



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

ORIGINAL

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Robert M. Dudek, Chief Appellate Defender
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April 6, 2017

RECEIVED

APR 06 2017

S.C. SUPREME COURT

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

Re: Anthony Bernard Chapman, Appellate Case No. 2016-001230

Dear Mr. Shearouse,

Please find enclosed the original and six copies of petitioner's motion for an order to reconstruct the record of petitioner's PCR hearing in the above-captioned case.

Thank you for your assistance in this matter.

Sincerely,

Susan B. Hackett
Appellate Defender

SBH/smf

Enclosure

cc: Caitlin Hastings, Esquire (w/ enclosure)
Anthony Bernard Chapman #251075

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

RECEIVED

APR 06 2017

S.C. SUPREME COURT

ANTHONY BERNARD CHAPMAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2016-001230

MOTION FOR AN ORDER TO
RECONSTRUCT THE RECORD OF
PETITIONER'S PCR EVIDENTIARY HEARING

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order requiring the parties to reconstruct the record of Petitioner's post-conviction relief (PCR) evidentiary hearing. The court reporter who was present for the hearing was Pamela Faucette; however, Harriet P. Bennett prepared the transcript. There are significant portions of the transcript missing either because those portions do not appear on the discs provided to Ms. Bennett or because the portions are inaudible. It is necessary that Petitioner have the missing portions transcribed to enable meaningful appellate review of his PCR hearing.

In accordance with Rule 240(c), SCACR, Counsel submits the following documents to support this motion:

Exhibit Number	Description
#1	Indictment – manufacturing marijuana (2010-GS-42-0667)
#2	Indictment – trafficking cocaine base (2010-GS-42-0668)
#3	Indictment – PWID cocaine (2010-GS-42-0669)
#4	Cover page of trial transcript dated October 5, 2010
#5	Trial transcript page 4
#6	Trial transcript pages 82-84
#7	Trial transcript 85
#8	Trial transcript 114
#9	Motion for reconsideration
#10	Letter to Brown dated 9/20/2011
#11	Order of Dismissal dated 10/12/2011
#12	Cover page of PCR hearing dated January 21, 2014
#13	Order filed July 18, 2014
#14	Order filed February 12, 2016
#15	PCR transcript page 48
#16	Index for PCR hearing
#17	PCR transcript page 16
#18	PCR transcript page 32
#19	PCR transcript page 49
#20	PCR transcript page 51
#21	PCR transcript page 56
#22	PCR transcript page 61
#23	PCR transcript page 18

Procedural history

On January 15, 2010, a Spartanburg County grand jury indicted Petitioner for manufacturing marijuana, trafficking cocaine base, and possession with intent to distribute cocaine. Exhibits #1, #2, #3. The state, represented by Ryan F. McCarty, called the case to trial on October 5, 2010, before the Honorable J. Derham Cole. Exhibit #4. Michael DeMorris Brown represented Petitioner. Exhibit #4.

Petitioner moved *in limine* to exclude a statement Petitioner made to law enforcement and to suppress the drugs found during the execution of a search warrant. Exhibit #5 (Tr. 4, ll. 9-

16). Thereafter, the judge presided over two hearings concerning the motions to exclude. At the conclusion of the presentation of evidence and the arguments of counsel, Judge Cole denied the motions to exclude. Exhibit #6 (Tr. 82, l. 19 – Tr. 84, l. 24). Upon learning the drugs and statement would be admissible, Petitioner entered guilty pleas to the offenses pursuant to negotiations with the state. Exhibit #7 (Tr. 85, ll. 6-7). Judge Cole accepted the guilty pleas and sentenced Petitioner to twenty years' imprisonment for trafficking crack cocaine, twenty years' imprisonment for PWID cocaine, and five years' imprisonment for manufacturing marijuana. He ordered the sentences to be served concurrently. Exhibit #8 (Tr. 114, ll. 1-14).

Thereafter, Petitioner filed a *pro se* motion for reconsideration on October 15, 2010. Exhibit #9. On September 20, 2011, Petitioner also requested his trial lawyer file a belated notice of appeal. He copied the Court of Appeals on this request. Exhibit #10. On October 12, 2011, the Court of Appeals dismissed the appeal stating, “[t]he proof of service” showed it had been mailed to counsel for Respondent outside the ten-day window. Exhibit #11.

On December 8, 2011, Petitioner filed an application for PCR. The matter proceeded to an evidentiary hearing on January 21, 2014 before the Honorable Roger L. Couch. Exhibit #12. During the hearing, the fact that Petitioner had filed a timely motion for reconsideration was discussed. Judge Couch directed the parties to brief whether the court had jurisdiction in the PCR in light of no ruling by a court on the post-trial motion filed by Petitioner. On July 15, 2014, Judge Couch determined a ruling in the PCR case would be premature until Petitioner obtained a ruling on his post-trial motion. Judge Couch ordered the PCR case stayed until a judge ruled on the post-trial motion. Exhibit #13. On February 12, 2016, Judge Cole issued an order denying Petitioner's post-trial motion. Exhibit #14. On May 20, 2016, Judge Couch issued an order of dismissal in the PCR case.

On June 6, 2016, Petitioner served his notice of appeal in the PCR case. On July 19, 2016, the Office of Appellate Defense ordered the transcript of the evidentiary hearing. The transcript was received on November 10, 2016. Undersigned counsel was assigned to represent Petitioner on December 5, 2016. Counsel's initial review of the documents received in the case did not reveal the incomplete nature of the transcript. In preparing to file the petition for writ of certiorari, counsel learned of the missing portions of the transcript.

Missing portions of transcript

Upon first glance, the transcript appears complete and in order. However, a closer look reveals significant portions missing. One of the most substantial omissions appears on page 48 where a note from the court reporter appears: **"When the matter was resumed a witness was on the stand. The calling and swearing of the witness was not contained on the disc. The following contains what was contained on the disc. I have nothing to identify the witness' name."** Exhibit #15 (PCR 48, ll. 17-21). The next portion is a very small section of direct examination followed by cross-examination. Based upon a comparison of what is available in the PCR hearing transcript and the PCR order, it appears this is the testimony of the assistant solicitor, Eddie Hunter, Esquire, in the case. The index on page 2 shows **"Unknown Witness"** testified. Exhibit #16. While this should have alerted undersigned counsel earlier to the substantial missing portions of the transcript, the way the words were written in the index did not provide such an alert to counsel. The words looked simply like a witness's name without closer inspection.

Other portions of the available transcript reveal that testimony is missing from other witnesses as well. On page 16, there is a note that the "applicant is reading rapidly from the search warrant ... a part of which was **inaudible.**" Exhibit #17 (PCR 16, ll. 2-4). On page 32,

there is a similar note: "Reading rapidly from transcript." Exhibit #18 (PCR 32, ll. 15-16). On page 49, there is a note "Portion **not audible** due to static." Exhibit #19 (PCR 49, ll. 8-9). On Page 51, there is a note "Portion **not audible** due to static on disc." Exhibit #20 (PCR 51, l. 1). On page 56, there is a note "portion **inaudible**." Exhibit #21 (PCR 56, l. 24). On page 61, there is a note "**inaudible** portion." Exhibit #22 (PCR 61, l. 14). These missing portions appear to be significant to the resolution of the case. Many of the missing portions relate to answers to questions important to the determination of the allegations raised by Petitioner in his PCR application.

Throughout the transcript there are portions missing represented by ". . ." Due to the sheer number of pages where the ellipses appear, counsel is not providing every single page. However, counsel offers page 18 as representative of how the missing portion appears in the transcript. Exhibit #23 (PCR 18, l. 15). Additionally, counsel provides the following page and line numbers where the ellipses appear throughout the transcript: page 5, l. 17; page 7, l. 1; page 8, l. 7; page 13, l. 2; page 15, l. 23; page 16, l. 12; page 17, l. 9; page 18, l. 15; page 24, l. 23; page 25, l. 22; page 27, l. 23; page 30, l. 10; page 30, l. 14; page 30, l. 21; page 34, l. 7; page 34, l. 9; page 36, l. 12; page 40, l. 5; page 41, l. 2; page 41, l. 18; page 41, l. 23; page 194, l. 8; page 42, l. 10; page 42, l. 11; page 43, l. 24; page 44, l. 7; page 44, l. 23; page 61, l. 18; page 62, l. 20; page 217, l. 18; page 66, l. 16; page 67, l. 17; page 67, l. 22; page 67, l. 24; page 68, l. 2; page 68, l. 20; page 69, l. 19; page 70, l. 23; page 71, l. 18; page 72, l. 2; page 72, l. 17; page 72, l. 25; page 73, l. 9; and page 73, l. 22. If this Court requires the actual transcript pages associated with these page numbers, counsel will provide them. Like the "inaudible" portions, these missing portions appear significant. At times, the ellipses indicated the absence of a question, which was not apparent from the answer, or the absence of an answer to a question. The quantity of the

ellipses is also troubling when trying to determine whether any evidence supported the PCR judge's decision, which will likely be one of the questions on appeal.

Reconstruction of the record

The trial court has the authority to set the record for appeal. State v. Ladson, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). “[T]he inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.” Id. (internal citations omitted). “Where a trial transcript has been lost or destroyed, a court may remand to have the record reconstructed.” Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); see also Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002)(holding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992).

In order for the record to be reconstructed, it must be done in a manner that provides for meaningful appellate review and complies with the constitutional guarantees of procedural due process. Ladson, 373 S.C. at 325, 644 S.E.2d at 273-274; see also China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Adams v. H.R. Allen, Inc., 397 S.C. 652, 726 S.E.2d 9 (Ct. App. 2012); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 418 S.E.2d 319 (Ct. App. 1992). The Court of Appeals held “the party challenging a reconstructed record on appeal [must] demonstrate prejudice flowing from an inadequate record.” Ladson, 373 S.C. at 325, 644 S.E.2d at 273. “A new trial is therefore appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting meaningful appellate review.” Id. at 325, 644 S.E.2d at 274 (internal quotations omitted).

In China, 251 S.C. at 332, 162 S.E.2d at 277, “portions of the stenographic notes of the trial proceedings were lost before they were transcribed by the court reporter.” The appeal concerned the form of a withdrawal for punitive damages, specifically, whether the withdrawal included a withdrawal as to the issue of recklessness on the part of the defendant. Id. The missing portions of the transcript were relevant to this issue. Id. The case was remanded to the trial judge “to settle the case for appeal.” Id. at 333, 251 S.E.2d at 277-278.

After Ladson was convicted of first-degree burglary at the conclusion of a three-day trial, he learned the court reporter could not produce the transcript. Ladson, 373 S.C. at 321, 644 S.E.2d at 271. Ladson moved for a new trial. Id. The state moved for reconstruction. The Court of Appeals remanded the case for reconstruction. Id. Ladson’s reconstruction hearing occurred more than a year after the trial. Id. The Court explained “the passage of time clearly dimmed the recall of the participants.” Id. at 325, 644 S.E.2d at 274. Reviewing the transcript of the reconstruction hearing, the Court noted “[i]t was clear from the outset of this hearing that reconstructing the record from scratch, after such a substantial delay, would be an uphill struggle.” Id. at 321-322, 644 S.E.2d at 271-272. The Court concluded meaningful appellate review was not possible where the testimony of the majority of the witnesses was in summary fashion, the information provided was conclusory, the parties had forgotten about one witness altogether, and there was a dispute whether the defendant testified. Id. at 322, 644 S.E.2d at 272.

After the reconstruction hearing, the Court was “left with a bare bones summary of the evidence (with more remaining unknown than known) from a lengthy multi-day and fact-intensive trial that resulted in a non-parolable twenty-five year person term.” Id. at 327, 644 S.E.2d at 274. The record before the Court contained only “a few gratuitous references to generic motions and objections” without any information concerning “the context of the motions,

the specific nature of the motions, and whether the challenged evidence was cumulative to other unchallenged evidence.” Id. The Court refused to speculate. Id. In concluding the record was insufficient for meaningful appellate review, the Court also noted the record “would effectively foreclose any collateral challenge through post-conviction relief or otherwise.” Id. at 327, 644 S.E.2d at 275. Thus, the Court concluded, Ladson had demonstrated “clear prejudice.” Id.

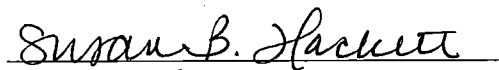
In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant’s convictions were set aside and a new trial had where the court reporter’s equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Citing Deaton, this Court denied a request for reconstruction in State v. Serrette, 375 S.C. 650, 652-653, 654 S.E.2d 554, 555 (Ct. App. 2007) where the reason for the lack of transcript was due to the defendant’s absence for a ten-year period, which the Court explained was “not a situation where the court reporter’s equipment malfunctioned at trial leading to a loss of the trial transcript.”

The current transcript does not permit meaningful appellate review of the lower court’s determinations. The standard of review on appeal in a PCR case requires a determination of whether any evidence in the record supports the PCR court’s decision. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). A substantial portion of a major witness’s testimony is missing from the record. Additionally, many other significant portions are missing because the court reporter could not hear what was recorded on the tape. Finally, approximately forty-five ellipses appear throughout the PCR transcript demonstrating that a considerable portion of what transpired in the court room could not be transcribed. The inability of the court reporter to produce a complete transcript is through no fault of Petitioner. Therefore, meaningful review of

the record below is not possible with the current transcript. Petitioner seeks reconstruction of the record to permit meaningful appellate review of his PCR hearing.

WHEREFORE, Petitioner requests an order for the reconstruction of the missing portions of his PCR hearing in order to perfect his appeal in the case. While this petition is pending, Petitioner asks this Court to hold the timelines for filing his petition for writ of certiorari and appendix in abeyance.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

Attorney for Petitioner

This 6th day of April, 2017.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

ANTHONY BERNARD CHAPMAN,

PETITIONER,

V.

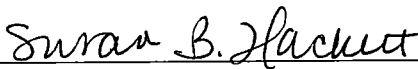
STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2016-001230

CERTIFICATE OF SERVICE

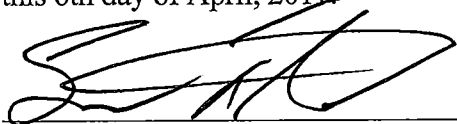
The undersigned attorney hereby certifies that a true copy of the motion an order to reconstruct the missing portions petitioner's PCR hearing in the above referenced case has been served upon opposing counsel, Caitlin Hastings, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Anthony Bernard Chapman, #251075, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 6th day of April, 2017.



Susan B. Hackett
Appellate Defender

Attorney for Petitioner

SUBSCRIBED AND SWORN TO before me
this 6th day of April, 2017.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: October 30, 2022.

Exhibit #1

WITNESSES

- 1. SENTENCE MADE *Computer*
- 2. REPORT ENDED *Computer*
- 3. SPARTANBURG COUNTY SHERIFF'S OFFICE
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURES *Computer*
- 7. ASSESSMENT AND *Computer*
- TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

M088868

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 1/15/10

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **10-GS-42-0667**

The State of South Carolina
County of Spartanburg
Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 18 2010

TERM

THE STATE
vs.

ANTHONY BERNARD CHAPMAN

Indictment for
MANUFACTURING MARIJUANA

SC Code: 44-53-370

FILED
SPARTANBURG COUNTY
2010 JAN 27 PM 3:04
MARC KITCHENS

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on
Jurors of Spartanburg County present upon their oath:

IAN 15 2010

, the Grand

MANUFACTURING MARIJUANA

That Anthony Bernard Chapman did in Spartanburg County on or about August 3, 2009, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance under provisions of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

Exhibit #2

WITNESSES

1. SENTENCE MADE

2. REPORT ENDED

3. CARD FILLED

4. INDEXED SHERIFF'S OFFICE

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND FINE CARD MADE

TRAFFIC VIOLATIONS COPY

Computer

Computer

ARREST WARRANT NUMBER

M088869

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 1/15/10

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

10-GS-42-0668

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 18 2010

TERM

THE STATE

vs.

ANTHONY BERNARD CHAPMAN

Indictment for

TRAFFICKING IN
METHAMPHETAMINE OR
COCAINE BASE

SC Code: 44-53-375

MARC KITCHENS

2010 JAN 27 PM 3:04

FILED
Spartanburg County
Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 15 2010, the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN METHAMPHETAMINE OR COCAINE BASE

That Anthony Bernard Chapman did in Spartanburg County on or about August 3, 2009, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (100) one hundred grams of Methamphetamine or Cocaine Base, a schedule II controlled substance, in violation of §44-53-375, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

Exhibit #3

WITNESSES

- 1. SENTENCE MADE
- 2. REPORT MADE **Computer**
- 3. CARD PULLED
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED ~~WARRANTS~~ **Computer**
- 7. ASSESSMENT AND
- 8. CARD MADE
- TRAFFIC VIOLATIONS COPY

ARREST WARRANT NUMBER

M088867

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 1/15/10

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **10-GS-42-0669**

The State of South Carolina
County of Spartanburg
Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JAN 18 2010

TERM

THE STATE
vs.

ANTHONY BENARD CHAPMAN

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE

SC Code: 44-53-370
CDR Code:
Class MIS/A

MARC KITCHENS
2010 JAN 27 PM 3:04

1151
10:10
1151

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 15 2010, the
Grand Jurors of Spartanburg County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE

That Anthony Bernard Chapman did in Spartanburg County on or about August 3, 2009, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Cocaine, a schedule II controlled substance or controlled substance analogue, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

Exhibit #4

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS

3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Anthony Bernard Chapman,) 2010-GS-42-0667-0669
7 Defendant.) October 5, 2010
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE
12
13

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

15 RYAN F. McCARTY, ESQUIRE
16 Attorney for the State

17 MICHAEL DEMORRIS BROWN, ESQUIRE
18 Attorney for the Defendant
19
20

21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

Exhibit #5

Motion

1 (Proceedings October 5, 2010)

2 THE COURT: This is the State vs. Anthony Bernard
3 Chapman, Indictments No. 2010-GS-42-0667;668;669.

4 Mr. McCarty is here on behalf of the state; Mr. Brown
5 is here on behalf of the defendant.

6 Mr. Brown, have you got some motions to have resolved
7 prior to jury selection?

8 MR. BROWN: That's correct, Your Honor.

9 The defense would request that the Court entertain a
10 Jackson vs. Denno hearing in regards to a statement that
11 was given at some point to my client in the course of these
12 indicted cases.

13 THE COURT: All right. Any others?

14 MR. BROWN: Your Honor, there's an issue as relates to
15 the validity of the search warrant which began the
16 indictments involved in this case.

17 THE COURT: All right. Mr. McCarty.

18 MR. McCARTY: Your Honor, if I could ask Mr. Brown to
19 maybe state with a little more particularity what he's --
20 in what regard he's challenging the search warrants so that
21 I might be able to --

22 THE COURT: Have you got the search warrant with you?

23 MR. McCARTY: I certainly do, Your Honor. Would you
24 like it marked as an exhibit, Your Honor?

25 THE COURT: Yeah. Is that the original or a copy?

Exhibit #6

1 requested to speak with an attorney until the end when they
2 were completing their execution of the search warrant and
3 asked Mr. Chapman to reduce it to writing for them, Your
4 Honor.

5 That would be the state's position with regard. We
6 respectfully ask that you not suppress the statements or
7 suppress the search warrant in this case, Your Honor.

8 THE COURT: Any reply?

9 MR. BROWN: Your Honor, I will simply state that the
10 assistant solicitor is absolutely correct. They are
11 experienced law enforcement officers. In fact, they have
12 gone through the cursory attempt at some point based upon
13 the information to issue a written statement, as well as a
14 waiver of rights.

15 They say that it was at the very end of any type of
16 interrogation based upon the number involved in the
17 situations here. I simply ask the Court again to consider
18 that in regards to our previous motion.

19 THE COURT: All right. Well, in a determination as to
20 whether or not a statement is to be permitted to be
21 considered by the jury in the trial of the case the Court
22 must first upon request determine whether or not the state
23 has established by a preponderance of the evidence that any
24 statement attributed to the defendant was made freely and
25 voluntarily considering the totality of the circumstances

1 surrounding the making of that statement.

2 The jury has the obligation and duty of determining
3 whether or not any statement was voluntary beyond a
4 reasonable doubt. But the threshold question is whether or
5 not the state has established by the greater weight of the
6 evidence that the statement was freely and voluntarily made
7 before its admission before the jury, and then the jury
8 determines what weight to give to it if they find it was
9 voluntary beyond a reasonable doubt.

10 So in applying a preponderance-of-the-evidence
11 standard I do find in this case that the defendant was in
12 custody at the time that any statement was made that was
13 attributed to him.

14 I do find that he was properly advised of his
15 constitutional rights in a verbal form.

16 I do find that he appeared to understand the rights,
17 that he was not threatened or coerced. He was intelligent,
18 educated. He was not under the influence of any
19 intoxicant, and therefore understood the rights provided
20 him.

21 In fact, as he testified, he had previous experience
22 with Miranda warnings and was aware of what the Miranda
23 warnings are and their applicability.

24 I also find that he did freely and voluntarily waive
25 those rights and he did provide statements to law

1 enforcement that may be used in the course of the trial.
2 And of course the jury will determine whether or not those
3 statements are voluntary beyond a reasonable doubt. But
4 they are to be admitted in the trial of the case, my
5 finding that he made those statements freely and
6 voluntarily after being advised of and having knowledge of
7 and understanding his constitutional rights.

8 With regard to the search warrant, I've reviewed the
9 search warrant. It does appear to be valid on its face.

10 There is no indication that any information contained
11 in the search warrant is false information. There's no
12 indication that if it were shown to be false that the
13 officers had knowledge of its falsity.

14 And I further find that for the most part all of the
15 information contained in the affidavit that relates to the
16 credibility of the informant and the reliability of the
17 information was previously corroborated by law enforcement
18 prior to obtaining the warrant, and therefore the warrant
19 being valid on its face it was properly executed, and any
20 evidence received as a result of the search is properly
21 admitted into evidence.

22 Therefore, the defendant's motions to exclude the
23 statements and the defendant's motions to suppress the
24 evidence resulting from the search are both denied.

25 All right. Any other matters we need to address?

Exhibit #7

Guilty plea

1 MR. McCARTY: None from the state, Your Honor.

2 THE COURT: Okay. Are we ready for jury selection?

3 MR. McCARTY: The state is, Your Honor. I don't know
4 what Mr. Brown's position is.

5 THE COURT: Okay.

6 MR. BROWN: Your Honor, my client at this time would
7 enter a plea before this Court.

8 THE COURT: Okay.

9 MR. McCARTY: May we have just a few minutes to do the
10 sentencing sheets?

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Let me address this issue.

13 Mr. Chapman, you talked to Mr. Brown about your
14 decision to plead guilty or have a jury trial.

15 THE DEFENDANT: Say that again, sir.

16 THE COURT: You have talked to Mr. Brown about your
17 decision as to whether you wish to enter a plea of guilty
18 or have a jury trial.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Brown has indicated to the Court that
21 you wish to enter a plea of guilty. Is that, in fact, the
22 case?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay.

25 MR. McCARTY: If I may for the record, I am going to

Exhibit #8

Guilty plea

1 THE COURT: All right. On 2010-668, that's the
2 indictment for trafficking in crack cocaine, Sentence of
3 the Court is you, Anthony Bernard Chapman, be confined to
4 the South Carolina Department of Corrections for a period
5 of 20 years.

6 Indictment 2010-669, an indictment for possession with
7 intent to distribute powder cocaine, second offense,
8 Sentence of the Court is you, Anthony Bernard Chapman, be
9 confined to the South Carolina Department of Corrections
10 for a period of 20 years. That sentence is concurrent to
11 any other sentence imposed.

12 Indictment 2010-667, manufacturing marijuana, sentence
13 is five years. That sentence also is concurrent with any
14 other sentence imposed.

15 All right. Good luck to you.

16 END OF REQUESTED TRANSCRIPT OF RECORD.

17

18

19

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Exhibit #9

Anthony Chapman
Defendant,

MOTION FOR RECONSIDERATION

V

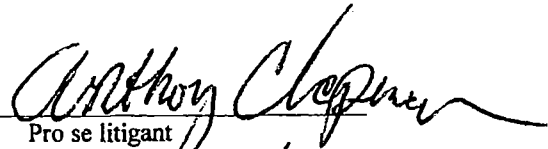
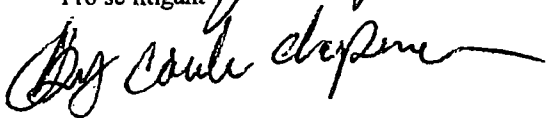
State of South Carolina
County of Spartanburg,

Pursuant to Rule 59 (e) of the S.C.R.C.P. defendant would like to respectfully request that this Honorable Court reconsider it's decision in accepting the defendant's guilty plea based on the following facts:

On Tuesday October 5, 2010, defendant reluctantly plead guilty to the charges of trafficking crack cocaine, possession of cocaine with the intent to distribute, and manufacturing marijuana. The defendant believes this Honorable Court should investigate the malicious prosecutorial misconduct by the Spartanburg County Sheriffs Office in procuring the evidence used against the defendant, arrest, and ultimate guilty plea rendered. No supporting probable cause previously existed to give the arresting officers authorization to utilize an undercover informant that was wired during multiple conversations with the defendant.

The defendant also believes his due process and 14th amendment rights were violated in that the evidence used was illegally obtained. The county officers must use county funds to make a "control buy" and this was not done, although the search warrants used against the defendant indicate that county funds were used. The defendant was not afforded the documentary evidence to substantiate the claim that the county used it's own funds, nor is this on file at the Clerk of Court. By this action alone, the defendant believes that the county Magistrate was deliberately mislead in issuing a search warrant for the case.

The defendant believes that this process has been fundamentally compromised from the onset from by the Spartanburg County Sheriffs Office and request that this Honorable Court review and reconsider it's decision in this case.

S/ 
Pro se litigant


M. HOPE BLACKLEY
2010 OCT 15 AM 10:57
SPARTANBURG COUNTY
CLERK OF COURT
FILED

Exhibit #10

MR. ANTHONY B. CHAPMAN #251075
P.O. BOX 205 /COOPER A-31
RIDGEVILLE, S.C. 29472

SEPTEMBER 20, 2011

THE LAW OFFICE OF MICHAEL D. BROWN, PA
145 NORTH CHURCH STREET, SUITE 210
SPARTANBURG, SOUTH CAROLINA 29306

RE: SPARTANBURG V. ANTHONY BERNARD CHAPMAN IN
THE COURT OF GENERAL SESSIONS INDICTMENT
/CASE #2010-GS-42-00667; 2010-GS-42-00668
AND 2010-GS-42-00669 OCTOBER 5, 2010 AND
RULE 59(e) SCRCP MOTION, OCTOBER 15, 2010.
(NOTICE & MOTION FOR BELATED OR OUT-OF-TIME APPEAL)

DEAR MR. BROWN;

I, ANTHONY CHAPMAN, THE UNDERSIGNED, HEREBY KINDLY REQUEST THAT YOU PLEASE FILE WITH THE S.C. COURT OF APPEALS A NOTICE & MOTION FOR BELATED OR OUT-OF-TIME APPEAL IN THE ABOVE CAPTIONED CASE NUMBERS.

I HAVE ENCLOSED SEVERAL DOCUMENTS TO INCLUDE THE ABOVE CAPTIONED RULE 59(e) SCRCP MOTION AND HEREBY DECLARE THAT IT IS CLEAR THAT I HAD NOT INTENDED TO ABANDON MY RIGHT TO A DIRECT APPEAL IN THIS MATTER. THEREIN YOU DULY AND PERSONALLY HAD A DUTY TO ADVISE ME OF MY RIGHT TO DIRECT APPELLATE REVIEW AND ALSO FILE SUCH NOTICE AS REQUIRED BEFORE THE TIME FOR FILING HAD OTHERWISE EXPIRED.

THEREFORE, MR. BROWN, YOU HAVING MADE APPEARANCE AS MY ATTORNEY IN THE ABOVE CAPTIONED AND STILL ACTING AS MY LEGAL ADVOCATE IN THIS CASE, I REQUEST THAT YOU FILE A BELATED APPEAL WITH THE COURT OF APPEALS AND SHOULD FOLLOW WHITE V. STATE, 263 SC 110, 208 S.E.2d 35(1974) CASE WHICH DIRECTLY CONTROLS, LEAVING TO THE COURT OF APPEALS PREROGATIVE, IF THE FOREGOING PRECEDENT OF S.C. SUPREME COURT HAS DIRECT APPLICATION IN THIS CASE, OR WHETHER JURISDICTION WOULD APPEAR TO REST ON SOME OTHER LINE OF REASONING. THIS MOTION FOR THE COURT OF APPEALS TO DECIDE IS FOR "JUDICIAL ECONOMY", RATHER THAN MOVE FOR A DECISION ON MY RIGHT TO APPELLATE REVIEW IN A DIFFERENT VENUE BASED UPON THE SAME PRECEPT OF LAW.

Exhibit #11

The South Carolina Court of Appeals

The State,

Respondent,

v.

Anthony Bernard Chapman,

Appellant.

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2010-GS-42-00667,
2010-GS-42-00669, 2010-GS-42-00668

ORDER of DISMISSAL

The appellant in this case was sentenced on appeal on October 15, 2010. The proof of service shows the Notice of Appeal was mailed to counsel for the Respondent on September 20, 2011. Rule 203 (b) (2), SCACR.

Rule 203(b)(2) allows ten (10) days for this service. Further, Rule 263(b) prohibits this Court from extending the time for service of the Notice of Appeal.

The service of the Notice of Appeal was not timely. Under Rule 260(a), this appeal must be and is dismissed.

V. Claire Allen, Deputy, A.J.

Columbia, South Carolina

cc: Assistant Attorney Salley W. Elliott
Chief Appellate Defender Robert M. Dudek
Anthony B. Chapman, # 251075

FILED
10/21/11

Exhibit #12

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF COMMON PLEAS
3 2011 CP 42 5457

4 ANTHONY B. CHAPMAN)
5 Applicant)
6 versus) TRANSCRIPT OF RECORD
7)
8 STATE OF SOUTH CAROLINA)

9
10 Spartanburg, South Carolina
11 January 21, 2014

12 B E F O R E :

13 HONORABLE ROGER L. COUCH, Judge Presiding

14
15 A P P E A R A N C E S :

16 For the Applicant: J. FALKNER WILKES, Esq.

17 For the State: SUZANNE H. WHITE, Esq.
18 Assistant Attorney
19 General

20 Reporter Present: PAMELA FAUCETTE

21 HARRIET P. BENNETT
22 Reporter, S. C. Court Administration
23 46 Regency Oaks Drive
24 Summerville, S. C. 29485
25

Exhibit #13

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON)
SEVENTH JUDICIAL CIRCUIT)

Anthony Chapman, #251075)

C.A. No.: 2011-CP-42-5457)

Plaintiff,)

ORDER)

vs.)

(Granting Rule 29 Hearing and)
Holding PCR Ruling in Abeyance))

State of South Carolina,)

Defendant.)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JUL 18 AM 9:07
M. HOPE BLACKLEY

THIS MATTER CAME TO COURT by way of a post conviction relief hearing in the above captioned case.

A post conviction relief hearing was held in the above captioned case. At the hearing the issue of whether the circumstances surrounding a document filed by the Applicant ten days after his guilty plea constituted an unresolved motion under Rule 29 of the Rules of Criminal Procedure. Although titled as a Rule 59(e) Motion for Reconsideration the substance of the motion was appropriate under Rule 29(a). It is clear from the substance of the motion that the Applicant intended it to be a motion for a new trial under Rule 29. A review of the Clerk's file and record show that the Applicant's motion has never been ruled on by the Court. It further appears that the Applicant never abandoned his intention to have the motion heard.

The issue of the post trial motion arose during the Applicant's post



conviction relief hearing. Although the Applicant has had a full hearing on his issues raised by way of his PCR application, a ruling would be premature until the Applicant has had an opportunity to present and obtain a ruling on his Rule 29 motion.

The Applicant has requested the Court stay a decision on the PCR and convene a hearing on the issues raised in the Applicant's Rule 29(a) motion. In the event the Court grants the Applicant a new trial under Rule 29(a), then the PCR will become moot. In the event that the Court denies relief under Rule 29, the Court will then issue a ruling on the remaining issues presented in the PCR.

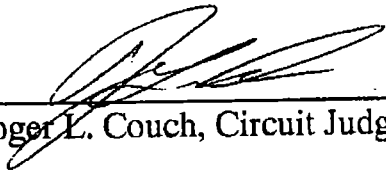
WHEREFORE, IT IS ORDERED, that the Applicant be granted a hearing on his Rule 29 motion. That this hearing should be held as soon as possible. That the ruling on the remaining issues raised the Applicant in his PCR shall be held in abeyance pending the Court's ruling on the Rule 29 motion.

Judge Couch does not retain jurisdiction of the Rule 29 motion and the motion may be set and heard before any judge of the Circuit Court. The parties shall notify Judge Couch once a ruling has been had on the Applicant's Rule 29 motion so that Judge Couch can issue a ruling on the Applicant's remaining PCR issues.



FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 JUL 18 AM 9:01
A. HOPE BLACKLEY

IT IS SO ORDERED.



Roger L. Couch, Circuit Judge

This 15th day of July, 2014,
Spartanburg, South Carolina.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 JUL 18 AM 9:07
M. HOPE BLACKLEY

Exhibit #14

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

The STATE of South Carolina,)
)
Prosecutor,)
)
-vs-)
)
Anthony Bernard CHAPMAN,)
)
)
Defendant.)

ORDER

Denying Rule 29 Motion

2010-GS-42-00667;
2010-GS-42-00668;
2010-GS-42-00669

This matter came before this Court on motion of the defendant pursuant to Rule 59(e), SCRCrP, seeking the Court to "reconsider its decision in accepting the defendant's guilty plea ..." based upon "malicious prosecutorial misconduct by the ... Sheriff's Office", and violation of his rights to "due process and 14th amendment".


The defendant appeared at the hearing held in this matter with counsel, J. Faulkner Wilkes, Esq. and the State was represented by J. Edward Hunter of the circuit solicitor's office. The request for relief was treated as a motion timely filed pursuant to Rule 29(a), SCRCrP.

The record reflects that the defendant represented by Michael D. Brown, Esq. entered pleas of guilty on the above-referenced indictments to Manufacturing Marijuana 2nd offense, Trafficking in Crack Cocaine 2nd offense, and Possession With Intent to Distribute Cocaine 2nd offense subsequent to a suppression hearing. He was sentenced to concurrent sentences of 5 years, 20 years, and 20 years.

After considering the record in this case including the transcript from the suppression and plea hearing, the argument of counsel, and the applicable law, this Court finds that the defendant's motion to vacate the sentence and plea of guilty should be and is therefore denied.

It Is So Ordered.

February 12, 2016


J. DERHAM COLE, Presiding Judge
The Seventh Judicial Circuit Court

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 FEB 12 PM 4:27
H. HOPE BLENDELLEY

Exhibit #15

M. HUTCHINS ON REDIRECT

1 A. If the -- for instance, if the informant told us he
2 was in one location on the video and it was obvious that
3 he did not go to that location, or if the informant tells
4 you information such as I have given you all of the evi-
5 dence and he did not -- if there is something of that
6 nature or something about a major discovery or something
7 like that, then, yes, sir.

8 Q. I don't have anything further.

9 MS. WHITE: Nothing further.

10 THE COURT: Then you can step down.

11 (Witness excused from stand)

12 THE COURT: The Applicant may call its next witness.

13 MS. WHITE: May we take a brief recess?

14 THE COURT: All right, we'll take a brief recess.

15 (Whereupon, the Court took a brief recess after which
16 the matter resumed)

17 TRANSCRIPTION NOTE: When the matter was resumed a
18 witness was on the stand. The calling and swearing of
19 the witness was not contained on the disc.

20 The following contains what was contained on the
21 disc. I have nothing to identify the witness' name.

22 MR. WILKES: Could we ask that someone review the
23 Solicitor's file to see if they do have the chain of cus-
24 tody form. That would be the incident referred to in
25 the affidavit.

Exhibit #16

I N D E X

		Direct-Redirect	Cross-Recross
1			
2			
3	Anthony Chapman		
4	By Mr. Wilkes	5-35	
5	By Ms. White		23-36
6	Michael Hutchins		
7	By Mr. Wilkes	37-47	
8	By Ms. White		45
9	Unknown Witness		
10	By Mr. Wilkes	49-50	
11	By Ms. White		49
12	MICHAEL BROWN		
13	By Ms. White	51-63	
14	By Mr. Wilkes		58-63
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

EXHIBITS

1

2 For the Applicant

3 1 Motion for reconsideration EV 7
4 2 Correspondence with Clerk EV 8
5 3 Letter to Clerk EV 10
6 4 Notice of Appeal EV 11
7 5 Printout of file EV 12
8 6 Search warrant ID 15
9 7 Applicant's letter to
10 SLED and response ID 17
11 8 Analysis report EV 39

12

13

Court's Exhibits

14

1 Video p. 14

15

16

17

18

19

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21

22

23

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25

Exhibit #17

A. CHAPMAN ON DIRECT

1 County, for the Sheriff's Office purchased a quantity of
2 marijuana from Anthony Chapman at the premises (Applicant
3 reading rapidly from search warrant, marked Applicant's
4 Exhibit 6, a part of which was inaudible).

5 Q. Now, you mentioned also that you believe that the
6 drug analysis and chain of custody documents would have
7 given Mr. Brown the ability to suppress evidence. Is that
8 correct?

9 A. Correct.

10 Q. Did you attempt to discover whether or not there was
11 a drug analysis in the case?

12 A. . . .

13 Q. Did you ever see the drug analysis and the chain of
14 custody documents?

15 A. No.

16 Q. I show you what's marked for identification as Ap-
17 plicant's Number 7. Can you identify what that is?

18 A. It's a letter from SLED, the South Carolina Law En-
19 forcement Division, in reply to my letter that I wrote to
20 them.

21 Q. When did you write to SLED; and what did you ask?

22 A. I asked them for the chain of custody and the drug
23 analysis or any other material alleged to have been taken
24 from my residence.

25 Q. And did you get a response?

Exhibit #18

A. CHAPMAN ON CROSS

1 A. Can you repeat that again?

2 Q. Did Mr. Brown -- the Judge asked you if Mr. Brown
3 had reviewed with you your constitutional rights, your
4 right to a jury trial, and he goes page by page in your
5 transcript -- the right to appeal.

6 The Judge told you about that, is that right?

7 A. Like I said, I was read a bunch of rights.

8 MS. WHITE: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MS. WHITE:

11 Q. I'm going to show you page 92 of your transcript and
12 if you would just follow along with me.

13 This is by the Court, and it says, if you were con-
14 victed you would have a right to appeal the verdict of the
15 jury and any sentence given by the Court, (Reading rapidly
16 from transcript) -- whether the Court made a mistake in
17 allowing the statement into evidence or whether or not it
18 made a mistake in allowing the drugs into evidence or the
19 results of the search.

20 Do you recall that?

21 A. Yes.

22 Q. Okay, and do you recall him telling you also when you
23 plead guilty you give up the right to attack any decisions
24 the Judge has made; that you waive your right to contest
25 any illegal search and seizure?

Exhibit #19

1 A. That's correct.

2 Q. Now, do you -- the Solicitor's Office being the
3 epitome of efficiency, there is a disc and in paper form,
4 is it not?

5 A. At that time it was in paper form.

6 Q. Okay. Is there anything to indicate that you ever
7 had in your file the chain of custody?

8 A. In my file is an Email concerning it. (Portion not
9 audible due to static)

10 Q. And does that reference indicate anything about the
11 chain of custody being received in your office?

12 A. No.

13 Q. No further questions.

14 THE COURT: Your witness.

15 MS. WHITE: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MS. WHITE:

18 Q. In regards to this case, this criminal action, was
19 this -- in discussing the case with a family member before
20 the day of trial and then leave, was this something you
21 had discussed with Mr. Brown in regards to attacking the
22 search warrant or was that an issue that you all had con-
23 sidered?

24 A. We had researched search warrant cases and had con-
25 versations back and forth with regard to it.

Exhibit #20

1 (Portion not audible due to static on disc)
2 MR. WILKES: I have nothing further.
3 THE COURT: Ms. White?
4 MS. WHITE: Nothing further.
5 THE COURT: You can step down.
6 (Witness excused from stand)
7 THE COURT: You may call your next witness.
8 MR. WILKES: We would rest, Your Honor.
9 THE COURT: The State may call its first witness.
10 MS. WHITE: Thank you, Your Honor. We would call
11 Michael Brown.
12 THE COURT: Mr. Brown, come up to be sworn.
13 MICHAEL BROWN, being duly
14 sworn, testified as follows:
15 CLERK: Please be seated and state your name for the
16 record.
17 WITNESS: Michael Brown.
18 DIRECT EXAMINATION
19 BY MS. WHITE:
20 Q. Do you recall being retained in the Xavier Chapman
21 case?
22 A. I do.
23 Q. And can you give me an idea of what time frame prior
24 to October 5th of 2010, the date of the plea, you were
25 retained?

Exhibit #21

M. BROWN ON DIRECT

1 pre-trial suppression hearings, obviously both of those
2 motions were not ruled in your favor; what were your dis-
3 cussions with him about his options?

4 A. He could go to trial and get potentially X amount of
5 years (portion inaudible) and risk his life, but our par-
6 ticular conversations were in essence that he would be
7 taking a chance. My recommendation at that time was that
8 he accept the negotiation.

9 At that particular point in time, it was that simple.

10 Q. And he was sentenced I believe to a third of the
11 time he could have gotten?

12 A. Yes.

13 Q. And was that a part of the agreement?

14 A. Yes.

15 Q. Were you informed later that he had filed a motion
16 for reconsideration following the plea?

17 A. Not at the time it happened, but later on I found
18 out after additional conversations I had with Mr. Chapman.

19 Q. And he has expressed that had wanted to pursue a mo-
20 tion for reconsideration or in his words withdraw the
21 plea.

22 Is that something that he expressed to you follow-
23 ing the plea?

24 A. No. (Portion inaudible)

25 Q. And in regards to an appeal, you did not file a

Exhibit #22

M. BROWN ON CROSS

1 observable on the video?

2 A. Well, if the case had gone to trial the prosecution
3 would have called the undercover officers or the respond-
4 ing officers at that time to do a description, so I would
5 have questioned them as to all of it.

6 Q. Do you recall specifically asking the officers about
7 the discrepancies between the allegations in the search
8 warrant and what he believed was on the video?

9 A. I'm sorry.

10 Q. In other words, saying to the officers on several
11 occasions that is it true, and if not that would clearly
12 be reflected in the video -- something to -- something to
13 that effect?

14 A. I may have. (Inaudible portion)

15 Q. But in the suppression motion obviously you pointed
16 out discrepancies or what Mr. Chapman said might be the
17 case?

18 A. . .

19 Q. You made several references to the video?

20 A. Yes. If there were any discrepancies that would
21 have been brought out with them.

22 Q. If in fact there were discrepancies as Mr. Chapman
23 had claimed, then you would have pointed it out to the
24 officers in the video?

25 A. True.

Exhibit #23

A. CHAPMAN ON DIRECT

1 Q. What theories did you consider as a basis for the
2 -- on the search warrant that you wanted Mr. Brown to
3 use to suppress?

4 A. The fact that no drugs had ever been sold at my resi-
5 dence.

6 Q. Now, since that time you have expressed a desire to
7 argue the legality of the search. Correct?

8 A. Correct.

9 Q. Based on the taping of the transaction by the person
10 who entered your residence. Correct?

11 A. Correct.

12 Q. Tell me what happened. Explain more about what hap-
13 pened for this person to come into your house and conduct
14 a search?

15 A. . .

16 Q. How did that happen?

17 A. Well, from the time the CI enter my garage, they con-
18 ducted a search.

19 Q. Well, why do you say that?

20 A. Because he was moving about my garage without me in
21 the residence.

22 Q. Well, how do you know that if you weren't present?

23 A. From the video.

24 Q. So from the video the CI had begun the search in your
25 garage before you had contact with him?