

No.:

26-5873 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Martin Renteria

Petitioner

v.

The United States of America

Respondent

Supreme Court, U.S.
FILED

APR 24 2025

OFFICE OF THE CLERK

On Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION PRESENTED

Petitioner Martjin Renteria, federal prisoner #18318-509, was convicted of (i) 18 U.S.C. §2251(a) Production of Child Pornography; (ii) 18 U.S.C. §2260(a) Committing a Felony Against a Minor While Being a Registered Sex Offender; (iii) 18 U.S.C. §2252(a)(4) Possession of Child Pornography; and (iv) 18 U.S.C. §1591(a) Sex Trafficking of a Minor.

After Petitioner's conviction and direct appeal, Petitioner Moved to vacate, set aside or correct his sentence under 28 U.S.C. §2255 claiming his conviction was unconstitutional on six grounds. The District Court rejected Petitioner's constitutional claims as frivolous and meritless without holding an evidentiary hearing. The 5th Circuit Court of Appeals denied the Petitioner's application for a Certificate of Appealability stating the petitioner did not satisfy the requisit of 28 U.S.C. §2253(c)(2) by not showing a substantial denial of a constitutional right or that a reasonable jurist would find the District Court's assessment of the Petitioner's constitutional claims debatable or wrong; citing Miller-El v. Cockrell, 537 U.S. 322 and Slack v. McDaniel, 529 U.S. 473. The question presented is should the 5th Circuit's decision in denying a Certificate of Appealability be reversed in light of §2253(c)(2), Miller-El v. Cockrell and Slack v. McDaniel where the Petitioner's claims were of the denial of 4th, 5th, and 6th amendment rights and can be held as debatable.

PARTIES TO THE PROCEEDINGS

Martin Renteria v. United States

RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the Western District of Texas, Midland/Odessa Division and the United States Court of Appeals for the Fifth Circuit, listed here in reverse chronological order.

(DENIAL OF CERTIFICATE OF APPEALABILITY)

United States of America v. Martin Renteria
No.: 24-50557 (5th Cir.)
2024 U.S. App. LEXIS 30239
Judgment entered November 26, 2024

(DENIAL OF 28 U.S.C. §2255 MOTION)

United States of America v. Martin Renteria
Case 7:20-CR-00355, Document 179 In the United States District Court for the Western District of Texas, Midland/Odessa Division
Judgment entered May 14, 2024

(DIRECT APPEAL)

United States of America v. Martin Renteria
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Fed. R. Crim. Proc. 41(e)(2)(A)

PETITION FOR WRIT OF CERTIORARI

After Petitioner's conviction and direct appeal, Petitioner Moved to vacate, set aside or correct his sentence under 28 U.S.C. § 2255 claiming his conviction was unconstitutional on six grounds under the 4th, 5th, and 6th amendments where; the superseding indictment did not contain any facts to describe the alleged criminal conduct as required by Fed. Rule. Crim. Proc. 7(c)(1) denying the Petitioner the right within the 6th amendment to know the nature and cause of the accusations against him in order to prepare an adequate defense, the right within the 5th amendment not to be charged for the same offense twice and the right within the 5th amendment to be tried on an indictment of charges found by a grand jury. In doing so, the indictment failed to confer jurisdiction onto the Court.

Petitioner was denied the right to assistance of Counsel within the 6th amendment when trial Counsel was ineffective in failing to inform or raise 4th amendment violations where; Petitioner's confinement remained to be illegal following a warrantless home arrest through an arrest warrant obtained afterwards which lacked probable cause supported by oath or affirmation when the arrest warrant did not describe the same conduct of the offense as charged in the complaint as required by Fed. Rule. Crim. Proc. Rules 3 and 4; an October 27, 2020 search warrant was invalid lacking probable cause by containing a false statement made by the Affiant stating that an item of search would be found at a different geographical location and that a November 2, 2020 search warrant was facially deficient in failing to correctly identify a cellphone not meeting the requirements of Fed. Rule. Crim. Proc. 41(e)(2)(A) or the particularity requirement of the 4th amendment.

Petitioner was also denied his 6th amendment right to assistance of Counsel when appellate Counsel failed to challenge the District Court's denial of the Petitioner's Motion to suppress evidence where the Court's determination that implied consent, the good faith exception, the independent source doctrine and the inevitable discovery doctrine applied to a series of 4th amendment violations involved in the arrest of the Petitioner and the obtainment of evidence which included a planned warrantless home arrest, a warrantless entry and search of Petitioner's home, two warrantless seizures of data and subsequent searches of that data from the Petitioner's cellphone and lastly where appellate Counsel abandoned the Petitioner's challenge to the Sufficiency of Evidence for the commerce element of 18 U.S.C. § 1591(e)(3) on direct appeal.

28 U.S.C. § 2255(a) provides a prisoner may Move to vacate, set aside, or correct a Federal Court's sentence if that sentence was imposed in violation of the Constitution or laws of the United States or that the Court was without jurisdiction to impose such sentence. (App. Y)

28 U.S.C. § ~~2253~~2253(c)(2) provides a Certificate of Appealability may issue only if the applicant has made a substantial showing of the denial of a Constitutional right. (App. Y) . In the year 2000 this Court held that when the District Court denies relief on the merits, an applicant must show that reasonable jurists would find the District Court's assessment of the Constitutional claims debatable or wrong, Slack v. McDaniel, 529 U.S. 473, 484 (2000).

In 2003 this Court upheld that either the requirement of § 2253(c)(2) or that which was explained in Slack v. McDaniel if met, should allow the issuance of a Certificate of Appealability; Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

Because Petitioner's claims are both of the denial of Constitutional rights and may be held as debatable, the requirement of § 2253(c)(2) and the holdings of Slack and Miller-El govern this case. The 5th Circuit's order has issued and this Petition is timely. Petitioner respectfully requests that this Court grant his Petition, vacate or reverse the 5th Circuit's decision in light of § 2253(c)(2), Slack and Miller-El, provide any habeas corpus relief for his Constitutional claims that he is entitled to and remand to the 5th Circuit for any further proceedings.

OPINIONS BELOW

The order of the Fifth Circuit in denying Petitioner's application for a Certificate of Appealability is unpublished. (App. **A**). It is available at 2024 U.S. App. LEXIS 30239. The order denying the Motion for reconsideration and rehearing en banc is also unpublished. It is available at USDC No.: 24-50557. (App. **B**). The order of the U.S. District Court for the Western District of Texas in the denial of Petitioner's § 2255 Motion is unpublished, but available at Case 7:20-CR-00355 (DOC. 179). (App. **C**). The opinion of Petitioner's Direct Appeal in the 5th Circuit is available at 84 F.4th 591 (5th Cir.) U.S. v. Martin Renteria. (App. **D**).

JURISDICTION

The judgment of the Fifth Circuit was entered on November 26, 2024 (App. A). On February 24, 2025 this Court extended time to file a petition for a writ of certiorari to April 25, 2025. This petition was timely mailed and postmarked April 24, 2025. This petition is timely. This Court has Jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

The relevant parts of amendments IV, V, and VI to the United States Constitution, 28 U.S.C. § 2255(a), 28 U.S.C. § 2253(c)(2) and 18 U.S.C. § 1591(e)(3).

STATEMENT OF THE CASE

Petitioner was convicted on four counts (1) production of child pornography, (2) committing that offense (count 1) while being required to register as a sex offender, (3) possession of child pornography and (4) sex trafficking of a child in the U.S. District Court for the Western District of Texas; Midland/Odessa Division; Case No.: 7:20-CR-00355-DC. The Petitioner timely Moved to appeal his conviction. The 5th Circuit affirmed. App. D.

Petitioner Moved to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 presenting six grounds arguing that his sentence was imposed in violation of the Constitution, laws of the United States and that the Court was without jurisdiction to impose such sentence where a superseding indictment denied 5th and 6th amendment rights by failing to meet the requirements of Fed. R. Crim. Proc. 7(c)(1) and confer jurisdiction onto the Court, 6th amendment rights were denied when trial Counsel failed to inform Petitioner or raise 4th amendment violations and where appellate Counsel failed to raise a challenge to the denial of a Suppression of Evidence which involved a series of 4th amendment violations and the exceptions to the 4th amendment exclusionary rule that the District Court used in the denial did not apply and also where appellate Counsel abandoned the Petitioner's challenge to the sufficiency of evidence for 18 U.S.C. § 1591(e)(3) on direct appeal. App. H.

Without granting an evidentiary hearing to allow the Petitioner to present evidence and testimony in support of his claims, the District Court denied the grounds as frivolous and meritless. (App. C.) Petitioner timely applied for a Certificate of Appealability with the U.S. Court of Appeals for the 5th Circuit.

The 5th Circuit denied a COA stating that the Petitioner did not show a substantial denial of a Constitutional right nor that reasonable jurists would find the District Court's assessment of Constitutional claims as debatable or wrong. (App. A). A Motion for rehearing en banc was also denied. (App. B).

Petitioner presents the same grounds to this Court to show his claims of the denial of his Constitutional rights are substantial and debatable also that a Certificate of Appealability should not have been denied.

The Petitioner's first ground presented on his 28 U.S.C. § 2255 Motion was that the Court was without jurisdiction to impose the sentence because the indictment failed to state an offense. The indictment did not contain any facts that describe the Petitioner's alleged criminal conduct as required by Fed. Rule. Crim. Proc. 7(c)(1); See Superseding Indictment (App. E). Fed. R. Crim. Proc. 7(c)(1) states an indictment must be a statement of the essential facts constituting the offense charged. App. Z.

The indictment accused the Defendant by providing a verbatim recitation of the broad and varied elements within the language of each statute. It did not include any other information that would accuse the Petitioner of any conduct that violates any element of such statutes other than a broad description of time and place stating proximal dates and, "in the Western District of Texas," See Superseding Indictment (App. E). Fed. Rule. Crim. Proc. 7(c)(1) ensures the satisfaction of three Constitutional rights. First, it satisfies the 6th amendment guarantee that in a criminal prosecution the accused shall be informed of the nature and cause of the accusations (App. X). Second, it protects the right of an accused to be free from double jeopardy as guaranteed by the 5th amendment (App. X) and finally, it guarantees that the accused has been indicted

by a grand jury, as required by the 5th amendment, for the offenses on which he is to be tried. (App. X). This third function is met by the requirement that an indictment contain some factual particularity, thus preventing the prosecution from filling in elements of its case with facts not presented to, or considered by the grand jury. In testing the sufficiency of an indictment, the criteria to be analyzed are whether the indictment contains the elements of the offense intended to be charged, and sufficiently appraises the Defendant of what he must be prepared to meet, and in case any other proceedings are taken against him for a similar offense, whether the record shows with accuracy to what extent he may plead a former acquittal or conviction; See U.S. v. Sugar, 606 F. Supp. 1134, 1141-42. Citing the Supreme Court's decision in Russell v. U.S., 369 U.S. 749, 763-64 quoting Hagner v. U.S., 285 U.S. 427, 431.

At the start of the investigation, the investigating officer wrote that she had found two separate images of child pornography on Petitioner's cellphone, one not involving the minor victim and one that did involve the minor victim the following day. See Police Supplemental Report, pg. 25 (Supp. App. 1). Likewise, Petitioner was also accused of committing more than one act and occurrence of sexual conduct involving the minor victim for which current State charges are pending. See Pending Indictment CR55886; State of Texas v. Martin Renteria. (App. G).

Without the essential facts constituting the offense charged, it is impossible to distinguish which image of child pornography was the basis for the Federal charges the Petitioner was tried and convicted for in Counts 1, 2, and 3 of the indictment. See Superseding Indictment (App. E).

Other Courts agree. In U.S. v. Remarque, 2021 U.S. Dist. LEXIS 28016 pg. 8-9, Maryland District Court 2021, the Court found the indictment defective for the third Count of possession of child pornography. It provided no essential facts regarding what pornography was allegedly possessed. It only provided the elements rather than sufficiently distinctive charge. The Court also found that nothing in the indictment protected the Defendant from being charged for the same possession crime at some point in the future. Also see U.S. v. Hillie, 227 F. Supp. 3d 57 (D.C. Cir. 2017). It is also impossible to ascertain from reading the indictment which sexual act was the basis for the sex trafficking charge of Count 4 of the indictment; See Superseding Indictment. (App. E).

Absent the essential facts of the alleged criminal conduct the indictment denies the Petitioner his 6th amendment right to know the nature and cause of the accusations. (App. X). It does not appraise the Defendant with reasonable certainty of the allegations in order to prepare a defense because it cannot be known, from reading the indictment, the conduct of which the government intended to base its case. Thus, it could not have been known how or what he must be prepared to meet at trial. Nor can this indictment provide the protection guaranteed within the 5th amendment against subsequent prosecutions for the same offense in any future Federal or State proceedings. (App. X). It also cannot be known what specific conduct a grand jury found cause within in order to charge an offense nor can it be assured that the charges adhere to the facts that a grand jury considered. Therefore, the indictment fails to provide the protection within the 5th amendment to be tried upon the presentation of an indictment of charges found by a grand jury. (App. X). See Russell v. U.S., 369 U.S. 749, 770.

This Court has said "undoubtedly the language of the statute may be used in the general description of an offense, but it must be accompanied with such as statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description with which he is charged." See U.S. v. Hess, 124 U.S. 483, 487; see also Pettibone v. U.S., 148 U.S. 197, 202-204.

The absence of the assertion of facts rendered the indictment Constitutionally deficient causing the charging instrument to fail to confer jurisdiction onto the Court.

The 5th Circuit has held that, the 5th and 6th amendments demand that indictments set forth each essential element of an offense. In reviewing a challenge to an indictment alleging that it fails to state an offense, the indictment must allege the Defendant's conduct met the essential elements of the crime charged. It is not sufficient to merely state the elements of the crime. See U.S. v. Suarez, 966 F.3d 376, 382-383 (5th Cir. 2020). The sufficiency of an indictment is not a matter for Federal habeas relief unless the indictment is so defective that the convicting Court had no jurisdiction. A failure to charge an offense claim may be raised on a 28 U.S.C. § 2255 because such an error divest the sentencing Court's jurisdiction. See U.S. v. Prince, 868 F.2d 1379, 1383-1384 (5th Cir. 1998).

This ground has substantial and debatable Constitutional concerns which should not have been denied under 28 U.S.C. § 2253(c)(2), Slack v. McDaniel or Miller-El v. Cockrell.

In denying the Petitioner's second ground of his § 2255 Motion, the District Court considered and denied a separate issue from the one presented. The claim was Ineffective Assistance of Counsel of Trial Attorneys for not raising and withholding from the Defendant the issue that the arrest warrant lacked probable cause under Fed. Rule. Crim. Proc. Rules 4, 3 and the 4th amendment of the United States Constitution. See DOC. 171 pg. 22. (App. H).

The District Court's assessment of this claim was, "Defendant's claim that Counsel failed to argue that his arrest was not supported by probable cause is just not true...the record shows, trial Counsel Moved to suppress the fruits of Defendant's illegal arrest and any evidence obtained therefrom. So there is no support of this claim." See pg. 7 (App. C).

The issue is not that trial Counsel failed to challenge the 4th amendment prohibitions of the warrantless home arrest and the illegal seizure of evidence, but, the claim the Movant raised is that trial Counsel's performance did not allow the Petitioner to litigate that his confinement remained to be illegal following the warrantless home arrest through a defective arrest warrant issued afterwards lacking probable cause and unsupported by oath or affirmation. See pg. 22-27 (App. H).

The defect is obvious. Fed. Rule. Crim. Proc. 3 provides, "a complaint is a written statement of the essential facts constituting the offense charged which must be made under oath before a judge." (App. Z). In Giordenello v. U.S. this Court held that the purpose of a complaint is to enable a Magistrate Judge to determine whether the probable cause required to support a warrant exists. 357 U.S. 480, 485-486 (1958).

Fed. Rule. Crim. Proc. Rule 4(b)(1)(B) says, "a warrant must describe the offense charged in the complaint." (App. Z). The essential facts of the complaint do not include the description of the offense on the arrest warrant. The Affiant swore under oath that the Petitioner's penis penetrated or came in contact with the minor victim's genitals, a completely separate element of conduct than that which was written on the complaint. _____ Probable cause for this element is absent and the arrest warrant cannot be supported by oath or affirmation as described in the Petitioner's § 2255 Motion. See pg. 22-24 (App. H).

The 4th amendment provides, "no warrant shall issue, but upon probable cause supported by oath or affirmation," (App. X) which applies to both arrest warrants and search warrants. Giordenello v. U.S., 357 U.S. 480, 486.

In Giordenello, this Court set aside and reversed a conviction holding that his arrest was invalid, in that the complaint, in violation of Fed. Rule. Crim. Proc. Rule 4 provided no sufficient basis on which could be made a finding of probable cause that the offense charged was committed and that the Defendant had committed it. 357 U.S. 480.

An evidentiary hearing should have been granted as requested by the Petitioner, (See § 2255 Motion [App. H.] pg. 83) to ask why Counsel, having the information of a distinct and apparent Constitutional violation, did not raise the issue. A 4th amendment violation of one to be secure in their person against an unreasonable seizure and confinement based on a warrant lacking probable cause supported by oath or affirmation was allowed to continue. (App. X). Counsel did not inform the Petitioner of the defect depriving him of a fair and full opportunity to raise the issue prior to trial.

A Certificate of Appealability should have been issued for this claim. The underlying 4th amendment claim has merit as required for an ineffective assistance of counsel claim under Strickland v. Washington. 466 U.S. 688,692 and §2253(c)(2). (App. Y) Also because the District Court did not rule on the ground at issue. The Court did not consider the defect on the arrest warrant or continued confinement at all in denying this particular ground. (App. C, pg. 7).

Therefore, the District Court has not provided good reason for the denial. Under Slack v. McDaniel any reasonable jurist would have found the District Court's assessment of the Constitutional claim wrong in not pertaining to the issue raised.

The Petitioner's Third constitutional claim on his §2255 motion was ineffective assistance of counsel of trial attorneys for not raising the issue that the search warrant dated 27 October, 2020 lacked probable cause by containing a false statement made by the investigating officer (§2255 motion [App. H] pgs. 31-36).

On October 27, 2020 an investigation began with an accusation of a sexual act involving a child being recorded on the Petitioner's cellphone. While interviews were still in progress and prior to applying for a warrant, the investigating officer instructed other police officers to arrest Petitioner and to enter his home to get the cellphone. See (Case Supplemental Report [Supp. App 1] pg. 23 and Transcripts of Suppression of Evidence Hearing [App. L] pgs. 25-27 and 30-31). The Petitioner and his cellphone were then transported to the Midland Police Department, Midland Texas. (See Case Supplemental Report [Supp. App. 1] pg. 23).

Afterwards, the investigating officer applied for a warrant to search Petitioner's home. With reckless disregard for the truth, she swore under oath that the cellphone would be still found at the Petitioner's house while knowing by her own instruction, it had been brought and was in her possession at a different geographical location. (See affidavit for search, Case 201027012 October 27, 2020 (Supp. App. 2 pg. 1.) The false statement was deliberate and intentionally included in the search warrant affidavit to keep from the judge, who issued the warrant, the fact that the cellphone had been seized illegally.

The 5th Circuit has held that probable cause will cease to exist if an item of search is not at the location specified on the warrant. U.S. v. Froman, 355 F.3d 882, 889 (2004) and U.S. v. Byrd, 31 F.3d 1329, 1340 (1994) This Court has held that if an affirmative misrepresentation is knowingly included in a probable cause affidavit in support of a search warrant and the misrepresentation is material and necessary to establish probable cause, the warrant is rendered invalid under the 4th amendment, Franks v. Delaware, 438 U.S. 154, 155-156 (1978). Trial Counsel had this information but neither informed the Petitioner nor raised the issue during the Suppression of Evidence hearing. This could not have been a strategic decision being that the outcome of the Suppression hearing was based on the Court's assumption that the search warrant was valid.

The Petitioner was prejudiced in the context of ineffective assistance of Counsel in trial Counsel's failure to raise the 4th amendment issue where (1) the 4th amendment issue had merit. The 4th amendment provides, "no warrant shall issue, but upon probable cause supported by oath or affirmation" (App. X), and (2) the verdict of the trial would have been different absent excludable evidence. Kimmelman v. U.S., 477 U.S. 375 and Strickland v. Washington, 466 U.S.

668, 687.

Had trial Counsel raised the issue in the Suppression hearing all the evidence used to convict Petitioner obtained from the October 27, 2020 search warrant would have been suppressed under the invalid warrant. This would have included Petitioner's cellphone, home security footage, books, police photographs, and other personal items (See affidavit for search, Case 201027018, 27 October 2020 (Supp. App. 2 pg. 1 and Inventory List)).

Without holding an evidentiary hearing, as requested by Petitioner (See § 2255 Motion [App. H] pg. 83], the District Court denied this ground stating, "it was not based on fact." the Court said, "the affidavit for the search warrant does not say that the Defendant's cellphone would be located at the Defendant's home." (See Order Denying § 2255 Motion [App. C] pg. 7).

The affidavit clearly states:

Paragraph 1 - There is in Midland County, Texas, a suspected place and premises described and located as following: 2813 Kessler Avenue,

Paragraph 2 - There is at said suspected place and premises property concealed and kept in violation of the laws of Texas, and described as follows:
electronics to include but not limited to cell phone, tablets and other devices to record sex acts...

Paragraph 3 - Said suspected place and premises are in charge of and controlled by each of the following persons: Martin Renteria, H/M, DOB: 8/23/69. (See affidavit for search, Case 201027018, 27 October, 2020 (Supp. App. 2 pg. 1.)

In further assessment of this issue , the Court veered from the literal meaning of the wording of Paragraph 2 changing the meaning by including, " in other words, any other phones in defendant's home". See (Order Denying §2255 Motion [App. C] pg. 7)

the 4th amendment does not allow a District Court to interpret a description on a warrant affidavit into "other words". The 4th amendment requires that an item to be seized be described with sufficient particularity so as to leave nothing to the discretion of the officers executing the warrant. U.S. v. Allen, 625 F.3d. 830, 835 (5th Cir. 2010).

The investigation centered around a single cellphone. Together the outcry witness, the child victim and the investigating officer describe a specific Samsung Galaxy S20 cellphone. See (Affidavit for Search Case 201027018 [Supp. App 2] pgs. 1-2 and Police Supplemental Report [Supp. App. 1] pg. 25). The literal meaning of paragraph 2 of the Affidavit is meant to include a single cellphone. The description of the cellphone is written in the singular, all other items are described in the plural.

A Certificate of Appealability should have been issued on this ground because the constitutional issues have merit as required by § 2253(c)(2) and reasonable jurists would have found the District Court's assessment of the constitutional claims as wrong as required of Slack v. McDaniel.

Ground Four of the Petitioner's § 2255 Motion was Ineffective Assistance of Counsel of trial attorneys for not providing the Defendant the information of or raising the issue that the search warrant dated 2 November, 2020 was facially deficient (§ 2255 Motion [App. H] pgs. 40-44).

Petitioner explained in his § 2255 Motion that the 2 November, 2020 search warrant affidavit failed to correctly identify the Petitioner's cellphone not meeting the requirements of Fed. Rule. Crim. Proc. 41(e)(2)(A) (App. Z) or the particularity clause of the 4th amendment (App. X)(§ 2255 Motion [App. H.] pg. 40-44). On 27 October, 2020 an investigation began centered around a specific cellphone suspected of containing a recorded image of a child performing a sexual act. On that day the investigating officer was made aware of the specific model of cellphone the suspect owned through interviews of the outcry witness and child advocacy. The investigating officer later specified in her report that she was aware the Petitioner's cellphone was a Samsung Galaxy S20 model. See Police Case Supplemental Report [Supp. App. 1] pg. 25.

On 2 November, 2020 a warrant was sought for the extraction of data from the cellphone. The investigating officer described the cellphone to be searched on the warrant affidavit as a "Black Samsung SM" which is either a different model or a generic term. See (Affidavit and Warrant for Search [Supp. App. 3] pg. 1) Fed.R.Crim.Proc. 41(e)(2)(A) provides a warrant must identify the property to be seized. (App. Z).

The 4th amendment provides that a warrant must particularly describe things to be seized (App. X).

The 5th Circuit has held that each item does not need to be precisely in a warrant if detailed particularity is impossible. U.S. v. Aguirre 664 F.3d. 606, 614 (5th Cir. 2011). In this case, detailed particularity was possible as was shown when the investigating officer correctly identified the cellphone in her report. See (Supp. App. 1 pg. 25). The 5th Circuit has also held that failure to employ the specificity available will invalidate a general description in a warrant. General classifications in a warrant are acceptable only when a more precise description is not possible. U.S. v. Cook 657 F. 2d. 730, 733 (5th Cir. 1981) and U.S. v. Bright 630 F. 2d. 804 , 812 (5th Cir. 1980).

Trial Counsel had the information that the description of the cellphone on the warrant affidavit was constitutionally inadequate. Counsel also had the information that the affiant had the availability to make a precise description at the time she applied for the warrant. Counsel neither informed Petitioner of the defect nor raised the issue during the Suppression hearing. Had Counsel raised the issue, the verdict of the trial would have been different. None of the contents of the cellphone would have been used to convict the Petitioner. The criteria for an ineffective assistance of Counsel claim is met under Strickland v. Washington, 466 U.S. 688.

The District Court denied the claim as frivolous without holding an evidentiary hearing or providing any reason of how a different description, other than the one known, is sufficient when used to describe an item to be searched on a warrant affidavit. (See Order Denying §2255 Motion [App. C] pg. 7-8). This claim should not have been denied a Certificate of Appealability under §2253(c)(2) because

the constitutional claim has merit, nor should it have been denied in light of Miller v. Cockrell because this claim can be found as debatable by reasonable jurists.

Petitioner,s fifth claim of his §2255 Motion was Ineffective Assistance of Appellate Counsel for failing to challenge the District Court's denial of the Defendant's Motion to Suppress Evidence (§2255 Motion [App. H] pg. 47-55). On October 27, 2020 an investigation began with a reporting of a recorded image of a child performing a sexual act on Petitioner's cellphone. While interviews were still in progress, the investigating officer instructed other officers to arrest Petitioner at his home and to get his cellphone prior to applying for a warrant. (See Police Case Supplemental Report [Supp. App. 1] pg. 23, and Transcripts of Suppression of Evidence hearing [App. L) pgs. 25 line 2 through pg. 27 and pg. 30 line 24 through pg. 31 line 9). Petitioner was immediately handcuffed and taken off his property to an awaiting police vehicle while other officers entered home to seize his cellphone. Both Petitioner and his cellphone were transported to the Midland Police Department, Midland Texas (Supp. App. 1 pg. 23). On November 4th and 5th, 2020 a forensic download followed by a manual extraction and subsequent searches uncovered two images of child pornography. (Case Supplemental Report [Supp. App. 1] pgs. 25 and 30). Evidence was used to convict Petitioner.

Prior to trial, Petitioner moved to suppress evidence claiming evidence was seized as fruit of an unlawful home arrest. (See Motion to Suppress Evidence [App. Q]). The District Court denied the Suppression deciding that implied consent, the good faith exception,

the independent source, and the inevitable discovery doctrines all applied to the obtaining of evidence. (App. R). After trial, Petitioner timely moved for an appeal.

Without communicating at all to discuss any facts of the case that may have applied to any arguments, Appellate Counsel concluded he would not be able to successfully challenge the inevitable discovery rationale solely based on the 5th Circuit's decision in U.S. v. Lamas 930 F.2d 1099. (App. S [pgs. 4-5]). Due to this same conclusion, he also chose not to challenge any other of the exceptions to the exclusionary rule that the District Court had ruled in favor of in denying Petitioner's 4th amendment claims where none of which could have applied. Although there may be similarities between Lamas and this case, there are significant differences.

First, in Lamas, police officers had in fact taken steps towards obtaining a search warrant. An officer had left the property with the intent to get a warrant at the time of the search. 930 F.2d 1099 at 1103.

In this case, no steps were made to obtain a warrant during Petitioner's home arrest and search of his home. Appellate Counsel explained in his affidavit that he had reviewed the Suppression Hearing transcripts and saw where the Detective had not yet started typing up the warrant application until after Petitioner had been brought to the police station and after the Detective had tried to talk to him. (See Government's Response to §2255 Motion [App. S] Doc. 175-2, pg. 4).

Second, unlike in Lamas, this case involves a planned illegality. Transcripts of the Suppression of Evidence Hearing show the Detective intentionally sent other officers to "pick up" Petitioner and to "get his cellphone" during the Child Advocacy interview and prior to applying for a warrant. See Transcripts of Suppression Hearing (App. L) pgs. 25 line 2 through pg. 27 line 22 and pg. 30 line 24 through pg. 31 line 9.

The 5th Circuit has held that it is a sound rule that planned home warrantless searches and seizures or arrests with the intention of obtaining a warrant after the fact are unacceptable.

In discussing the inevitable discovery doctrine, the 5th Circuit agreed, "Police who believe they have probable cause to search cannot enter a home without a warrant merely because they plan to get one" U.S. v. Cherry, 759 F.2d. 1196, 1205 (5th Cir. 1985) citing U.S. v. Griffin, 502 F.2d. 959 (6th Cir. 1974).

The 5th Circuit also held, "the government cannot later initiate a lawful avenue of obtaining the evidence and then claim that it should be admitted because its discovery was inevitable." Cherry at 1205.

The idea of implied consent is not applicable. Any consent given would be fruit of an unlawful arrest as well as the result of a custodial interrogation absent 5th Amendment Miranda warnings. At the time of Petitioner's arrest, police officers knocked on the door and immediately placed Petitioner in handcuffs. Petitioner was taken off his property to an awaiting police vehicle and transported to the

police station prior to an arrest warrant being issued. See (App. L pg. 25 line 2 through pg. 27 line 22 and pgs. 30 line 24 through pg. 31 line 9). While in the police vehicle, police asked Petitioner where his cellphone was located. However, Petitioner did not give consent for the police to enter his home.

In Kaupp v. Texas, 538 U.S. 626 (2003), the Supreme Court said, "this Court has never sustained the involuntary removal of a suspect from his home to a police station and his detention there for investigation purposes absent probable cause or judicial authorization". Pg. 630. This Court has also held that consent was a mere submission to a claim of lawful authority during an unlawful detainment. Kaupp at 630. This Court has further held that statements given during a period of illegal detention are inadmissible, even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will (Florida v. Royer, 460 U.S. 491, 501 [1983]).

The good faith exception can not apply because it requires a warrant to have been issued, then later determined that probable cause was absent. U.S. v. Leon, 468 U.S. 897, at 913-914 and 922. In this case the police were not relying on the probable cause determination of a judge. They were acting on the instruction of another police officer (App. L pg. 25 line 2 through pg. 27 line 22 and pg. 30 line 24 through pg. 31 line 9). Neither can the independent source doctrine apply to the obtainment of data from the Petitioner's cellphone. The independent source doctrine provides that evidence not obtained as a

result of police illegality, but rather through a legal independent source, need not be suppressed. It permits the introduction of unlawful discovered evidence when the police have acquired that evidence through a distinct, untainted source. U.S. v. Oliver, 630 F.3d. 394, 408 (5th and 11th Cir. 2011). Citing U.S. v. Groenheinder, 200 F.3d. 321, 327 (5th Cir. 2000).

The obtainment of evidence from the Petitioner's cellphone was the product of a series of police illegalities including a warrantless home arrest, a custodial interrogation absent Miranda warnings, a warrantless search of a home, two search warrants lacking probable cause, and two additional warrantless seizures and searches of data from Petitioner's cellphone.

On November 2, 2020, after Petitioner's warrantless home arrest and seizure of his cellphone, the forensic officer responsible for the extraction wrote that he waited for a warrant to be obtained prior to seizing data and was informed by the investigating officer a warrant had been signed by a judge at 3:33 pm. He then began to extract data from Petitioner's cellphone (Case Supplemental Report [Supp. App. 1] pg. 30). The warrant had not been signed by a judge until 3:45 pm. (See Warrant for Search, Case 201027018, November 2, 2020 [Supp. App. 3]). Not having a warrant, data was seized for twelve minutes without discretion in violation of the 4th amendment. On November 4, 2020, the data from that extraction was searched by the investigation officer. She reported finding one image of child pornography which did not include the complainant child victim. She then returned the warrant (Case Supplemental Report [Supp. App. 1] pg. 25).

On November 5, 2020, the investigating officer told the forensic officer she needed other data from the Petitioner's cellphone that was not included in the

prior extraction. The forensic officer manually performed another extraction which together he and the investigating officer searched finding an image of the child victim (Case Supplement Report [Supp. App. 1] pg. 25 and 30).

This subsequent seizure and search of data required a subsequent warrant. They seized and searched different information one day after a search had been completed and after the warrant had been returned in violation of the 4th amendment. Appellate Counsel should have included Petitioner's claims in challenging the denial of the suppression of evidence on direct appeal. The denial of 4th amendment rights are numerous and substantial. The exceptions to the exclusionary rule do not apply.

This ground on Petitioner's §2255 Motion should have been issued a Certificate of Appealability because in light of ~~§2253~~(c)(2), the denial of 4th amendment and the 6th amendment right of effective assistance of Counsel are shown and in light of Miller-El, this claim can be found to be debatable.

Ground six of Petitioner's §2255 Motion was ineffective assistance of Appellate Counsel for abandoning the Defendant's challenges to the sufficiency of the evidence for the Commerce element of 18 U.S.C. §1591(e)(3) on direct appeal (§2255 Motion [App. H] pg. 62-74). Appellate Counsel was aware that prior to trial, Petitioner moved to dismiss Count four 18 U.S.C. §1591 "Sex Trafficking of a Child". Counsel knew from the record Petitioner had contended in particular that because there was no payment or expectation of payment on account of a sexual act, no commercial sex act occurred as defined by 18 U.S.C. §1591(e)(3). (Order Denying Motion to Dismiss Count Four [App. T] pg. 6 and [App. Y]).

After hearing testimonies during the trial, Petitioner moved for a judgment of

acquittal under Fed. R. Crim. Proc 29 claiming the Government had failed to prove a commercial sex act occurred. The Court denied the Rule 29 Motion.

In the opening brief, appellate counsel mentioned the history of Petitioner's arguments against the denial of the dismissal and the judgment of acquittal including supporting testimony but failed to further develop an argument, thus waived Petitioner's opportunity to challenge the sufficiency of the evidence for the Commerce element of §1591(e)(3) by abandoning the issue. (Appeal 22-50242 Brief of Defendant [App. U] pg. 13-15 and Appeal 22-50242 Appellee Brief of the United States [App. V] pg. 22-23 and 38).

Petitioner's challenges to the sufficiency of evidence for §1591(e)(3) should have been raised on direct appeal for two reasons. First, 18 U.S.C. §1591(e)(3) requires proof of an exchange of something of value for a sexual act. (App. Y) At the time of the denial of the Dismissal of Count Four, the Court did not know which of three acts of alleged sexual assault or item of value was the basis of conduct constituting the offense.

The indictment did not provide any essential facts that would fit the description of a commercial sex act. (See Order Denying Motion to Dismiss [App. T] pg. 6 and Superseding Indictment [App. E]). The Court said, "Whether there was payment or expectation of payment for the sex acts between Defendant and the minor is a fact issue for the jury at trial." (Order Denying Motion to Dismiss [App. T] pg. 6).

It is well established that neither a District Court nor a trial jury may be permitted to guess at the grand jury's unexpressed intent. U.S. v. Hillie, 227 F. Supp. 3d. 57, 77 (DNC 2017), U.S. v. Pickett 209 F. Supp. 2d. 84, 88-89

(DDC 2002).

This Court has held, "To allow a prosecutor or a Court to make a subsequent guess as to what was in the minds of a grand jury at the time they returned an indictment would deprive the Defendant of a basic protection which the guarantee of the intervention of a grand jury was designed to secure, for a Defendant could then be convicted on the basis of facts not found by and perhaps not even presented to the Grand Jury which indicted him." U.S. v. Hillie 227 F. Supp. 3d. 57, 78 (DDC 2017, citing Russell v. U.S., 369 U.S. 749, 770 (1962).

Second, at trial Minor and Parents of the minor testified that their understanding was that things purchased for the minor by Petitioner were payment in exchange for work performed at the Petitioner's home. (See Jury Trial Transcripts [App. W] pg. 70 line 13-25 through pg. 71 line 1-2, and pg. 92 line 4-25 through pg. 93 line 1-22). Given those testimonies the judgment of acquittal should have been granted and its denial should have been subsequently challenged on direct appeal. The District Court denied those factual arguments within the §2255 Motion as meritless stating that both the Court and appellate counsel had observed at trial the minor had testified that Petitioner offered money in exchange for performing sexual acts (App. C pg. 9). However, the minor testified in trial that there was no money or anything of value purchased in exchange for the performance of any sexual act and that anything given to him by the Petitioner was payment for work performed by the minor at the Petitioner's home. (See Jury Trial Transcripts [App. W] pg. 92 line 4 through pg. 93 line 22.)

An alleged offer does not demonstrate an exchange of anything of value for a sexual act. Neither does payment for work performed. In U.S. v. Arif, ---

F.4th --- (2025) The Defendant was charged with Commercial Sex Trafficking of a Minor. The U.S. Court of Appeals for the Eighth Circuit affirmed the Defendant's motion for judgment of acquittal holding that, "Evidence that Defendant gave the 15-year-old daughter of the handyman who worked for his business \$20 in cash after she did not acquiesce to his pressure to engage in sexual activity in exchange for \$100 did not satisfy the Commerce element of the charge of commercial sex trafficking of a minor in or affecting interstate commerce, in violation of the Trafficking Victims Protection Act or 18 U.S.. §1591(a)(1)". (Only the Westlaw citation is currently available at 2025 WL 2800434 United States Court of Appeals, Eighth Circuit). See Keynote 11.

In Jackson v. Virginia, this Court held that a conviction violates Federal due process if, viewed in the light most favorable to the prosecution, the evidence is not sufficient for, "any rational tier of fact to have found the essential elements of the crime beyond a reasonable doubt." 443 U.S. 307, 319. In denying Petitioner's §2255 Motion, the District Court also stated, "Petitioner's insufficiency argument was so against the weight of evidence, if raised on appeal, it would have damaged the one argument Appellate Counsel did make." (Denial of §2255 Motion [App. C] pg. 9). However, Appellate Counsel's single argument of the statutory construction of §1591 and how it relates to interstate commerce would not have mattered if it was to be shown that a commercial sex act did not occur as defined by § 1591(e)(3) on Direct Appeal (App. Y and App. D)

This ground should have been issued a Certificate of Appealability under or in light of §2253(c)(2) and Miller-El because the claim of Ineffective Assistance of Counsel has merit and the District Court's assessment is wrong.

REASONS FOR GRANTING THE PETITION

The Court should grant the Petition to vacate or reverse the Fifth Circuit's judgment in denying a Certificate of Appealability (COA) and remand in light of 28 U.S.C. §2253(c)(2), Miller-El v. Cockrell and Slack v. McDaniel.

Petitioner is a Federal prisoner who Moved to vacate, set aside or correct his sentence under 28 U.S.C. §2255(a). (App. H). The District Court denied Petitioner's claims as frivolous and meritless without an evidentiary hearing. (App. C) pgs. 10-11 and footnote No. 45.

This Court holds that to obtain a COA, there must be a, "substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336 (2003) and that when a District Court denies relief on the merits, an applicant must show that reasonable jurists would find the District Court's assessment of the constitutional claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000). The 5th Circuit denied a COA stating that Petitioner failed to make the requisite showing. (App. A). The 5th Circuit is mistaken.

Petitioner's conviction was imposed in violation of the constitution and the laws of the United States. The indictment that charged Petitioner is constitutionally deficient. It fails to meet the requirements of Fed. R. Crim Proc. 7(c)(1) by not including any facts to describe the illegal conduct of which Petitioner was accused (App. E). Rule 7(c)(1) clearly states the indictment must be a plain, concise and definite written statement of the essential facts constituting the offense charged. (App. Z)

Rule 7(c)(1) ensures the satisfaction of three constitutional rights; the right within the 6th amendment to be informed of the nature and cause of the accusations (App. X); the right to be free from double jeopardy of the 5th amendment (App. X); and the right to be indicted on charges found by a grand jury (App. X). See Russell v. U.S., 369 U.S. 749, 763-764. Police reported the finding of two images of child pornography and three accusations of sexual conduct involving a minor. It is impossible to tell, from reading the indictment, which image and sexual act Petitioner was tried and convicted for. This Court has held that the language of the statute must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense. U.S. v. Hess, 124 U.S. 483, 487; also in Pettibone v. U.S., 148 U.S. 197, 202-204.

The indictment does not inform of the nature and cause of the accusations; provide the protection against double jeopardy or ensure that a grand jury considered any facts in order to charge an offense. The indictment is so deficient it fails to confer jurisdiction on to the sentencing Court. The 5th Circuit has held, "A failure to charge an offense claim may be raised on a 28 U.S.C. § 2255 because such an error divest the sentencing Court's jurisdiction." U.S. v. Harper, 901 F.2d. 471-472 (5th Cir. 1990) and U.S. v. Prince, 868 F.2d. 1379, 1383-1384 (5th Cir. 1993).

Furthermore, this Court has held, the 6th amendment right to counsel includes, "the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686. Trial and appellate counsel were ineffective in not providing Petitioner a fair and full opportunity to claim and challenge the denial of 4th amendment rights or a conviction found on insufficient evidence.

Petitioner's claims are debatable and should not have been denied a Certificate of Appealability under Miller-El.

Following a warrantless home arrest, Petitioner's confinement remained to be illegal through an arrest warrant lacking probable cause by failing to meet the requirements of Fed. Rule of Crim. Proc. 4 (App. Z). Rule 4 provides, "a warrant must describe the offense charged in the complaint". The arrest warrant describes a different element of conduct than that which is in the complaint. This Court has held an arrest invalid where the complaint provided no sufficient basis on which could be made a finding of probable cause that the offense charged was committed or that the Defendant had committed it. Giordenello v. U.S., 357 U.S. 480. Trial Counsel had this information and allowed an illegal confinement to continue in violation of the 4th amendment. The District Court did not address this issue. Therefore, it has not provided good reason to deny this particular claim of Peitioner's §2255 Motion.

The gravity of these first two claims must be recognized. Petitioner is a prisoner in Federal custody. The deficiency of both charging instruments, (the arrest warrant and the indictment) renders his confinement illegal since October 27, 2020 to the present day.

Trial Counsel also failed to raise the issue that the investigating officer deliberately included a false statement with reckless disregard for the truth on a search warrant affidavit. She wrote that a cellphone would be found at a previous location to hide the fact that by her own instruction, it had already been illegally seized. The 5th Circuit has held that in determining whether probable cause exists, there must be a fair probability that contraband or evidence of a crime will be found in a particular place. U.S. v. Froman, 355 F.3d 882, 889 (2004).

This Court has held, if an affirmative misrepresentation is knowingly included in a probable cause affidavit in support of a search warrant, and the misrepresentation is material and necessary to establish probable cause, the warrant is rendered invalid under the 4th amendment. Franks v. Delaware, 438 U.S. 154, 155-156 (1978). Trial Counsel also failed to raise the issue that a second search warrant failed to meet the requirements of Fed. Rules Crim. Proc. 41(e)(2)(A) (App. Z) and the particularity clause of the 4th amendment (App. X) by not adequately describing a cellphone. Counsel had the information that the affiant had the availability to correctly identify the cellphone (Supp. App. 1 pg. 25). The 5th Circuit has held that failure to employ the specificity available will invalidate a general description in a warrant. General classifications in a warrant are acceptable only when a more precise description is not possible. U.S. v. Cook, 657 F.2d 730, 733 (5th Cir. 1981) and U.S. v. Bright, 630 F.2d 804, 812 (5th Cir. 1980).

Had trial Counsel challenged the validity of the two warrants, evidence would not have been allowed into trial and the verdict would have been different.

Appellate Counsel failed to challenge the denial of the Suppression of Evidence where the exceptions to exclusionary rules did not apply to a series of 4th amendment violations including a warrantless home arrest, search of a home, and two seizures of data and subsequent searches of a cellphone. Counsel chose not to challenge based on the 5th Circuit's application of the inevitable discovery doctrine in U.S. v. Lamas, 930 F.2d 1099. The circumstances in Lamas do not apply to this case. Counsel had information that was contrary to the application of the inevitable discovery doctrine. Counsel said he had read where the Detective had not started to type an affidavit for a search warrant until after Petitioner had been brought to the police station and after she had tried to talk to him. (App. S pg. 4).

The inevitable discovery doctrine requires police to be actively pursuing a substantial alternate line of investigation at the time of the constitutional violation; U.S. v. Lamas, 930 F.2d at 1102 (5th Cir. 1991).

The inevitable discovery doctrine also could not have applied to the circumstances of this case because this case involves a planned illegality. The investigating officer sent other officers to arrest Petitioner at his home and to enter the home to seize evidence prior to applying for a warrant. (App. L) (Transcripts of Suppression Hearing) ~~pg. 25-27~~, 30-31.

The 5th Circuit held, "police who believe they have probable cause to search cannot enter a home without a warrant merely because they plan to get one." U.S. v. Cherry, 759 F.2d 1196, 1205 (5th 1985) citing U.S. v. Griffin, 502 F.2d 959. 961 (6th Cir. 1974) also stating, "the Government cannot later initiate a lawful avenue of obtaining the evidence and then claim that it should be admitted because its discovery was inevitable." U.S. v. Cherry at 1205)

Appellate Counsel abandoned Petitioner's challenges to the sufficiency of evidence for 18 § 1591(e)(3). § 1591(e)(3) requires an exchange of something of value for the performance of a sexual act. (App. Y). On direct appeal, Counsel began by demonstrating that trial testimonies of minor victim and parents showed there had been no exchange of anything between Petitioner and minor victim for the performance of a sexual act. (App. U) [pg. 13-15]). Counsel failed to continue to develop an argument in support of this claim, thus waived Petitioner's opportunity to challenge the sufficiency of evidence. In doing so, Counsel also had forsaken Petitioner's claim that the indictment failed to provide any facts that would inform the jury of what item of value was given for what sexual act.

This Writ of Certiorari must be granted because everything from the time of Petitioner's warrantless home arrest, continued confinement, the obtainment of evidence and indictment has been in violation of the Constitution and the laws of the United States. The violations against Petitioner's 4th amendment rights were substantial, numerous, and deliberate. The warrants and charging instruments are constitutionally inadequate. Trial and appellate Counsel failed to provide the assistance of Counsel guaranteed within the 6th amendment by not allowing Petitioner a fair and full opportunity to present these issues prior to trial and on direct appeal. The Constitutional magnitude of this case demands to be heard.

A Certificate of Appealability should not have been denied in light of § 2253(c)(2), Miller-El v. Cockrell and Slack v. McDaniel. Petitioner's Constitutional claims have merit and reasonable jurists would have found the District Court's assessment of the Constitutional claims as debatable or wrong.

Summary vacature, reversal and remand are especially appropriate here because correctly applying the rules of 28 U.S.C. § 2253(c)(2), Miller-El v. Cockrell and Slack v. McDaniel is likely to determine the case's outcome. Accordingly, this Court should grant the Petition, vacate or reverse the 5th Circuit's decision, provide or grant any habeas relief Petitioner is entitled to and remand for further proceedings in light of § 2253(c)(2), Miller-El and Slack.

CONCLUSTON

For the foregoing reasons, this Court should grant the Petition for Certiorari.

Respectfully Submitted,

Martin Renteria
Martin Renteria
Pro Se Petitioner
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Edgefield, South Carolina
501 Gary Hill Rd.
P.O. Box 725
Edgefield, SC, 29824

Date: April 24, 2025

CERTIFICATE

I declare under penalty of perjury that the foregoing is true and correct and that this petition for a writ of certiorari was deposited in the Edgefield Federal Correctional Institution's internal mail system on _____, 2026 with first class postage prepaid. Also that it was to the U.S. Department of Justice on the same day.

Executed on August 11, 2026

Martin Renteria 18318-509

Martin Renteria 18318-509
Federal Correctional Institution
Edgefield South Carolina
P.O. Box 725
Edgefield, SC. 29824