and they were "trying to determine who ha[d] access to a computer" there. Detective Broughton

[7] It is unfortunate that the recorder did not capture the family's answer because this exchange is directly relevant to the Fourth Amendment issue. If the Spriggs Family expressly and specifically explained to the lead detective that their residence was separate and apart from the search warrant's target address, then that would strengthen the Petitioner's claim of a Fourth Amendment violation. Conversely, if the Spriggs Family answered the question in a way that suggested just one common address/residence or left the matter unclear or ambiguous, then that would strengthen the Respondent's position that the lead detective proceeded in good faith or on the mistaken impression that the RV was part of the target address.

asked about the owners' computer and internet usage. Phillip and Garry replied that the owners had no computer and had internet for the Spriggs Family's use. At that point the detectives begin to ask about the Spriggs Family's computers.

It is unclear exactly when Petitioner joined the conversation, but it appears that he was not present at the beginning of the encounter.[8] Petitioner's affidavit says he was inside the RV working on his computer when his mother "came in the front door yelling that the cops were next door with a warrant for child porn." [Petitioner's Affidavit, D.E. 16]. Petitioner says he could have removed the computer from the RV at that time but did not do so and instead attempted to "follow the law" because "doing the right thing is always the first consideration." Petitioner went outside and listened to his family talk to the detectives. "After some time, while the others talked," Detective Colasuonno introduced himself to the Petitioner. According to his

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[8] The transcript of the search warrant's execution (which for instant purposes this Court refers primarily to the Petitioner's version which he submitted at the Evidentiary Hearing as his Exhibit 1) suggests that he joined the conversation after the encounter already had begun, albeit relatively soon after. That is also how the witnesses recall it. The Petitioner's parents say that he did not join the conversation until later. The Petitioner's mother says that she returned to the RV and explained to him the reason for law enforcement's presence, which was when the Petitioner left the RV and approached the detectives. At the Evidentiary Hearing (at page 131 of DE 77) Detective Broughton recalls the same. That he spoke first with Phillip and Gary Spriggs; then Junice Spriggs; and then "a short time later, Timothy Spriggs made an appearance, and I then wound up talking to all three."

affidavit, Petitioner "felt more comfortable" talking to Detective Colasuonno because he was not as "intimidating in stature" as Detective Broughton. Detective Colasuonno told Petitioner that Comcast had reported someone was downloading child pornography from the owners' address. Petitioner responded that internet providers "easily could block child pornography internet transmissions if they had technology to detect and report them." Petitioner told the detective he was a software developer and explained to the detective how peer-to-peer file sharing software worked. Detective Colasuonno asked Petitioner whether he had downloaded any child pornography. Petitioner demurred, telling the detective that "although he did not mind helping them stop the flow of child porn, [he] did not want to answer any personal questions without an attorney." Detective Colasuonno escorted Petitioner back to the group.[9]

Meanwhile Detective Broughton continued talking with the rest of the Spriggs Family. He asked them to call the property owners, which they did. Detective Broughton spoke to the owner over the telephone and informed her that he had a search warrant for her premises. Detective Broughton then made clear to the Spriggs Family that he intended to search for and seize all computers, including theirs, under the authority of the search warrant. He said that computers in the RV were "on the property" and "subject to examination".

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[9] Because this conversation was with Detective Colasuonno, there is no audio recording of it. The Court's recitation of facts about this conversation is based on Petitioner's affidavit.

The transcript records no protest over the detectives' use of the search warrant to reach the RV and the Spriggs Family. None of the Spriggs Family members identified the RV as being on a different lot or having a different street address. No one expressed a perception that they were a separate household or residence unconnected to the house. Detective Broughton asked for the Spriggs Family members' driver licenses to get their official names and addresses. The transcribed exchange is unclear, but it seems the Petitioner responded that he uses the "1150" address (which this Court construes to mean the 11501 house address) as the address on his driver's license.[10] There was no sign on the property indicating that the lot the RV was on was a different lot than 11501. The RV was located next to the house, approximately three or four yards away this Court estimates from the photographs of Government's Exhibits 5 & 6. At the Evidentiary Hearing Detective Broughton described the RV as sitting "close" to the house (starting at page 131 of DE 77), and at the Sentencing Hearing he testified that the RV sat just "a few feet from the house" (at page 34 of DE 91). There was no barrier between the RV and the house that would suggest to a normal observer that the house and RV sat on different parcels of land. Some of the photographs in the record suggest that the RV

[10] Although the Petitioner told the detectives he uses the 1150 address on his license, his parents describe his stay at their RV as temporary in their affidavits. They claim he came down for Christmas and was staying only for their wedding anniversary party which was set to take place the day after the search warrant's execution.

appeared to be sitting in the yard of the residence. One photograph (DE 15–6) shows the property lots along the street to be narrow with structures sitting closely to each other, however. That photograph suggests the lot the RV was on was about the same size as the other lots on the street.

The transcript suggests that as Detective Broughton began to inquire more directly about the Spriggs Family's computer and internet use, the Petitioner took him aside to converse with him directly.[11] During the conversation, which is recorded, Petitioner admitted to both detectives that he had received child pornography and saved it on his personal laptop computer. He described what his personal laptop computer looked like to the detectives, even before they sought to enter the RV. He did not, however, go so far as to express specific consent to allow the detectives to take his laptop or to enter the RV to do so. Petitioner clearly wanted to convey certain points to the detectives during their conversation. He wanted to bring the focus of the criminal investigation away from his family members. He tried to cast the child pornography download activity in mitigating terms (while at the same time trying to avoid making a direct confession). He acknowledged the risk he was taking in speaking so freely with law enforcement, but despite being aware

[11] In his affidavit the Petitioner recalls that it was the lead detective who isolated him from the group. Regardless of the characterization of how the two entered private conversation, a fair reading of the transcript shows that the Petitioner freely engaged with the lead detective.

of that risk, continued to speak freely and to share details about downloading child pornography. He was even knowledgeable enough to express concern about how file-sharing software might support a distribution charge (carefully denying any desire or intent to do anything beyond simply receive images). He portrayed himself as motivated to do the right thing and take responsibility, while at the same time trying to lessen the consequences as much as possible. The tone of the conversation was cooperative and conciliatory. Detective Broughton complimented the Petitioner for being forthright, for taking steps to face a potential problem, and for taking the focus of the investigation off his family and neighbors.

When the property owner arrived, Detective Broughton ended the conversation with the Petitioner and went into the house with the owner. The audio recording captures his conversation with her inside the house and does not capture Detective Colasuonno's continued conversation with the Petitioner and the Spriggs Family. Evidently, it was at this point that the Petitioner told his family that he had downloaded child pornography and implicated himself as the reason why law enforcement was there.

Detective Colasuonno then went to the property owners' house at the 11501 address, while Detective Broughton began to search the Spriggs Family's RV. At this point Detective Broughton stopped recording. The time was 6:07 PM (which implies that all of the foregoing had taken place in a half-hour's time). In his

affidavit the Petitioner recalls the foregoing as having "taken hours".

At pages 135 and 136 of the transcript of the Evidentiary Hearing (found at DE 77), Detective Broughton explains why at two different points he turned the audio recorder off. He testified that he turned it off during those times when he was not asking questions such as when he entered the RV to search it. If he re-engaged with a witness, such as when the Petitioner entered the RV, he would resume recording.

Consequently, subsequent interaction with the Spriggs Family after Detective Broughton began searching the RV is not recorded. The only source of evidence about the conversation during this period of time comes from the Spriggs Family members' affidavits. According to these affidavits, Detective Broughton placed his hand on his firearm "in the 'ready' position," an act which they perceived as a show of authority and coercion. Detective Broughton told them to stay outside of the RV while he searched. After searching the house, Detective Colasuonno joined Detective Broughton in searching the RV. The Petitioner claims that, as the detectives put on their gloves, his mother told Detective Colasuonno she did not want them going in her home without a warrant. Detective Broughton responded that they did have a warrant. Petitioner's parents also recall this discussion. The father's affidavit says that when his wife "questioned the need for a Warrant," Detective Broughton answered that he had one and that the Spriggs' RV "was included in the 'curtilage' on the 11501 property Warrant." The father

recalls Detective Broughton declaring "I can search anything on this property," as he swung his arms to encompass the RV and a storage shed. Petitioner's mother recalls questioning how law enforcement "could search our home without a warrant." She says that Detective Broughton "said his warrant included [her] home and any buildings both on 11501 and apparently on 11491 where [the Spriggs Family] lived." After that, Petitioner's mother says she" didn't see where [the family] had any choice but to let them [search]." Petitioner's mother says she did not want the police to go inside her home. She also says that law enforcement denied them entry and kept them outside the RV while they searched it.[12]

Petitioner says that ten minutes into the search of the RV, a deputy told him Detective Broughton needed him inside. Once inside, Detective Broughton asked him to identify his personal laptop computer. Petitioner claims that initially he refused to answer. He claims he asked Detective Broughton, "This is crazy. Can you do this?" Detective Broughton said yes, explained "that he had a warrant" and said he already knew which computer was the Petitioner's and just needed him to confirm it. (The transcript confirms that

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[12] In their affidavits, the family members recall what happened when the two detectives went alone inside the RV. The Petitioner and his brother peered through the RV window. They believed the detectives to be making noise and commotion solely for the sake of making noise and commotion. The parents recall hearing an exaggerated display of commotion, too. The brother wonders if the detectives used the commotion as a distraction while they changed settings on the Petitioner's computer.

the Petitioner earlier had described what his computer looked like.) The Petitioner gave in and confirmed the subject laptop as his. The Petitioner also confirmed that the subject files were downloaded to a separate hard drive. The Petitioner recalls discussing file search and downloading activities as well as answering questions about his computer equipment. The Petitioner says the detectives handed him some papers to sign. One of them was a "Consent to Search" form that he refused to sign. The Petitioner protested, explaining "I'm not signing anything that gives you the right to search my stuff." Detective Broughton withdrew the consent search form from the paperwork without comment, the Petitioner recalls. The Petitioner did sign the inventory receipt but claims he added the words, "NO SEARCH" alongside his signature.[13]

The transcript shows that Detective Broughton resumed audio recording when the Petitioner entered the RV. The recording resumes with Detective Broughton asking, "Okay. You just had some questions? All right. Do you live here?" A fair reading of the transcript suggests the Petitioner was far more cooperative and forthcoming with Detective Broughton than Petitioner describes in his affidavit. The transcript records no protest over the search, no words indicating a lack of consent to the search, and no reluctance to answer questions. There is also no discussion of any paperwork. Towards the end of the recording, Detective Broughton asked the Petitioner to go back outside to

[13] The record does not appear to contain this particular document.

let them finish with their search and investigation activities. Detective Broughton told the Petitioner that he will see him before he leaves. At that point Detective Broughton stops the audio recording.

The Petitioner's affidavit recalls that when Detective Broughton came out of the RV, he asked Petitioner's parents for their permission to remove the computer equipment to search them for illegal downloads. Petitioner claims his father answered, "looks to me like you already have them", in reference to how the computer equipment already sat in the trunk of the detective's car.

B. Counsel's Advice to Petitioner Regarding a Motion to Suppress

AFPD Rosen Evans testified at the evidentiary hearing. She has been a trial attorney with the Federal Public Defender's Office for almost thirty years. At the outset of her testimony, she clarified that she has very little independent memory of specific conversations with Petitioner or actions taken regarding his case because these events occurred almost a decade ago. She requested Petitioner's case file from the FPD's archives prior to the hearing. She reviewed the case file before testifying and referred to it throughout the hearing.

According to her case file, Rosen Evans met with Petitioner about his case fourteen times[14] in addition

[14] AFPD Rosen Evans' file shows she met with Petitioner on the following dates: 2/22/10, 3/1/10, 3/11/10, 3/19/10, 3/23/10,

to communicating with him by letter and phone calls. She also met with his parents and received multiple emails from them (which were retained in her file). She also met with the owner of the 11501 property that was the subject of the search warrant. Her case file contained detailed notes from these meetings and she read directly from these notes during her testimony.

Based on the notes in her case file, AFPD Rosen Evans explained what she learned from the Petitioner and his family members about the RV. She knew Petitioners' parents spent their winter months living in the RV in Hobe Sound and that they parked the RV on the lot next to the 11501 address. During they summer they used the RV to travel to other states where their other children lived. They paid the owner of the 11501 address $200 per month in rent to park on the lot. The lot they parked the RV on had its own septic tank but not its own electricity – the RV was hooked up to electricity from the 11501 residence. The lot also had its own separate number, 11491. Rosen Evans' case file contained a diagram that Petitioner drew for her showing separate lots (one with the house on it and one with the RV on it).

Rosen Evans' notes also described what Petitioner and his family told her about law enforcement's search of the RV. Petitioner told her he spoke to the officers and told them that he "found some stuff on [his] computer and it might be what you're looking for."

4/23/10, 4/30/10, 5/4/10, 5/21/10, 6/1/10, 7/26/10, 8/5/10, 4/4/10, 4/19/10.

Petitioner told her that he said to the officer, "I probably ought to have a lawyer," to which the officer responded, "You're not under arrest yet." The officers told Petitioner he would not be arrested until they determined whether anything illegal had happened. Petitioner's family told Rosen Evans that the officers did not ask for permission to search the RV and "just sort of went in and searched" it based on the search warrant.

AFPD Rosen Evans testified that all this information "went into [her] calculus and everything else [she] was thinking through in making determination about the motion to suppress." She did not credit the officers' version that they had permission to search. In fact, she believed law enforcement did not have permission to enter the RV, even though they said they had permission. She proceeded on the assumption that they just entered the home. Given these circumstances, she had to determine whether filing a motion to suppress would be beneficial or not to Petitioner, she testified. She believed it would not be beneficial to him for two reasons. First, law enforcement had enough information from the original search warrant and Petitioner's admissions to them to establish probable cause to search the RV. Thus, Rosen Evans believed the evidence on Petitioner's laptop would have been discovered and admissible under the "inevitable discovery" doctrine.[15] Second, Rosen Evans was concerned that if they filed and lost a motion to suppress, the judge

[15] AFPD Rosen-Evans' file contained legal research on the inevitable discovery doctrine and the issue of consent.

hearing the motion might make adverse credibility findings against Petitioner and/or his family members if they testified later in the case. She worried that such adverse credibility findings could result in Petitioner not receiving credit at sentencing for acceptance of responsibility under USSG § 3E1.1, and could even result in Petitioner receiving an obstruction of justice enhancement under USSG § 3C1.1. It could also result in Petitioner and/or his family not being believed at sentencing if they testified about mitigating factors. Rosen Evans testified that she weighed the downside of filing a motion to suppress against the upside. She did not feel such a motion would be successful and did not feel any Franks hearing would have prevailed.[16]

Based on her assessment, AFPD Rosen Evans advised Petitioner that she would not be filing a motion to suppress. She then focused her attention on whether Defendant would go to trial or enter a guilty plea.

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[16] When asked to explain her reasoning on the stand, Rosen Evans testified, "If you don't think the motion is really going to win, you have to really – especially when the client is looking at a high guidelines range anyway – and then you're going back into Court and you're asking the Judge to give a variance, you really don't want to be in a situation where you're – you know, there are allegations or there's like, grumbling from the Government that, you know, maybe somebody didn't testify truthfully pretrial. I mean you want the Judge to want to give your client that break, that 3553(a) break especially for someone like Mr. Spriggs who – there was so much mitigation. He had so much going for him in terms of mitigation, you know, and we – I think we really brought it all out for the Judge both times, for the original sentencing and for the resentencing, and the Judge did vary twice but, you know, did not vary as much as we had hoped."

Rosen Evans testified that she and the Petitioner reviewed the discovery, discussed the psychologist's report, and discussed possible trial defenses.[17] They also discussed the Sentencing Guidelines and how they would apply. Rosen Evans estimated Petitioner's guidelines sentence as possibly as high as 168 months to 210 months, and possibly as low as 97 months to 121 months with acceptance of responsibility. She explained that the sentence Petitioner received would depend on whether certain enhancements would apply and how well they could present mitigating factors.

According to Rosen Evans' notes, Defendant decided the defenses discussed were not good trial defenses and he would plead guilty. The plan was to "marshal all [their] resources, and . . . present the best possible case to the judge on why the guidelines [were] unreasonable and greater than necessary, [and] hope the judge sees it [their] way." Rosen Evans' file contained no notes or correspondence indicating any disagreements with Petitioner or his family or requests for emergency meetings with the family. There was no

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[17] Petitioner testified that one potential defense he had was that although he knowingly downloaded child pornography, he did not know it was being downloaded while he was *in* Martin County, as alleged in the Indictment. He said AFPD Rosen Evans responded that "in this district the jury would not care about anything technical like that, that they would put the pictures [of child pornography] on the wall, and that would prejudice the jury and there wasn't any such thing as technical innocence." Another potential defense they discussed was that other peer to peer users could not obtain child pornography from Defendant's computer because he installed a firewall to prevent others from downloading files – such as music and software – from his computer.

evidence in the file that Petitioner ever told her he wanted to withdraw his plea.

This Court finds AFPD Rosen Evans testimony to be credible. It was based on detailed notes and documentation contained in her case file. It also was consistent with Defendant's version in all material respects.[18]

IV. LEGAL STANDARD

The U.S. Supreme Court has established a two-prong test for deciding whether a defendant has received ineffective assistance of counsel. The defendant must show (1) that counsel's performance was deficient, meaning that it failed to meet an objective standard of reasonableness, and (2) that the defendant's rights were prejudiced as a result of the attorney's

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[18] Petitioner testified that Rosen Evans told him many times that she was not going to file a motion to suppress. She explained it to him the way she explained it during her testimony. She said that if they lost the motion to suppress, Petitioner would have to deal with the loss of credibility. Petitioner testified that he did not feel that was true. He felt like there were empirical lies in the affidavit itself that were self-evident, but Rosen Evans said she was not going to call Detective Broughton a liar in open court. Rosen Evans also explained the term "inevitable discovery," to Petitioner, but Petitioner did not believe it applied because he "never said anything to them that would indicate that there was child pornography on [his] computer until well after they had already declared authority." Petitioner said that after a while, Rosen Evans started saying "Well, you're just going to have to file a 2255" whenever he would bring up filing a motion to suppress. Petitioner did not believe Rosen Evans ever listened to the recording.

substandard performance. *Gomez-Diaz v. United States*, 433 F.3d 788, 791 (11th Cir. 2005) (citing the seminal opinion of *Strickland v. Washington*, 466 U.S. 668 (1984)) (internal citations omitted). *See also*, *Gordon v. United States*, 518 F.3d 1291, 1297 (11th Cir. 2008). To satisfy the "deficient performance" element, the defendant must show that the quality of his counsel's representation was objectively unreasonable. That is, that it fell short of an objective standard of reasonableness under prevailing professional norms and in light of the full circumstances and particular facts of the case. To establish prejudice, the defendant must show a reasonable probability that the outcome would have been different had his attorney not made the complained-of error. "When a defendant claims that his counsel's deficient performance deprived him of a trial by causing him to accept a plea, the defendant can show prejudice by demonstrating a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Spriggs*, 703 Fed. Appx. at 890-91 (*quoting Lee v. United States*, 137 S.Ct. 1958 (2017).[19] A reasonable

[19] *Lee* is distinguishable from the instant case. Lee did not have to establish deficient performance. The government conceded that Lee's counsel provided inadequate representation when he assured Lee that he that he would not be deported if he pleaded guilty. The only question in Lee was whether movant was prejudiced by that erroneous advice. See *Lee*, 137 S. Ct. at 1964. Here, Petitioner must prove both prongs of *Strickland* and the deficient performance element requires him to prove that no reasonable lawyer would have thought the motion would fail, in other words, that the motion was a winner, not just "potentially meritorious".

probability is a probability sufficient to undermine confidence in the outcome. *See Morris v. Sec'y, Dep't of Corrs.*, 677 F.3d 1117, 1127 (11th Cir. 2012). Because a petitioner must satisfy both prongs of the *Strickland* test to show ineffective assistance of counsel, a court "need not address the performance prong if the petitioner cannot meet the prejudice prong and vice versa." *Ward v. Hall*, 592 F.3d 1144, 1163 (11th Cir. 2010).

In remanding Petitioner's Motion, the Eleventh Circuit emphasized that where a movant claims his counsel was ineffective for failing to file a motion to suppress, a court must consider the merits of the foregone suppression motion. "A district court's inquiry into trial counsel's performance in advising a client to plead guilty cannot be unmoored from the merits of an alleged Fourth Amendment violation, particularly when, as here, the defendant claims he is innocent of the offense he pled guilty to and when a motion to suppress may have been outcome-determinative." *Spriggs*, 703 Fed. Appx at 891. "[B]oth the deficient performance and prejudice prongs of *Strickland* turn on the viability of the motion to suppress." *Id.* (*quoting Arvelo v. Sec'y, Florida Dep't of Corr.*, 788 F.3d 1345, 1348 (11th Cir. 2015)). The motion's likelihood of success impacts the deficient performance analysis because "no reasonable lawyer would forgo competent litigation of meritorious, possibly decisive claims." *Id.* (*quoting Kimmelman v. Morrison*, 477 U.S. 365, 382 n. 7 (1986)). It impacts the prejudice analysis because being properly advised about whether one has a viable motion to suppress is critically important in determining

whether to plead guilty or go to trial, especially where – as here – a successful motion would result in the exclusion of most or all the incriminating evidence. Thus, the merits of Petitioner's motion to suppress is crucial to the *Strickland* analysis.

Petitioner argues that he is not required to prove his motion to suppress would have prevailed at the district level in order to obtain relief under *Strickland*, but only need prove that his motion was "at least potentially meritorious." [DE 46 at 2] (*citing Lee v. United States*, 137 S.Ct. 1958, 1965 (2017)). This Court disagrees. "Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must . . . prove that his Fourth Amendment claim is meritorious[.]". *Morrison*, 477 U.S. at 375. A meritorious Fourth Amendment issue is necessary to the success of Petitioner's Sixth Amendment claim. *Id.* at 382. Petitioner must prove that "no competent attorney would think a motion to suppress would have failed." *Premo v. Moore*, 562 U.S. 115, 124 (2011). This means he must show his motion was a winning one, not just "at least potentially meritorious." [DE 46 at 2]. *See also Arvelo v. Secretary, Florida Department of Corrections*, 687 Fed. Appx. 901 (11th Cir. 2017) (when the issue is whether a lawyer was ineffective for failing to file a motion to suppress a court must determine whether the motion would have succeeded). If Petitioner can do so, he not only establishes deficient performance, but also goes far towards establishing prejudice. That is because suppression of the evidence on Petitioner's laptop would likely have

been outcome determinative. There would have been no reason for Petitioner to plead guilty with a winning, outcome determinative motion to suppress available to him.

In analyzing the merits of Petitioner's Fourth Amendment claim, however, the undersigned stays mindful that this is an ineffective assistance of counsel claim under the Sixth Amendment, not a motion to suppress under the Fourth Amendment. This distinction is important. To prevail under the Fourth Amendment, Petitioner need prove only that the search was illegal and that it violated his reasonable expectation of privacy. *Kimmelman v. Morrison*, 477 U.S. 365, 374-75 (1986). To prevail under the Sixth Amendment, Petitioner must prove not only that his Fourth Amendment challenge was meritorious, but also that counsel's error in advising him otherwise fell below an objective standard of reasonableness. *Id.* Petitioner's defaulted Fourth Amendment claim is only one element of proof of his Sixth Amendment claim, it is not the whole of his case. Having a meritorious motion to suppress will not by itself earn him federal habeas relief. *Id.* at 382. "Only those habeas petitioners who can prove under *Strickland* that they have been denied a fair trial by the gross incompetence of their attorneys will be granted the, writ and will be entitled to retrial without the challenged evidence." *Id.* Petitioner must therefore show counsel's error regarding a motion to suppress was not based on sound strategy and unreasonable in light of prevailing professional norms. He must show that her advice and handling of his case

were "outside the wide range of professional competent assistance" in light of all the circumstances. He must show she made errors so serious that she was not functioning as the counsel guaranteed him by the Sixth Amendment. This standard is highly demanding, and meeting it is never an easy task. It "must be applied with scrupulous care, lest 'intrusive post-trial inquiry' threaten the integrity of the very adversary process the right to counsel is meant to serve." *Strickland*, 466 U.S. at 689.

The undersigned therefore begins the analysis with two points. First, Petitioner has the burden to show that his motion to suppress would have succeeded and that no competent attorney would have advised him otherwise. Second, this Court plays a limited deferential role in determining whether there was a manifest deficiency in counsel's handling of the case considering the information available to her at that time, and whether Petitioner suffered prejudice. With that in mind, the undersigned turns to the present dispute.

V. ANALYSIS

A. Merits of the Motion to Suppress

1. The Scope of the Search Warrant

The first question is whether the warrant authorized the officers to search the Spriggs Family's motor home. A search warrant must "particularly describe the place to be searched and the persons or things to be seized." U.S. Const. Amen. IV. The particularity

requirement prevents general searches. *Maryland v. Garrison*, 480 U.S. 79, 84 (1981). Its purpose is to "ensure[] that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." *Id.*

In this case, the warrant authorized the search of the premises at 11501 on the subject street in Hobe Sound, Florida. The location is further described as a "single family home" with "the number 11501 affixed to the house." The warrant includes a photograph of the house, and only of the house. The language and photograph are taken verbatim from Detective Broughton's application and affidavit. The warrant itself does not mention curtilage, but Detective Broughton's application says that he believes "the Premises and the curtilage thereof" were being used to possess child pornography.

There is no mention of an RV anywhere in the warrant, application or affidavit. These documents do not describe any structures or vehicles on the property other than the single-family home located at 11501. Although Detective Broughton included a photograph of the house in the application and affidavit, that picture does not show the land around the house or any motor homes, other structures or other vehicles nearby. If law enforcement wanted to search the RV, they could have specified that in the search warrant application. They could have described the property as containing a mobile home within its curtilage that they wished to search. They did not do so. Thus, the warrant's

language does not authorize the search of anything other than the house designated as 11501. The Court next considers whether the warrant implicitly authorized a search of structures or vehicles on the house's curtilage and if so whether the RV was included within that curtilage.

2. Curtilage

Detective Broughton told the Spriggs Family that the warrant authorized him to search the house and everything on its curtilage, so the Court presumes that curtilage was his basis for searching the RV at the time. The Fourth Amendment protects a home and its curtilage from warrantless searches. *United States v. Dunn*, 480 U.S. 294, 300-04 (1987). "Curtilage" is that "area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacy of life.'" *Oliver v. United States*, 466 U.S. 170 (1984). As a general rule, a warrant for the search of a residence includes within its scope the residence's curtilage even if the search warrant does not expressly mention the curtilage. See *U.S. v. Armstrong*, 546 Fed.Appx. 936, 939 (11th Cir. 2013) (explaining that a "a home, house, or residence has curtilage" which "is part of the home itself for Fourth Amendment purposes" and thus the search warrant at issue permitted the search of the vehicle parked on the premises), *U.S. v. Villaverde-Leyva*, 2010 WL 5579825, *9 (N.D.Ga. 2010) ("In any event, a search of a residence pursuant to a warrant may include all other buildings and all other objects 'within the curtilage of that residence, even if not specifically

referenced in the search warrant", citing *U.S. v. Cannon*, 264 F.3d 875, 881 (9th Cir. 2001)), and *U.S. v. Kellogg*, 2013 WL 3991956, *17 (N.D.Ga. 2013) (noting the consensus that "a warrant authorizing the search of a residence automatically authorizes a search of the residence's curtilage", citing *U.S. v. Gorman*, 104 F.3d 272, 275–76 (9th Cir. 1996)). See also, *US. v. Perez*, 2011 WL 3438094, *3 (E.D.Penn. 2011) (noting that a valid warrant for a "premises" generally permits the search of any vehicles owned by the resident that are located on the property).

Courts differ on whether curtilage can include structures or vehicles on an adjoining lot that has a different address number. Prior to Petitioner's case, some courts had held that a house's curtilage could include an adjoining lot with a different address number, while other courts had said it could not. In *United States v. Villanueva-Magallon*, 43 Fed. Appx. 16, 17-18 (9th Cir. 2002), for example, the government had a warrant to search 792 Ada Street. When they arrived, they found a house with that address on it, and another house and garage with the address 784 Ada Street. Law enforcement searched both houses and drugs were found in 784. The court noted that the same owner possessed and controlled both 792 and 784, and 784 was not being used as a separate residence by some other third party. The court concluded that 784 was within the curtilage of 792, and the search was proper under the warrant. Similarly, in *United States v. Vaanderling*, 50 F.3d 696 (9th Cir. 1995), the warrant authorized the search of a house on a particular lot.

Police searched the house identified in the warrant as well as the homeowner's car, which was located on an adjacent lot. The court held that the car was still within the curtilage of the house even though it was on a lot with a different number. The fact that the car was parked on a lot with a different was not dispositive of whether it was curtilage. Conversely in *Opalenik v. LaBrie*, 945 F.Supp.2d 168 (D. Mass. 2013), the warrant authorized the search of a single-family house at 5 Bach Lane. In addition to the house at 5 Bach Lane, law enforcement searched a shed at 5 Bach Lane, and a garage and recording studio on 4 Bach Lane. The court held that the shed was within the curtilage because it was on 5 Bach Lane, but the garage and recording studio were not because there was no authority "for the proposition that the curtilage of a dwelling located on one piece of property may extend onto a separate but adjoining piece of property." *Id.* at 184. The court reached this conclusion in part because – unlike Petitioner – the defendant in *Opalenik* expressly told the officers that the recording studio and garage were located at a different address.

From these cases, it appears that the law is unclear on whether a structure or conveyance may be within the curtilage of a property described in a warrant even when it is located on an adjoining lot with a different address number. Given this lack of clarity, this Court cannot say no reasonable lawyer would have thought Petitioner's arguments as to curtilage could fail.

Petitioner relies on *United States v. Bershchansky*, 788 F.3d 102, 11 (2d Cir. 2015) for the proposition that that the search of the RV was unlawful. In *Bershchansky*, the court was confronted with the search of an apartment for evidence of child pornography. The warrant authorized the search of Apartment 2 of a particular address, and police searched Apartment 1 instead. *Bershchansky* is distinguishable on several grounds, however. First, the police in *Bershchansky* had clear evidence that they were searching the wrong apartment because there was a sign on the door indicating that it was Apartment 1, not Apartment 2. In the case at hand, there is no evidence that law enforcement knew the RV was located on a lot with a different lot number. There was no sign with a different lot number, no fence between the two lots, and no one at the scene told the officers that the RV was on a different lot number. Second, the responsible officer in *Bershchansky* had a history of misconduct in executing search warrants. *Bershchansky*, 488 F.3d at 112, 114. There is no evidence of any similar history for the officers in this case. Third, *Bershchansky* involved the search of an apartment not a mobile home and therefore did not implicate the automobile exception. Fourth, *Bershchansky* Was decided five years after Petitioner's case, so AFPD Rosen Evans cannot be expected to have predicted the Second Circuit's analysis when she was advising Petitioner about his motion to suppress. Thus, *Bershchansky* is not applicable here.

The Court also looks at whether it was reasonable for the officers to believe the RV was within the

curtilage of the house and therefore within the scope of the search warrant. A law enforcement officer who executes a search warrant must do so reasonably and in good faith based on available information. If the law enforcement officer's actions were objectively reasonable—that is, objectively consistent with what a reasonably well-trained officer would have done—then a mistake made in carrying out that search does not necessarily constitute a Fourth Amendment violation. Compare *Garrison*, *supra*, (finding no Fourth Amendment violation where law enforcement's mistake was understandable) with *Bershchansky*, *supra*, (finding the law enforcement officer's search not objectively reasonable and inconsistent with a good faith reliance on the search warrant's scope). From the photographs, it appears that the RV was only a few yards away from the house. There were no physical barriers between the two plats of land signifying them as being separate properties. There were no signs identifying the lots as having different lot numbers. No one told police the land the RV sat on was assigned a different lot number. Police knew the entire property had a single owner, who was the person named in the search warrant. These factors all weigh in favor of the reasonableness of Detective Broughton's belief that the RV was within the curtilage of the house. On the other hand, Detective Broughton was told the RV was being used as a residence by members of the Spriggs' Family. That should have raised at least some concerns as to whether the warrant authorized a search of the RV which, unlike the adjoining lots in *Villanueva-Magallon* and *Vaanderling*, was being used as a private

residence by third parties. Ultimately, some of Petitioner's arguments on the issue of curtilage might be persuasive were this Court hearing the matter as a motion to suppress. However, as stated above, this is a habeas petition, not a Fourth Amendment motion. At this stage, Petitioner has the burden to show that his arguments are so strong that no competent lawyer would have thought otherwise. Petitioner cannot meet this burden with respect to curtilage because potentially viable arguments existed on both sides.

3. The Spriggs Family's Consent

The Court also considers whether the Spriggs' Family consented to the search of their RV. A search is reasonable and does not require a warrant if law enforcement obtain voluntary consent. *Schneckloth v. Bustamonte*, 412 U.S. 218, 227 (1973). The government has the burden to show that consent was freely and voluntarily given. For a search to be voluntary, it must be the result of an "essentially free and unconstrained choice." *United States v. Purcell*, 236 F.3d 1274, 1281 (11th Cir. 2001) (*quoting Schneckloth*, 412 U.S. at 225). Voluntariness is determined on a case by case basis based on the totality of the circumstances. *United States v. Blake*, 888 F.2d 795, 798 (11th Cir. 1989) (*citing Schneckloth*, 412 U.S. at 224-25). Circumstances to consider include "the defendant's awareness of his right to refuse to consent to the search," among other factors. *United States v. Chemaly*, 741 F.2d 1346, 1352 (11th Cir. 1984).

A search cannot be justified as lawful based on consent if the consent was given only because the officer said he had a warrant. *Bumper v. North Carolina*, 391 U.S. 543, 549 (1968).

> When a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search. The situation is instinct with coercion – albeit colorably lawful coercion. Where there is coercion there cannot be consent.

Id. at 550. A search conducted based on a warrant cannot later be justified as consensual if the warrant turns out to be invalid. *Id.*

The Spriggs Family did not consent to the search of their motor home. Detective Broughton told them he had a search warrant for the premises, and based on that search warrant he intended to search for and seize all computers on the property, including theirs. They acquiesced to his claim of lawful authority, which does not constitute consent. *Id.* Thus, any argument that the Spriggs Family's willingness to cooperate constituted consent to a search of their RV is without merit. Because Detective Broughton searched the Spriggs' RV based on the warrant and not on any expression of consent by the Spriggs, the case of *U.S. v. Spivey*, 861 F.3d 1207 (11th Cir. 2017) – which discusses what actions negate an expression of consent – does not affect the analysis of the Movant's present claims for relief.

4. Inevitable Discovery Doctrine

AFPD Rosen Evans testified that she did not credit law enforcement's claim of consent, and she did not believe the warrant covered the motor home. She believed the incriminating evidence on the laptop would still be admitted against her client, however, under the inevitable discovery exception to the exclusionary rule.

"Under the inevitable discovery exception, if the prosecution can establish by a preponderance of the evidence that the information would have ultimately been recovered by lawful means, the evidence will be admissible." *United States v. Virden*, 488 F.3d 1317 (2007) (*citing Nix v. Williams*, 467 U.S.431, 442-43 (1984)). In AFPD Rosen Evans' view, law enforcement would have inevitably discovered Petitioner's laptop because by the time they searched the RV police had sufficient probable cause to obtain a warrant for it. Specifically, law enforcement knew the IP address assigned to the house was downloading child pornography and they knew from the Spriggs Family that the owners did not have a computer in the house and only had internet for the Spriggs Family's use. They also knew Petitioner's computer (which was in the RV) likely contained child pornography because Petitioner pulled them aside and told so. Because police had probable cause to search the RV by the time that they searched it, AFPD Rosen Evans concluded that the laptop's evidence would be admissible under the inevitable discovery doctrine.

The undersigned disagrees, however, that the requirements of inevitable discovery were met in this case. The law in this circuit is clear that it is not enough to say the information would have been inevitably discovered. *United States v. Brookins*, 614 F.2s 1037, 1048 (5th Cir. 1980).[20]

In the Eleventh Circuit,

> in order for evidence to qualify for admission under this exception to the exclusionary rule, there must be a reasonable probability that the evidence in question would have been discovered by lawful means, *and the prosecution must demonstrate that the lawful means which made discovery inevitable were being actively pursued prior to the occurrence of the illegal conduct.*

United States v. Delancy, 502 F.3d 1297, 1315 (11th Circuit 2007) (*citing Jefferson v. Fountain*, 382 F.3d 1286, 1296 (11th Cir. 2004)) (emphasis added). In other words, to say the evidence would or could have been discovered because there was probable cause to obtain a warrant is. not sufficient. The government must also have been *actively pursuing* those lawful means when the warrantless search occurred. *Virden*, 488 F.3d at 1322 (*citing Jefferson*, 382 F.3d at 1296). The "active pursuit" requirement is not adhered to by all circuits, but it is and was clearly established law in this circuit

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[20] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

at the time police searched the Spriggs' motor home. *Id.* at 1322-23 ("[T]his circuit also requires the prosecution to show that the lawful means which made discovery inevitable were being actively pursued prior to the occurrence of the illegal conduct."). The active pursuit requirement is important. "Any other rule would effectively eviscerate the exclusionary rule, because in most illegal search situations, the government could have obtained a valid search warrant had they waited or obtained the evidence through some lawful means had they taken another course of action." *Id.* (citations and quotation marks omitted).

One of the cases Rosen Evans reviewed according to her case notes was *United States v. Stilling*, 346 Fed. Appx. 458 (11th Cir. 2009). In *Stilling*, two officers participated in conducting a traffic stop that ultimately led to a search of the vehicle and the discovery of narcotics. The officer who conducted the stop lacked probable cause to do so because he had not seen the defendant commit any offense, but the other officer had observed the defendant commit traffic violations and was in active pursuit of defendant to stop him on that lawful basis. The fact that the officer who did not have probable cause was able to stop the defendant first did not change the fact that the other officer was in active pursuit with a lawful basis for the stop. In *Nix v. Williams*, 467 U.S. 431 (1984), police obtained evidence about the location of a murder victim's body through an illegal interrogation. The active pursuit requirement was met because search parties were already searching in the area near the body and would have

inevitably discovered it through legal means. Similarly, in *United States v. Delancy*, the Eleventh Circuit found that the active pursuit requirement was met where police found drugs in a sofa during an illegal protective sweep of a house because law enforcement was actively pursuing the homeowners' consent to search the home before the drugs were found. *Delancy*, 502 F.3d at 1315. Unlike the circumstances present in *Stilling, Nix* and *Delancy*, there is no evidence here that Detective Broughton or Detective Colasuonno ever attempted to obtain a warrant for the RV or were attempting any other legal means of searching the RV. Thus, AFPD Rosen Evans erred in concluding that the inevitable discovery doctrine applied. Law enforcement was not in active pursuit of alternative legal means to obtain the evidence.

5. Automobile Exception

The automobile exception to the warrant requirement allows the police to conduct a search of a vehicle if (1) the vehicle is readily mobile; and (2) the police have probable cause for the search. *United States v. Watts*, 329 F.3d 1282, 1286 (11th Cir. 2003). Although the original justification for the automobile exception was the exigency of the circumstances, the requirement of mobility is now satisfied merely "if the automobile is operational." *Id.* (noting that the Eleventh Circuit has "made it clear that the requirement of exigent circumstances is satisfied by the 'ready mobility' *inherent* in all automobiles that reasonably appear to be capable of functioning"). Thus, if a vehicle

reasonably appears to be functional, the readily mobile requirement is met and the only question that remains is whether there is probable cause for the search. *Id.* Regardless, even if there were an exigency requirement, the Government had evidence to establish it: Petitioner could have fled with his laptop and indeed had considered doing just that. Ultimately he decided instead to stay, motivated to do the right the thing, according to his affidavit.

In *California v. Carney*, the Supreme Court examined the question of whether the automobile exception applies to motor homes. In *Carney*, police were surveilling the defendant's motor home based on information they received that he was using the motor home to exchange drugs for sexual favors. While officers were watching the motor home, a young man entered the motor home and came out with marijuana. He later told police he obtained the marijuana inside the motor home in exchange for sexual activity. The motor home was parked downtown near a courthouse where the officers could have obtained a warrant. Instead they conducted a warrantless search and found drugs inside the motor home. The defendant moved to suppress the evidence, arguing that his motor home should be treated like a house or a dwelling which enjoys the full protection of the Fourth Amendment because he lived there. The government argued that motor homes should be treated like vehicles which are subject to warrantless searches because of a reduced expectation of privacy for Fourth Amendment purposes. The trial court sided with the government and the California

Supreme Court reversed. The government appealed and the United States Supreme Court granted certiorari.

The United States Supreme Court acknowledged that a motor home "possessed some, if not many of the attributes of a home." However,

> when a vehicle is being used on the highway, or if it is readily capable of such use and is found stationary in a place not regularly used for residential purposes – temporary or otherwise – the two justifications for the vehicle exception come into play. First, the vehicle is obviously readily mobile by the turn of an ignition key, if not actually moving. Second, there is a reduced expectation of privacy stemming from its use as a licensed motor vehicle subject to a range of police regulation inapplicable to a fixed dwelling.

Carney, 471 U.S. at 392-93. Based on the circumstances before it, the *Carney* Court found that the warrantless search of the motor home was justified. The Court recognized, however, that different circumstances might warrant a different result. Specifically, it left open the possibility that a "motor home that is situated in a way or place that objectively indicates that it is being used as a residence" could require a warrant. Factors to consider in deciding this question include "the vehicle's location, whether the vehicle is readily mobile or instead, for instance, elevated on blocks, whether the vehicle is licensed, whether it is connected to utilities, and

whether it has convenient access to a public road." 471 U.S. 386, 394 n. 3.

Courts applying the factors identified in *Carney* have reached varying results, but generally the automobile exception has been found to apply to motor homes. *See*, *e.g.*, *United States v. Hamilton*, 792 F.2d 837 (9th Cir. 1986) (applying the automobile exception to a motor home parked in a private driveway because it was readily mobile, licensed for travel and had easy access to public road; electrical connection to a house did not make the vehicle a residence because an extension cord "is hardly the kind of 'pipe and drain' connection that would render the motor home more permanent and less mobile as was contemplated by the Court in *Carney*"); *United States v. Markham*, 844 F.2d 366 (6th Cir. 1988) (applying the automobile exception to a motor home bearing Tennessee license plates parked in a driveway in Ohio); *United States v. Navas*, 597 F.3d 492 (2d Cir. 2010) (applying the automobile exception to a truck trailer, detached from its cab, with its legged dropped; the trailer had an axle and wheels and was capable of being driven away); *United States v. Houck*, 888 F.3d 957 (8th Cir. 2018) (applying the automobile exception to RV because it had fully inflated tires, could have been moved within 30 minutes, was parked on a driveway with ready access to a roadway, was parked at a Pennsylvania residence but had Missouri license plates and registration, and was not attached to the ground or permanently affixed to any structure); *see also United States v. Bertram*, No. CR-07-10-JHP, 2007 WL 1375576, at *3 (E.D. Okla. May 3,

2007) (applying the automobile exception to an RV because the vehicle was readily mobile and probable cause existed to search).

Applying these factors to the case at hand, the undersigned finds it very likely that law enforcement's search of the Spriggs' RV would have been justified under the automobile exception. Petitioner's parents used the RV to travel from Minnesota where they were from to Hobe Sound where they spent the winter months. They told AFPD Rosen Evans that they also used the RV to travel to other states to visit their other children during the summer. It therefore is reasonable to presume the RV was licensed and mobile. The maps and diagrams submitted to the Court at DE 15–3 through 15–9 show that the RV was parked directly off the publicly accessible road of Ella Ave. At page 1 of DE 25–3 Garry Spriggs attests that the RV was "chocked and blocked," which the undersigned takes to mean that a physical stopper was applied to the wheels to prevent accidental or unintended movement, but not that the RV was incapable of moving. The pictures submitted of the RV show it was not elevated on blocks or otherwise demonstrably unable to move. The RV was connected to electricity, cable, and sewage, but there is no evidence before the Court that these connections were of such a nature that the motor home could not be driven away. It appears to this Court that the Spriggs RV, although being used as a home, nevertheless was readily mobile for purposes of the automobile exception. The only question that remained under the automobile exception was whether police had probable cause to

search the RV which – as AFPD Rosen Evans pointed out – they clearly did at that point. This Court concludes that had a motion to suppress been filed, it likely would have failed based on curtilage or the automobile exception. Petitioner has not met his burden to prove his motion to suppress would have been meritorious.

B. Deficient Performance and Prejudice

AFPD Rosen Evans' belief that the inevitable discovery doctrine applied was an error, but that error was not so egregious as to constitute deficient performance under the Sixth Amendment. Whether the basis for the motion's failure was inevitable discovery, curtilage, or the automobile exception, the point is that she correctly advised Petitioner that there was a very real risk he could lose the motion to suppress and receive a higher sentence as an unintended result. An attorney cannot be deemed ineffective for failing to pursue a motion to suppress for which viable arguments existed on both sides, particularly where – as here – that attorney must balance important. countervailing considerations about the potential impact of losing the motion. AFPD Rosen Evans weighed the fact that if Petitioner filed a motion to suppress, he and/or his family members would have to testify. If the motion was lost, the district court might make adverse credibility findings against those who testified on Petitioner's behalf, resulting in Petitioner or his family members not being believed at sentencing when testifying about mitigating circumstances. The court also could find that

Petitioner lied on the stand and increase his advisory guidelines sentence for obstruction of justice or deny him a decrease for acceptance of responsibility as a result. AFPD Rosen Evans' advice not to file a motion to suppress was therefore based on strategic considerations that should not be second guessed by this Court. Unlike the undersigned, AFPD Rosen Evans "observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with the opposing counsel, and with the judge." *Premo v. Moore*, 562 U.S. 115, 122 (2011). As a thirty-year veteran of the Federal Public Defender's Office, she had "insights borne of past dealings with the same prosecutor [and] the court." *Id.* at 126. Applying a "heavy measure of deference" to her judgment as this Court must do, the undersigned finds that AFPD Rosen Evans' representation was reasonable and consistent with prevailing professional norms. Her overall performance, which included meeting and corresponding with Petitioner and his family members numerous times, interviewing the family members and property owner about what happened during the search, investigating and researching various defenses that were potentially applicable, and convincing the district judge twice to vary below the guidelines based on mitigating circumstances, shows she rendered effective professional assistance to Petitioner throughout the case. Indeed, her case file contained an email from Petitioner's father recognizing this very fact. Despite their affidavits which now claim otherwise, the email shows that the Spriggs

Family was very happy with her representation of their son.[21]

Petitioner also has not shown "a reasonable probability that but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). "Plea bargains are the result of complex negotiations suffused with uncertainty, and defense attorneys must make careful strategic choices in balancing opportunities and risks." *Premo*, 562 U.S. at 125. The opportunities, of course, include obtaining a lesser sentence based on acceptance of responsibility and convincing a judge to vary below the guidelines based on defendant's truthfulness, change of heart, and other mitigating factors. Losing a motion to suppress in this case carried with it significant risks of a much stiffer sentence. "Uncertainty [is] inherent in plea negotiations: The stakes for defendants are high, and many elect to limit risk by foregoing the right to assert their innocence." *Id.* at 129. Although she erred in the specific basis for her belief, AFPD Rosen Evans was correct in believing and advising Defendant that a motion to suppress could fail. Given the uncertainty involved, it is reasonable to think Defendant would have accepted the plea agreement because he did not want to risk the real

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[21] One email from Petitioner's father to Rosen Evans the day after the first sentencing hearing stated, "I want to tell you how proud I am of your work yesterday. [Petitioner] also called me last night and said he was very happy with how you handled it all. No one could have done better. I wish the Judge would have stayed and finished it. I'm sure you will let us know the new date. Hope it is soon. Gary."

possibility of losing the motion and receiving a higher sentence. Defendant has not shown a reasonable probability that but for Rosen Evans' error he would not have pleaded guilty and would have insisted on going to trial.

VI. CONCLUSION

This Court recommends that Defendant's § 2255 motion be denied because he has not shown that his foregone motion to suppress was meritorious. He therefore cannot show deficient performance by his counsel or prejudice as a result.

ACCORDINGLY, this Court recommends to the District Court that Movant's Renewed Motion for § 2255 Relief (DE 46) be **DENIED**.

The parties shall have fourteen (14) days from the date of this Report and Recommendation within which to file objections, if any, with the Honorable Jose E. Martinez, the United States District Judge assigned to this case. Failure to file timely objections shall bar the parties from a de novo determination by the District Court of the issues covered in this Report and Recommendation and bar the parties from attacking on appeal the factual findings contained herein. *LoConte v. Dugger*, 847 F.2d 745, 749–50 (11th Cir. 1988), *cert. denied*, 488 U.S. 958 (1988).

DONE AND SUBMITTED in Chambers at Fort Pierce, Florida, this 28th day of February, 2019.

/s/ Shaniek M. Maynard
SHANIEK M. MAYNARD
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION
Case Number: 13-14189-CIV-MARTINEZ-MAYNARD
Case No. 10-14013-CR-JEM

TIMOTHY HOWARD SPRIGGS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.
_____/

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

(Filed Jun. 21, 2019)

THIS MATTER is before the Court on Petitioner's Renewed Motion to Vacate, Set Aside, or Correct Sentence filed pursuant to 28 U.S.C. § 2255, following remand from the Eleventh Circuit Court of Appeals, [ECF No. 46 (renewed motion to vacate), ECF No. 42 (remand)]. Magistrate Judge Shaniek M. Maynard filed a Report and Recommendation, [ECF No. 79], recommending that Petitioner's Renewed Motion for § 2255 Relief be denied because he has not shown that his foregone motion to suppress was meritorious and, therefore, cannot how deficient performance by his counsel or prejudice as a result. Petitioner .timely filed objections to the Magistrate Judge's Report and Recommendation, [ECF No. 81]. The Government responded to Petitioner's objections, [ECF No. 84], and

Petitioner replied to the Government's response, [ECF No. 85].

The Court has reviewed the entire file and record, has made a *de nova* review of the issues that Petitioner's objections to the Report and Recommendation present, and is otherwise fully advised in the premises. The Court finds the issues raised in Petitioner's objections are already addressed in Magistrate Judge Maynard's Report and Recommendation. Accordingly, after careful consideration, it is hereby

ADJUDGED that United States Magistrate Judge Maynard's Report and Recommendation, [ECF No. 79], is **AFFIRMED and ADOPTED**. Accordingly, it is:

ORDERED AND ADJUDGED that

1. Petitioner's Renewed Motion to Vacate, Set Aside, or Correct Sentence filed pursuant to 28 U.S.C. § 2255, [ECF No. 46], is **DENIED** because he has not shown that his foregone motion to suppress was meritorious and, therefore, cannot show deficient performance by his counsel or prejudice as a result.

2. This case is **CLOSED**, and any pending motions are **DENIED AS MOOT**. A final judgment shall be entered by separate order.

DONE AND ORDERED in Chambers at Miami, Florida, this 21 day of June, 2019.

/s/ Jose E. Martinez
JOSE E. MARTINEZ
UNITED STATES
DISTRICT JUDGE

Copies provided to:
Magistrate Judge Maynard
All Counsel of Record

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13238-AA

TIMOTHY HOWARD SPRIGGS,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Respondent - Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(Filed Sep. 27, 2022)

BEFORE: NEWSOM and MARCUS, Circuit Judges, and STORY*, District Judge.

PER CURIAM:

The Petition for Panel Rehearing filed by Appellant, Timothy Howard Spriggs, is DENIED.

ORD-41

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* Honorable Richard W. Story, United States District Judge, for the Northern District of Georgia, sitting by designation.