

Attachment A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG)	
Anthony B. Chapman, #251075,)	Case No. 2011-CP-42-5457
)	
Applicant,)	ORDER OF DISMISSAL
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed December 8, 2011. Respondent made a Return on or about September 16, 2012. The Court convened an evidentiary hearing into the matter on January 21, 2014, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by J. Falkner Wilkes, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's plea counsel, Michael D. Brown, Esquire, ("Counsel"), Eddie Hunter, Esquire, with the Seventh Circuit Solicitor's Office, and Matt Hutchins of the Spartanburg County Sheriff's Department also testified. The Court had before it a copy of the plea transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the pleadings, the return, and the exhibits introduced at the hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. In January 2010, the

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SPARTANBURG COUNTY
SOUTH CAROLINA

Spartanburg County Grand Jury indicted Applicant for manufacturing marijuana (2002-GS-20-0546), trafficking in methamphetamine or crack (2002-GS-20-0082), and possession with intent to distribute cocaine ("PWID") (2002-GS-20-0132). Michael D. Brown, Esquire, represented Applicant. On October 5, 2010, Applicant pleaded guilty to the lesser included offense of trafficking in cocaine 28-100g and pleaded guilty as indicted to the other two charges before the Honorable J. Derham Cole. Pursuant to the State's recommendation, Judge Cole sentenced the Applicant to confinement for concurrent terms of twenty years each for trafficking in cocaine 28-100g and PWID cocaine, second offense, and five years for manufacturing marijuana, second offense.

On October 15, 2010, Applicant filed a pro se document captioned "Motion for Reconsideration." In the document, he stated that the motion was filed pursuant to Rule 59(e), SCRCRCP. On April 29, 2011, Applicant then filed a pro se document titled "Notice of Intent to Appeal." Respondent also received a copy of a document titled "Notice and Motion for Belated or Out of Time Appeal," dated September 20, 2011. The South Carolina Court of Appeals dismissed the Applicant's appeal as not timely by written Order dated October 12, 2011. The Remittitur was issued October 28, 2011.

At Applicant's PCR hearing on January 21, 2014, the issue of whether the circumstances surrounding Applicant's filing of the pro se document titled "Motion for Reconsideration," ten days after his guilty plea constituted an unresolved motion under Rule 29, SCRCrimP. The Court issued an Order on July 18, 2014, finding that the Order was a proper motion under Rule 29, SCRCrimP, and holding the PCR matter in abeyance until the motion was ruled upon. On February 12, 2016, the Honorable J. Derham Cole denied the Rule 29 motion by written Order.

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II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of counsel; in that,
 - a. Counsel failed to investigate
 - b. Counsel failed to inform Applicant of discovery pertaining to arrest,
 - c. Counsel stated that no appeal could be filed,
 - d. Counsel failed to challenge the search warrant and arrest, and
2. Involuntary Guilty Plea.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Testimony

Applicant testified that his case started out as a jury trial. He testified Michael Brown represented him for at least a year. Applicant testified that he met with Brown once while he was out on bond during the entire year. Applicant testified he saw Counsel the day before trial and that they talked about going to trial. Applicant testified that a Jackson v. Denno¹ hearing was held the day of trial. Applicant testified he told Counsel that he wanted to appeal and asked Brown to file the appeal. Applicant testified that he wanted to withdraw the guilty plea and that he made a motion within eight days after the plea. Applicant testified that a suppression hearing was held at the time of trial. He testified he did not believe Counsel was effective. Applicant testified that there was a material false statement in the affidavit used to obtain the search

¹ 378 U.S. 368 (1964).

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p 3

warrant, which was that the confidential reliable informant ("CRI") bought a quantity of marijuana at the house. Applicant stated that Counsel should have used the video, could have challenged the chain of custody and done a chemical analysis. Applicant testified that Counsel did not introduce the video. He testified he had seen a copy of the video.

Applicant testified that the search warrant was challenged in the suppression motion. Applicant introduced the search warrant and affidavit attached as Applicant's Exhibit No. 6 at the hearing. He indicated that paragraph two of the affidavit contained the statement he believed was false, which was that on June 18, 2009, the CRI purchased marijuana and saw marijuana being grown behind the house. Applicant testified that there were other theories he wanted Counsel to use. He stated that no drugs were ever sold out of the residence. Applicant testified that based on the video, the CRI entered his garage and was conducting a search without Applicant being present. Applicant testified that he left the CRI downstairs to take his son upstairs and the CRI went back and looked around the garage. Applicant testified that he never gave permission for a recording and would not have let him in if he knew he was recording.

Applicant testified that he pleaded guilty on the advice of Counsel. Applicant testified that if Counsel told him his Fourth Amendment rights had been violated and that there was a chance jury would have suppressed the drugs, he would not have pleaded guilty. Applicant testified that after the guilty plea, he told Counsel there were things that should have been said. Applicant testified the plea judge did not ask if he thought Counsel did a good job. Applicant stated he testified at the suppression hearing.

Officer Matt Hutchins testified that at the time he was a Senior Narcotics Agent with the Spartanburg County Sheriff's Department. He testified that the Spartanburg County analysis of the substance was complete on June 25, 2009, and the substance was found to be 2.67 grams of

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marijuana. He testified those were the drugs referenced in the controlled buy in the affidavit supporting the search warrant. Hutchins testified the chemist sends a copy to the solicitor's office but it is unsigned because it is not the original. He testified the search warrant was executed at the time the arrest warrant was executed. He testified that crack cocaine and marijuana were found. Hutchins testified that regarding the chain of custody, the substances all had the solicitor's markings and he could identify them. Hutchins also testified that the video from June 18, 2009, showed marijuana being grown. Hutchins testified that the CRI also reported marijuana being grown on July 28, 2009.

Eddie Hunter of the Seventh Circuit Solicitor's Office testified regarding the chain of custody for the first charge. He testified that he did not have drug analysis or chain for the June 18, 2009, offense. Hunter testified that he had a note in his file dated November 2, 2009, regarding discovery being turned over. Hunter testified that Applicant was permitted to see the video prior to trial. The video was introduced as Applicant's Exhibit No. 9.

Counsel testified that he was retained about a year prior to the plea. Counsel stated that he tries to keep a log of when he visits with his clients. He testified that he has notes in his file that he met with Applicant on three occasions—December 18, 2009, September 27, 2010, and October 4, 2010. Counsel testified that he and Applicant discussed the federal statutes and the nature in which the authorities came in. Counsel testified there were problems with the search and questioning of Applicant. He stated that he talked with Applicant about the statements that were made during questioning. Counsel testified that he told Applicant it would be up to the Court whether the statements would be admissible. Counsel testified he did not agree with the statement about the Fourth Amendment violations. Counsel testified he did not consider entering the video in at the suppression hearing. Counsel testified the first video was black and white and

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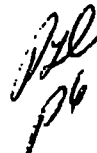
the second video was in color, and both had audio. Counsel testified that his conversation with Applicant revolved around the Court's ruling on the suppression motions and stated that the decision to move forward was left up to Applicant. Counsel testified he spoke with narcotics regarding a plea deal and twenty years. Counsel testified he was aware at some point of a pro se motion for reconsideration and withdrawing.

Counsel testified that he discussed the chain of custody issue and always told him that they could challenge the chain at trial. Counsel testified that he raised issues at the pretrial motions that he discussed with Applicant. Counsel testified he was not sure if he had chain of custody documents on the initial controlled buy. Counsel testified he did not address the issue of chain of custody at the pretrial hearing.

B. Ineffective Assistance of Plea Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant "must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice." Walker v. State, 407 S.C. 400, 404-05, 756 S.E.2d 144, 146 (2014). "The two-part test adopted in Strickland also applies to challenges to guilty pleas based on ineffective assistance of counsel." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011).

The applicant must first show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal



cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, he would not have [pleaded] guilty, but would have insisted on going to trial." Thompson v. State, 340 S.C. 112, 116, 531 S.E.2d 294, 297 (2000).

The record reflects that prior to Applicant's plea, Counsel made a pretrial motion in which he challenged the search warrant and moved to suppress Applicant's statements. The plea judge denied the motions, finding that the statement was made freely and voluntarily and that the search warrant appeared to be valid. Applicant also testified at the suppression hearing. Following the judge's ruling in the suppression hearing, Applicant pleaded guilty. The plea judge informed Applicant on the record that if his ruling regarding the suppression motions was incorrect, the method of correcting the mistake would be for Applicant to have a trial. He then admonished Applicant that by pleading guilty, he was giving up his right to contest his ruling, and waiving his right to contest any illegal search and seizure. (Tr. pp. 91-93). The plea judge also confirmed that Applicant was aware of his constitutional rights and that he understood that by pleading guilty he was waiving those rights. Applicant stated that he understood the rights he was giving up and that he still wished to plead guilty. Applicant stated that he was making the decision on his own and that he was satisfied with the decision. Applicant stated he was pleading guilty to each indictment because he did commit the crimes as described in the indictments. Applicant confirmed that he was satisfied with Counsel's representation and that he had sufficient time to discuss the decision to plead with him.

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Failure to inform Applicant of discovery

Applicant testified Counsel met with him only once. Counsel testified he met with Applicant at least three times. Counsel testified he reviewed all discovery with Applicant, and Applicant admitted he had seen a copy of the video of the controlled buy. This Court finds Counsel adequately conferred with Applicant and reviewed all discovery with him. See Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) (“[T]here is no established ‘minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.’” (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988))). Applicant has failed to satisfy his burden of proving counsel's performance was deficient in this regard, or that any alleged deficiency prejudiced him. Accordingly, this Court finds this allegation is without merit and it is therefore denied and dismissed.

Failure to investigate

Applicant alleged Counsel failed to conduct a proper investigation. To show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he been more fully prepared for the trial. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)).

This Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant regarding the State's burden of proof and any potential defenses, and was thoroughly competent in his representation. Counsel reviewed all the evidence against Applicant and discussed it with him. Counsel testified that he discussed potential defenses with Applicant,

including the challenges to the search and Applicant's statements. Applicant failed to produce any evidence regarding any additional investigation that Counsel could have pursued.

Therefore, this Court finds that Applicant has failed to meet his burden of proving that Counsel was deficient in this regard. This Court further finds that Applicant failed to produce any evidence of how any further investigation would have affected the outcome at trial. See Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) ("[A]pplicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."). Accordingly, this Court finds Applicant has failed to prove either prong of Strickland, and this allegation must be denied and dismissed with prejudice.

Failure to challenge the search warrant and arrest

Applicant alleged Counsel failed to properly challenge the search warrant. However, Counsel made pretrial motions challenging both the search warrant and the admissibility of Applicant's statement. Ultimately, the motions were not successful. After the judge denied the suppression motions, Counsel consulted with Applicant and properly advised him regarding his option to go forward with the trial or plead guilty. Counsel negotiated a plea to the lesser included offense of trafficking in cocaine base second offense, with a recommendation of twenty years and concurrent sentencing. Though Applicant testified he had other theories that he wanted Counsel to explore, he failed to present sufficient evidence showing what these theories would have been or how they would have been successful. See Arnette v. State, 306 S.C. 556, 557, 413 S.E.2d 803, 804 (1992) (counsel not ineffective for failing to advise of potential defense where no evidence exists to support the defense).

This Court finds Applicant has failed to satisfy his burden of showing that Counsel's performance fell below an objective standard of reasonableness. Furthermore, Applicant



admitted to the plea judge that he was guilty, and stated that he understood that the agreement reached was a twenty year sentence and he stated that he wanted the judge to go along with that recommendation. This Court finds Applicant has failed to satisfy his burden of showing that but for any alleged deficiency of Counsel, Applicant would not have pleaded guilty, but would have insisted on going to trial. Accordingly, this Court finds Applicant has failed to show ineffective assistance of counsel and this allegation is therefore denied and dismissed.

Failure to file an Appeal

This Court finds that trial counsel was not ineffective for failing to file an appeal. The United States Supreme Court has rejected a "bright-line rule that counsel must always consult with the defendant regarding an appeal." Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000). It instead held that "counsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing." Id. "[A]lthough not determinative, a highly relevant factor in this inquiry will be whether the conviction follows a trial or a guilty plea, both because a guilty plea reduces the scope of potentially appealable issues and because such a plea may indicate that the defendant seeks an end to judicial proceedings." Id.

This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel failed to file an appeal on his behalf. Counsel made pretrial motions to suppress on Applicant's behalf that were not successful. Counsel then conferred with Applicant regarding his options to proceed with trial or enter a plea. Counsel negotiated a favorable plea offer on Applicant's behalf and testified that Applicant made the decision to plead.

Applicant clearly stated on the record that he understood that if the judge accepted the plea, he would receive a twenty year sentence. In addition, the plea judge admonished him that he was waiving any challenge to the evidence by pleading guilty. This Court finds that there is no evidence that a rational defendant would want to appeal or that the Applicant indicated he wanted to appeal. Accordingly, this Court finds that Applicant has failed to satisfy his burden as to this allegation, and it is therefore denied and dismissed.

C. Involuntary Guilty Plea

Applicant alleges he was coerced to plead guilty and that therefore his plea was involuntary. This Court finds Applicant's guilty plea was entered freely and voluntarily. To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63, 97 S. Ct. 1621, 52 L.Ed.2d 136 (1977)). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. United States, 519 F.2d 347 (4th Cir.1975).

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An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)).

This Court finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. Applicant has presented no reason why he should be allowed to depart from the truth of his statements made at the plea hearing. Applicant's Counsel made challenges to the search warrant and made a motion to suppress Applicant's statements. The plea judge denied the motions and admonished Applicant that by pleading guilty he was waiving any challenges he had to the Court's ruling. The record reflect that Applicant told the plea judge that he was not threatened, coerced, or forced to plead guilty. Counsel informed Applicant of his constitutional rights, and Applicant waived these rights, including the right to challenge the search and seizure of the drugs, the admission of his statement, his right to a jury trial, right to remain silent, and right to confront witnesses. Applicant has failed to show that Counsel's performance was deficient or that any alleged deficient performance prejudiced him. Accordingly, this Court hereby denies and dismisses Applicant's allegation that his guilty plea was involuntary.

D. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any

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such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.


The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 469 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

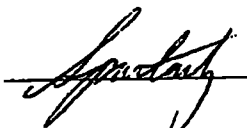
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IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 31st day of May, 2016.


THE HONORABLE ROGER L. COUCH
Presiding Judge
Seventh Judicial Circuit

, South Carolina

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483

Phone (864) 596-2591
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M. Hope Blackley
Clerk of Court

June 1, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

7TH JUDICIAL CIRCUIT

Anthony B. Chapman
Applicant # 251075

CASE # 2011CP42-5457

CERTIFICATE OF SERVICE

vs
State
Respondent

I certify that, on this date, I served a copy of the Order of Dismissal
in this action dated May 31, 2016 on June 1, 2016

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Ashley Hawthorth
Court Reporter
J. Pauline Williams
Attorney, Chapman

June 1, 2016
(Date)

Carrie Selby
(Signature)

Attachment B

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
General

19 Reporter Present: PAMELA FAUCETTE

20
21 HARRIET P. BENNETT
22 Reporter, S. C. Court Administration
46 Regency Oaks Drive
23 Summerville, S. C. 29485

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25

I N D E X

Direct-Redirect Cross-Recross

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Anthony Chapman

By Mr. Wilkes

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By Ms. White

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Michael Hutchins

By Mr. Wilkes

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By Ms. White

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Unknown Witness

By Mr. Wilkes

49-50

By Ms. White

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MICHAEL BROWN

By Ms. White

51-63

By Mr. Wilkes

58-63

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 SLED and response ID 17
10 8 Analysis report EV 39
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Court's Exhibits

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1 Video p. 14

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1 (The within matter came before the Court for hearing
2 on January 21, 2014)

3 THE COURT: This is Anthony B. Chapman versus the
4 State of South Carolina.

5 Are you ready to proceed?

6 MS. WHITE: Yes, Your Honor.

7 THE COURT: Mr. Wilkes, you represent the Applicant?

8 MR. WILKES: Yes, Your Honor.

9 THE COURT: Do you know the issues you will go forward
10 on today?

11 MR. WILKES: Yes, I do, Your Honor. There are two
12 issues. One is the question of whether or not the Defen-
13 dant is entitled to a belated appeal, and we will intro-
14 duce some testimony and documents on that issue.

15 There is also an issue as to effective assistance of
16 counsel, and I will challenge the search warrant and the
17 advice surrounding the search warrant and decision to
18 plead guilty versus continuing on and going to trial.

19 THE COURT: Are you ready to go forward?

20 MS. WHITE: Yes, Your Honor.

21 THE COURT: All right, you may call your first witness,
22 Mr. Wilkes.

23 MR. WILKES: Thank you, Your Honor. We'd call Anthony
24 Chapman to the stand.

25 THE COURT: Come over to my left to be sworn, please.

1 ANTHONY B. CHAPMAN, being
2 duly sworn, testified as follows:

3 CLERK: All right, have a seat, please, sir, and
4 state your name.

5 WITNESS: Anthony Bernard Chapman.

6 THE COURT: Thank you. Mr. Wilkes?

7 DIRECT EXAMINATION

8 BY MR. CHAPMAN:

9 Q. Mr. Chapman, who represented you at your guilty plea?

10 A. Michael Brown.

11 Q. And did that originally start out as a jury trial?

12 A. Yes, sir, it did.

13 Q. And tell me about that. How long did Mr. Brown
14 represent you?

15 A. Almost a year.

16 Q. Where were you during that year?

17 A. . . .

18 Q. In or out of jail?

19 A. Out of jail.

20 Q. About how many times were you able to meet with Mr.
21 Brown?

22 A. Once.

23 Q. And what time period if you can give me -- relate that
24 to the trial or the arrest. When in that period did you
25 see Mr. Brown?

A. CHAPMAN ON DIRECT

1 A. I saw Mr. Brown the day before trial.

2 Q. And what type of discussions did you have with Mr.
3 Brown the day before trial?

4 A. We talked about my going to trial.

5 Q. Okay, and what issues did you discuss?

6 A. We discussed the drugs that was sold or allegedly
7 sold at my residence.

8 Q. Okay, and tell me about the -- tell me about the be-
9 ginning of the trial the next day or what happened the
10 next day?

11 A. The next day that was Jackson-Deno motion. We talked
12 about the statement given because of the investigation.

13 Q. Okay. Subsequent to the Jackson v Deno hearing,
14 you entered a guilty plea. Correct?

15 A. Correct.

16 Q. What sentence did you receive?

17 A. Twenty years -- actually two twenty year sentences all
18 to run concurrent.

19 Q. Did Mr. Brown advise you concerning your rights to
20 appeal?

21 A. No, he didn't.

22 Q. Did you desire an appeal in the case?

23 A. I did.

24 Q. And what action did you take in order to preserve
25 your right to appeal?

A. CHAPMAN ON DIRECT

1 A. . .

2 Q. What was the first thing you did?

3 A. At the time I filed a motion after I pled, a motion
4 to reconsider my guilty plea. I was actually trying to
5 withdraw my guilty plea.

6 Q. All right. You made a post-trial motion within ten
7 days of the plea? Is that what you're saying?

8 A. Yes. I'll show you something.

9 Q. Let's mark this.

10 MS. WHITE: No objection.

11 THE COURT: All right. Without objection, Applicant's
12 Number 1.

13 (Applicant's Exhibit 1 entered in evidence without
14 objection, being Applicant's motion for reconsideration)

15 BY MR. WILKES:

16 Q. Mr. Chapman, I show you what's marked as Applicant's
17 Exhibit 1. Tell us what that is?

18 A. Well, it's my motion for reconsideration.

19 Q. And what is the date that motion was clocked in by
20 the Clerk of Court?

21 A. October the 15th.

22 Q. And do you recall how many days prior to that you ac-
23 tually sent it in to the Clerk?

24 A. No, I don't recall the exact date. It was days be-
25 fore that actually.

A. CHAPMAN ON DIRECT

1 Q. Was the date of October 5th correct on the guilty plea?

2 A. That's right.

3 Q. So your motion was actually received and clocked in
4 within ten days of the case being heard by the Court?

5 A. Yes, it was.

6 Q. All right. Now, what happened after that?

7 A. . .

8 Q. Did you make several -- did you make several requests
9 of the Court to try to get information on the status of
10 that?

11 A. You mean of my motion?

12 Q. Yes, of the status of that?

13 A. Yes, I did.

14 Q. You requested an update on the status of your case?

15 A. Yes, I did. Yes, sir.

16 Q. Let me ask you a question to sum it up.

17 A. Yes, sir.

18 Q. Let's mark this.

19 THE COURT: Any objection?

20 MS. WHITE: No objection.

21 THE COURT: Admitted without objection as Applicant's
22 2, being correspondence of Applicant with Court Clerk.

23 (Applicant's 2 admitted in evidence without objection,
24 being Applicant's letter to Clerk)

25 BY MR. WILKES:

A. CHAPMAN ON DIRECT

1 BY MR. WILKES:

2 Q. Mr. Chapman, I show you what has been marked as Ap-
3 plicant's Exhibit 2. Does this show a letter from you on
4 January the 4th to the Clerk of Court?

5 A. Yes.

6 Q. And in that letter did you inquire as to the status
7 of your motion, your post-trial motion?

8 A. Yes.

9 Q. And is there also attached a copy of the Clerk's re-
10 sponse dated January 4th to you?

11 A. It is. Yes, sir.

12 Q. And did the Clerk of Court give you an actual status
13 of your motion?

14 A. No.

15 Q. Did the Clerk tell you that they can't tell you what
16 the status is?

17 A. Actually that's what they said.

18 Q. Okay, so you did not get an answer, and does your
19 letter not say, I have asked at least four times to get
20 the status of my motion?

21 Isn't that what you said in your letter?

22 A. It is.

23 Q. And they responded by saying, we can't tell you what
24 the status is?

25 9

A. CHAPMAN ON DIRECT

1 A. Correct.

2 Q. Okay. Now, did you ever -- did you ever get a no-
3 tice or any information that the Court had actually ruled
4 on your post-trial motion?

5 A. No, I didn't.

6 Q. All right, and at some point you sent the Clerk a
7 letter saying you wanted to appeal months later. Why did
8 you do that?

9 A. Because I never received any notice or return from my
10 attorney or from the Court or anyone.

11 Q. Did you again file a notice of appeal later on?

12 A. I did.

13 Q. Do you recall when that was?

14 A. Not right offhand.

15 THE COURT: Any objection?

16 MS. WHITE: No objection, Your Honor.

17 THE COURT: Without objection, that's Number 3. It
18 will be admitted.

19 (Letter to Clerk admitted without objection as Ap-
20 plicant's Exhibit 3 in evidence)

21 BY MR. WILKES:

22 Q. I show you what's been marked as Number 3, a letter
23 dated 4 25 2011. Were you again asking the Clerk about
24 the status of your motion?

25 A. I was.

A. CHAPMAN ON DIRECT

1 Q. And at that time were you getting any response from
2 the Clerk as to the status of your motion?

3 A. No.

4 Q. Did you subsequently file a notice of appeal with the
5 Court of Appeals?

6 A. I did.

7 MR. WILKES: We would offer this.

8 MS. WHITE: No objection, Your Honor.

9 THE COURT: It will be admitted as Number 4 for Ap-
10 plicant.

11 (Notice of appeal admitted without objection as
12 Applicant's Exhibit 4)

13 BY MR. WILKES:

14 Q. If you will look at what is marked Applicant's Ex-
15 hibit Number 4, are these the documents from the Court of
16 Appeals that you received?

17 A. Yes, sir.

18 Q. This is it?

19 A. Yes, sir.

20 Q. Now, does it indicate that your appeal was dismissed
21 because it was filed more than ten months after the date
22 of the conviction?

23 A. It does.

24 Q. And did you see that the Court of Appeals was telling
25 you they were dismissing your case because you filed it

A. CHAPMAN ON DIRECT

1 ten months later?

2 A. Yes, sir.

3 Q. At any time even to the date that you received that,
4 did you ever receive a ruling or notice of any kind of
5 ruling on your post-trial motion?

6 A. No, sir, I didn't.

7 Q. And did anybody inform the Court of Appeals that you
8 were still waiting on that ruling?

9 A. No.

10 MR. WILKES: Your Honor, we would offer the appli-
11 cant's file which is a printout from the Judicial Circuit
12 of Spartanburg County for Mr. Chapman's case.

13 MS. WHITE: No objection.

14 THE COURT: Without objection, this will be received
15 as Applicant's Number 5.

16 (Printout of Applicant's case entered in evidence
17 without objection as Applicant's Exhibit 5)

18 BY MR. WILKES:

19 Q. Mr. Chapman, in this case, as far as you know, has
20 there ever been a ruling on your post-trial motion?

21 A. No.

22 Q. Moving back to the search warrant. At the time of
23 the trial, there was a suppression hearing. Correct?

24 A. Correct.

25 Q. And tell me what happened at the suppression hearing.

A. CHAPMAN ON DIRECT

1 What was the problem with the suppression hearing?

2 A. Can you . . .

3 Q. Let me back up. I'm sorry. Do you believe Mr. Brown
4 was effective in challenging the search warrant?

5 A. No, I don't believe he was.

6 Q. Well, tell me why.

7 A. Well, I'll try. He never made the Court aware of
8 a material falsehood in the affidavit or to what occurred
9 in the search warrant.

10 Q. What was the false statement in the affidavit?

11 A. That a confidential reliable informant of the County
12 Sheriff's Department purchased a quantity of marijuana at
13 my residence.

14 Q. Okay. Now, how would Mr. Brown have shown that to
15 be false?

16 A. By, one, asking for the chain of custody for the evi-
17 dence, and challenging the video.

18 Q. Okay. Now, did he question the officers about the
19 truthfulness of the statements or the referencing always
20 of the video? Always referencing the video?

21 A. Correct.

22 Q. Was the video introduced or shown to the Judge in
23 the hearing; the suppression hearing?

24 A. No, it wasn't.

25 Q. Okay, and do you think it would have made a difference

A. CHAPMAN ON DIRECT

1 had the Judge seen the video?

2 A. Yes, I do think it would have made a difference.

3 Q. And seeing the video would have made it apparent that
4 the allegations in the search warrant -- it would have made
5 it apparent that they were either untruthful essentially,
6 or at least with reckless disregard?

7 A. Yes.

8 MR. WILKES: Your Honor, we would ask the Court to
9 admit in evidence the video and view the video as our
10 Exhibit -- the next number.

11 If the State would make us a copy -- we would ask
12 to be allowed to obtain a copy.

13 THE COURT: Any objection?

14 MS. WHITE: Your Honor, I think with the stipulation
15 that the Applicant did not receive a copy of it, I think
16 there is no objection to it as a Court's Exhibit.

17 THE COURT: All right. We will allow it into evi-
18 dence with that stipulation as a Court's Exhibit.

19 (Video admitted in evidence with stipulation and
20 without objection as Court's Exhibit 1)

21 BY MR. WILKES:

22 Q. Now, explain to me in the video -- have you seen a
23 copy of the video although you did not receive it?

24 A. Yes.

25 Q. And do you believe that in watching that video, it

A. CHAPMAN ON DIRECT

1 will be clear that the allegations of the search warrant
2 are not true?

3 A. I do.

4 Q. And do you believe the Judge seeing that video would
5 make it appear that the underlying allegations of the
6 search warrant are not true?

7 A. Yes.

8 Q. I hand you what we have marked as Applicant's Exhibit
9 Number 6. Can you identify that?

10 A. Yes, sir.

11 Q. Is that the search warrant that Mr. Brown was chal-
12 lenging in the suppression motion?

13 A. Yes, it is the search warrant.

14 Q. And is there an affidavit also attached to that?

15 A. Yes.

16 Q. The affidavit for the search warrant is a part of
17 that as well?

18 A. Yes, it is.

19 Q. And in that affidavit are facts which you believe to
20 be untrue?

21 A. Yes.

22 Q. What are those facts?

23 A. . .

24 Q. Read it.

25 A. That on 6 18 09 the CI, a resident of Spartanburg

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?

A. CHAPMAN ON DIRECT

1 A. Would you say that again?

2 Q. Did they respond to you?

3 A. They did.

4 Q. And is that their response?

5 A. Yes, it is.

6 Q. Did they indicate whether SLED had done any testing?

7 A. Yes, it said they did some tests.

8 Q. And what else did they say?

9 A. . .

10 Q. They referred you back to the County, is that cor-
11 rect?

12 A. Yes, they did. They told me to contact the Spartan-
13 burg County Sheriff's Office for any information they
14 may have concerning the matter.

15 MR. WILKES: Your Honor, we'd offer that as Number 7.

16 MS. WHITE: Without objection, Your Honor.

17 THE COURT: Without objection, it is admitted as
18 Applicants 7.

19 (Letter of Applicant to SLED, and response entered in
20 evidence without objection as Applicant's Exhibit 7)

21 BY MR. WILKES:

22 Q. Mr. Chapman, did you discuss with Mr. Brown any of
23 your theories as far as the suppression of the search war-
24 rant?

25 A. Yes.

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?

A. CHAPMAN ON DIRECT

1 A. Correct.

2 Q. What happened after that?

3 A. Uh, he ring the bell, knock on the door, but I already
4 gone at the time, and I had leave and I took my son into
5 town, and he went to the kitchen, to the living room and
6 back to the kitchen.

7 Q. Now, how do you know that?

8 A. From the video.

9 Q. Was that something that you had consented to?

10 A. No, it was not.

11 Q. Was that something that you had explicitly consented
12 to?

13 A. No, I did not.

14 Q. And it is clear on the video that he is doing that?

15 A. It is clear on the video.

16 Q. And all of that occurred prior to any contact with
17 you?

18 A. Yes. The video will also show he went back into the
19 garage while we were gone..

20 Q. And what was he doing?

21 A. He was looking around the garage.

22 Q. And is that the evidence on the video?

23 A. Yes.

24 Q. Okay. Did you at any time consent to him doing any
25 kind of surveillance on you or making the video when he

A. CHAPMAN ON DIRECT

1 came inside your residence?

2 A. No, I did not.

3 Q. Did he indicate that you were being videotaped at any
4 time?

5 A. No, he didn't.

6 Q. Would you have let him in had you known that?

7 A. Absolutely not.

8 Q. Now, you chose on the record it appears to enter a
9 guilty plea after the Court denied the suppression motion.

10 Correct?

11 A. Correct.

12 Q. Why did you do that?

13 A. My attorney advised me to, being that the Judge was
14 going to allow the search to come in. He said I didn't
15 have a chance after that at trial.

16 Q. Did he explain to you that any challenge to the
17 search warrant you could maintain through an appeal?

18 A. No, he did not.

19 Q. Okay. Had he challenged the search warrant in the
20 manner in which he really should have, he would have then
21 brought out all that the Court has just heard you say,
22 and you say he should have done that?

23 A. Yes.

24 Q. If he had done that, and you believe the record was
25 clear, would you have chosen to plead guilty?

A. CHAPMAN ON DIRECT

1 A. No, I wouldn't.

2 Q. Even if the Judge had ruled against you, would you
3 still have pled guilty?

4 A. No, I wouldn't if my attorney had been competent and
5 if he hadn't told me I didn't have a chance if I went to
6 trial by jury so that I wouldn't want a trial. I would
7 have had a trial.

8 Q. Very good. Now, there have been a number of in-
9 stances that you have raised as grounds for appeal. Now,
10 to be clear, are there other instances that you believe
11 Mr. Brown's representation was below par or ineffective
12 and which affected your rights?

13 A. Yes, they are.

14 Q. Tell me what they are?

15 A. You have pretty much covered it or a lot of them. I
16 just feel like I was rushed and I feel like I was taken
17 advantage of so that I would plead guilty, and even if
18 he had represented my interests better at a trial . . .

19 MS. WHITE: I think he's reading from a document that
20 was not entered into evidence, and I would object to it.

21 THE COURT: He can use notes to refresh his memory.
22 However, he has to testify to the best of his memory when
23 it is refreshed.

24 MR. WILKES: Thank you, Your Honor.

25 THE COURT: But the law does not allow a witness to

A. CHAPMAN ON DIRECT

1 read from a document not in evidence.

2 BY MR. WILKES:

3 Q. Mr. Chapman, do you feel you received ineffective
4 assistance of counsel?

5 A. Yes, I do.

6 Q. And other than those facts that we have brought out,
7 are there any other facts or specific instances that you
8 can identify that we have not covered?

9 A. The matter of -- after the plea hearing, you know, I
10 asked Mr. Brown to appeal. I said there were some things
11 that should have been did.

12 Q. At the plea hearing or before?

13 A. After the plea hearing.

14 Q. Okay.

15 A. I asked him after the plea hearing, and he said he
16 was going to take care of it.

17 Q. Okay, but after the plea hearing you told him what
18 now?

19 A. I told him there were things I feel like should have
20 been did or said that wasn't said.

21 Q. Okay.

22 A. And that there were things that didn't go in the re-
23 cord?

24 Q. What things should have been brought up?

25 A. That the statement -- the things in the statement

A. CHAPMAN ON DIRECT

1 they never happened.

2 Q. And you just testified a minute ago that the video
3 would have made that very clear?

4 A. Correct.

5 Q. Okay. Very good.

6 MR. WILKES: Your Honor, that's all we have for Mr.
7 Chapman.

8 THE COURT: You may cross examine.

9 MS. WHITE: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MS. WHITE:

12 Q. Mr. Chapman, you testified that you only met with
13 Mr. Brown the day before trial in the entire year before
14 your trial?

15 A. Correct.

16 Q. How did he have any discussion with you about the
17 facts in the case as you indicate you had only met with
18 him the day prior?

19 A. Would you repeat?

20 Q. You indicated at your guilty plea that you
21 had had plenty of time to talk with him and go over with
22 him all the facts and circumstances of the case.

23 How were you able to do that if you only met with
24 him one time on the day before the plea?

25 A. Because I only talked with him the day before my

A. CHAPMAN ON CROSS

1 trial. It didn't take that long to talk to him on the day
2 before my trial.

3 Q. And that is what I'm asking you. How did you have
4 time to discuss with him and go over all the facts and
5 information about the case if you only met with him be-
6 fore the guilty plea?

7 A. I'm not understanding your question, counselor.

8 Q. Okay.

9 A. He contacted me the day before my trial and I meet
10 with him. That's the only time we ever discuss anything
11 about my trial.

12 Q. How did you retain his services?

13 A. Through a friend of mine.

14 Q. Okay. So did you go and meet with him when you re-
15 tained him?

16 A. I did.

17 Q. You did go and retain him?

18 A. Yes.

19 Q. So you actually did meet with him more than once?

20 A. Yes, I met with him once to talk about my case. I
21 meet with him and that was it after I hire him.

22 Q. You met with him at least twice?

23 A. . .

24 Q. The day you hired him and the day before trial?

25 A. Right.

A. CHAPMAN ON CROSS

1 Q. So your testimony was not accurate?

2 A. The question was how many times I discuss my case
3 with him, and that was once. That as the day before my
4 trial.

5 If you want to say I met with him when I hire him,
6 then I met with him twice.

7 Q. And you did tell him what you were hiring him for,
8 is that right?

9 A. Yes, a little bit of it.

10 Q. Okay, and you actually testified at the pre-trial
11 hearing. Is that right?

12 A. Right, I did.

13 Q. Okay, and the State also called two narcotics agents,
14 is that right?

15 A. Called who?

16 Q. The State called as witnesses two of the agents that
17 were involved in narcotics?

18 A. They did.

19 Q. Okay, and they went over the search warrant about a
20 purchase that was made by a confidential reliable inform-
21 ant at the scene?

22 A. . . .

23 Q. They went over the observation that the CI made of
24 marijuana at your home, and then the search warrant was
25 served on August third, is that right?

A. CHAPMAN ON CROSS

1 A. You know, I didn't know any of that until I found
2 out the false statements that was made.

3 Q. I asked you if the Court went over -- if they reviewed
4 the CI buy on June 18th?

5 Did they talk about that in the testimony at the pre-
6 trial hearing?

7 A. They did.

8 Q. And they talked about what they had done, and the fact
9 that the CI had been back to your home on July 28th and
10 observed marijuana?

11 A. Did they talk about it?

12 Q. Yes.

13 A. Yes, they did.

14 Q. Okay, and did they also discuss the fact that the
15 search warrant was issued after that observation, and
16 then the arrest warrant was issued and signed that day on
17 August third?

18 A. They did talk about it, and they also said that --
19 they testified it was in conjunction with that but what I
20 am saying is that it was not true.

21 They say they already knew about that and I was not
22 being tried for that. My attorney should have shown the
23 fact that they was in my house before they obtain that
24 search warrant.

25 Q. Did you see the video of July 28th, the observation

A. CHAPMAN ON CROSS

1 of marijuana?

2 A. (Inaudible)

3 Q. You said that there was a video of the three days be-
4 fore the search warrant?

5 A. I said there's no proof of that. There is no proof
6 of that.

7 Q. You are saying there is an illegal video? Are you
8 saying it's an illegal video?

9 A. I am.

10 Q. You are not discussing the video of the buy of June
11 18th?

12 A. That's the illegal video I'm talking about.

13 Q. That's the video you're talking about?

14 A. Right.

15 Q. Okay, and to clarify, are you aware of the video of
16 July 28th of 2009 where they reference the CI was at your
17 house a second time and saw marijuana growing?

18 A. No, maam.

19 Q. All right. That's what I'm trying to get clear on.

20 During the pre-trial hearing the Judge even asked you
21 if you had reviewed the search warrant and the affidavit,
22 didn't he?

23 A. Did he . .

24 Q. Did the Judge in the pre-trial hearing review the af-
25 fidavit and ask you questions about it himself?

A. CHAPMAN ON CROSS

1 A. He did.

2 Q. And your attorney cross-examined the police officers,
3 didn't he?

4 A. He did.

5 Q. And he also asked them about the recording that was
6 used in order to get the CI buy. Is that right?

7 A. He did.

8 Q. You also said at the start of the pre-trial suppres-
9 sion hearing that you were alleging it was an improper
10 warrant based on the fact that there was false information
11 given and the affidavit was not proper. Is that right?

12 A. Yes. That was part of it.

13 Q. Okay, and ultimately the Judge decided that the search
14 warrant was proper and that he was not going to suppress
15 it in the trial of the case. Is that right?

16 A. Yes.

17 Q. And he decided the statement you gave was given by you
18 voluntarily. Is that right?

19 A. He decided -- repeat that.

20 Q. The Judge ruled that your statement given to the po-
21 lice was given freely and voluntarily?

22 A. Yes, he did.

23 Q. Now, when you proceeded with the plea, the Judge went
24 over with you a lot of information. Do you recall your
25 guilty plea?

A. CHAPMAN ON CROSS

1 A. Uh huh. Some of it.

2 Q. And did you acknowledge that this had been a third of-
3 fense on each of these charges, but they reduced it down
4 to second offenses if you decided to plead?

5 A. Yes.

6 Q. Okay, and so you were facing a minimum of twenty-five
7 on these charges?

8 A. Correct.

9 Q. And the Judge asked you if you had had plenty of time
10 to talk to Mr. Brown?

11 A. He did.

12 Q. And when he was talking to you about pleading guilty,
13 he asked if your attorney had explained to you your consti-
14 tutional rights, and you told the Judge he had?

15 A. Yes. He explained the right to testify and that I
16 could have a trial, but I am explaining that with the
17 search warrant being allowed that I was -- that if I had
18 gone to trial it was a high probability that I would be
19 found guilty.

20 Q. But did you not try to suppress the drugs prior to
21 trial and that did not work?

22 A. I did, and he explained to me about my rights, and
23 in the Jackson v Deno, so it was all going to be heard
24 in my trial.

25 Q. In your conversations with him in preparing for the

A. CHAPMAN ON CROSS

1 pre-trial suppression motion, you all talked about the fact
2 that the main thing was that the search was not valid?

3 A. He told me he was going to Jackson-Deno, and that was
4 what he did.

5 Q. But you were present when he argued about the valid-
6 ity of the search warrant. Right?

7 A. I was there when he argued some about the search war-
8 rant but he never made it clear about the false details
9 in the search warrant.

10 Q. You are telling us -- your testimony . . .

11 A. He never made that clear to them about the false
12 statements, and he never bring up anything about the chain
13 of custody. He never asked the video to be played.

14 If he had . . .

15 Q. Mr. Chapman, is it your testimony here today that you
16 weren't aware of the fact that you all were attacking the
17 search warrant before you went in there that day?

18 A. My testimony is that he never went into any details
19 about how my rights were violated. If you're asking . .

20 Q. That's not what I'm asking.

21 A. That's what I'm saying is that . .

22 Q. Let me ask you again. Did you talk with him about
23 the fact that you wanted to attack the validity of the
24 search warrant on the day you started to trial?

25 A. I asked him about it, sure, and he said he was going

A. CHAPMAN ON CROSS

1 to do that anyway. I asked him about the drugs and he
2 said he was going to handle that. That's what he told
3 me.

4 Q. Okay. So your answer is, no, that you never dis-
5 cussed attacking the search warrant?

6 A. He never discussed that with me.

7 Q. So that was all that you knew when you showed up for
8 the trial?

9 A. What you mean? Say what you mean.

10 Q. You all had not discussed the attacking of the search
11 warrant?

12 A. We hadn't discussed the rights violation. We had
13 discussed the material false statements, but we hadn't
14 discussed anything like that. If we had I would have in-
15 sisted on going to trial.

16 Q. I'm going to move on. When the Judge asked you if
17 you knew of any defense you had to the charges in the In-
18 dictment or any reason why you should not be found guilty,
19 you said, no, sir, Is that correct?

20 A. It is.

21 Q. And when the Judge went over with you whether or not
22 Mr. Brown explained to you all your constitutional rights,
23 the right to jury trial, the right to any defenses, the
24 right to actually attack the sufficiency of the evidence,
25 you said he had. Is that right?

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?

A. CHAPMAN ON CROSS

1 A. Correct.

2 Q. Okay, and then it told you that it is your choice whe-
3 ther you go to trial or plead guilty. Do you recall that?

4 A. Yes.

5 Q. Okay. Do you recall him saying, do you understand you
6 are giving up those rights, and you said, yes, sir, that's
7 what I want to do?

8 A. That was on the advice of my attorney, that I had
9 to plead guilty. At this point I had to rely on his judg-
10 ment.

11 I knew that there was a material false statement in
12 that search warrant or in the affidavit, and had I known
13 all of these things I would have gone to trial.

14 Q. Then the Judge asked you if you wanted a trial or if
15 you wanted to plead guilty, and that was a decision you had
16 to make, and you told the Court you wanted to plead.

17 Is that correct?

18 A. I did.

19 Q. When the Judge asked you if you had made this decis-
20 ion on your own and nobody had suggested to you to plead
21 guilty or threatened you or promised you anything, and you
22 said no, sir. Is that correct?

23 A. That is not my decision.

24 Q. When the Judge asked you if anyone had suggested to
25 you that this was the decision you ought to make, you said,

A. CHAPMAN ON CROSS

1 no, sir. Was that your testimony that day?

2 A. Yes.

3 Q. Okay, and had anybody promised you anything or threat-
4 ened you. You said, no, sir?

5 A. Yes.

6 Q. Is that right?

7 A. Without knowing . .

8 Q. No, that's not what I asked you.

9 A. I had . .

10 (Counsel and the witness speaking at the same time)

11 BY MS. WHITE:

12 Q. I'm asking you right now did you say that no one had
13 threatened you or promised you anything or put any pres-
14 sure on you to plead guilty?

15 A. Did I say no one had threatened me?

16 Q. Did you also say you were guilty of these two crimes?

17 A. Correct.

18 Q. And that you were pleading guilty understanding
19 the recommendation of twenty years concurrent on these
20 charges?

21 A. I did.

22 Q. Okay, and was there anything else you thought you
23 were going to get or if you had any other issues, and you
24 said no. Right?

25 A. Correct.

A. CHAPMAN ON CROSS

1 Q. And now you believe after all of that, you now say
2 you should have been able to attack the search warrant
3 more. Is that right?

4 A. It should have been attacked for me more.

5 Q. All right. So you did plead guilty and told the
6 Judge you were doing it freely and voluntarily. Is that
7 right?

8 A. I did that after my lawyer telling me to plead and he
9 said I had no choice.

10 Q. No, I'm asking you if you told the Court you were
11 pleading guilty freely and voluntarily?

12 A. Yes, and that was after I was advised it was my right
13 to go to trial. I was advised to give up my right and go
14 to trial.

15 Q. And did you tell the Court you wanted to go on with
16 the plea?

17 A. That's what I told the Court.

18 Q. Okay.

19 A. I knew -- I didn't know that my rights had been vio-
20 lated like they were. I didn't know any of that.

21 Q. Thank you, Mr. Chapman. That's all I have.

22 MR. WILKES: Just a few things, Your Honor.

23 THE COURT: Yes, sir.

24 REDIRECT EXAMINATION

25 BY MR. WILKES:

MR. CHAPMAN ON REDIRECT

1 Q. Mr. Chapman, were you asked if you believed your
2 defense lawyer had properly defended you in the suppres-
3 sion motion?

4 A. No.

5 Q. And when you gave the answers, were you taking into
6 consideration that the Court had already ruled on the
7 issue of the search warrant?

8 A. I did.

9 Q. And if the Court had given you at that time the op-
10 portunity to re-visit the suppression issue, would you
11 have?

12 A. Would I have . .

13 Q. Would you have said something about the suppression
14 issues before you pled guilty?

15 A. Yes, I would have.

16 Q. Were you allowed to do that?

17 A. No, I wasn't.

18 Q. All right.. No further questions.

19 MS. WHITE: Just in follow-up.

20 RECROSS EXAMINATION

21 BY MS. WHITE:

22 Q. You did have a chance to speak on the suppression
23 issue at the pre-trial hearing, isn't that right?

24 A. Say again?

25 Q. You did have a chance to speak with the Judge about

A. CHAPMAN ON RECROSS

1 the suppression issues because you testified at the sup-
2 pression hearing, is that right?

3 A. Right.

4 Q. Okay. Nothing further.

5 THE COURT: You may step down.

6 (Witness excused from stand)

7 THE COURT: You may call your next witness.

8 MR. WILKES: Thank you, Your Honor. We would call Mr.
9 Hutchins.

10 THE COURT: Come forward and be sworn, sir.

11 MICHAEL HUTCHINS, being duly
12 sworn, testified as follows:

13 CLERK: Have a seat, please, and when you are seated,
14 sir, state your name for the record.

15 WITNESS: Michael Hutchins.

16 DIRECT EXAMINATION

17 BY MR. WILKES:

18 Q. Where do you work, Mr. Hutchins?

19 A. Spartanburg County Sheriff's Office.

20 Q. In what capacity?

21 A. Right now I'm a Sergeant -- one of two Sergeants who
22 were assigned to the violent crimes unit. At the time of
23 this hearing I was a senior investigator in the narcotics
24 unit.

25 Q. Okay, and are you familiar with Mr. Chapman's case?

M. HUTCHINS ON DIRECT

1 A. Yes, sir, I am.

2 Q. Were you involved in it?

3 A. Yes, sir.

4 Q. Sergeant Hutchins, is there a drug analysis and chain
5 of custody for the incident which is referenced in the af-
6 davit for the search warrant?

7 A. Yes, sir, and I've got a copy of the drug analysis.
8 I do not have a copy of the chain but it should be in the
9 Solicitor's Office file.

10 But there is a Spartanburg County Forensic Analysis
11 Lab. The report date is 6 25 09, referencing case number
12 2009 GS 4080 -- a green plant-like material. Marijuana
13 found, two point six seven grams of a schedule one con-
14 trolled substance.

15 Q. And this is a substance that was received from a CI
16 in Mr. Chapman's case?

17 A. Yes, sir.

18 Q. And are these the drugs that were the basis for or
19 formed the basis of the search warrant?

20 A. These were the drugs that the CI verified in the af-
21 fidavit for the search warrant. Yes.

22 Q. Do you know if the drug analysis was ever provided
23 to the defense attorney?

24 A. The Solicitors -- there was a copy sent to the Soli-
25 citor's Office and I do not know what was provided in

1 discovery. The chemists sent a copy to the Solicitor's
2 Office.

3 Q. The copy that you have indicates -- it's in handwrit-
4 ing but there is no signature on this.

5 A. The copy that's sent to the Solicitor's Office was
6 printed off from the database, which means it is done and
7 printed out and sent on from the database. That is why
8 there is no signature on it.

9 Q. Okay, but the original analysis would have a signa-
10 ture on it?

11 A. Probably.

12 (Brief pause)

13 BY MR. WILKES:

14 Q. Is there any reason we couldn't have a copy of this
15 report?

16 A. At some point someone will make you a copy of that.

17 CLERK: There's a copy machine right here.

18 Q. You indicated that you don't have a chain of cus-
19 tody document for those drugs? Is that correct?

20 A. I don't have in my possession the chain of custody.
21 It would be in the Solicitor's Office case file.

22 Q. Why would you not keep a copy in your file?

23 A. On the marijuana analysis I do not receive a copy.
24 They would send a copy to the Solicitor's Office and keep
25 a copy of the chain and the analysis.

M. HUTCHINS ON DIRECT

1 MR. WILKES: Any objection to that being admitted
2 into evidence?

3 MS. WHITE: No objection.

4 THE COURT: It will be admitted as an Applicant's
5 Exhibit, and that is a copy of . .

6 MR. WILKES: A copy of the chemist's report.

7 (Drug analysis report admitted in evidence without
8 objection as Applicant's Exhibit 8)

9 BY MR. WILKES:

10 Q. Back to the chain of custody, Sergeant Hutchins, where
11 would the chain of custody be?

12 A. It would be -- a copy would be in the Solicitor's Of-
13 fice file. I don't have a copy or know what was turned
14 over in discovery.

15 (Brief pause)

16 Q. You don't deliver any documents or discovery to the
17 Defense, is that correct?

18 A. No, sir.

19 Q. So it would have to go from you to the Solicitor,
20 and from the Solicitor to the Defense?

21 A. It would go from me or other people involved in the
22 case to the Solicitor's Office, and the original chain
23 would be housed in evidence with the drugs.

24 The original chain -- the only time that I get no-
25 tice from the chemist of the results is on a negative

M. HUTCHINS ON DIRECT

1 result, not if there is a positive.

2 In a lot of these cases they stream-line . .

3 Q. I believe I sent a subpoena that might cover the
4 chain of custody. Would it be fair for us to have a copy
5 if we can't find one from the Solicitor?

6 A. . .

7 Q. Would we be able to obtain a copy?

8 A. Yes. The chemist, I'm sure, would have a copy of it
9 or they ought to have a copy.

10 MR. WILKES: Just for the record, Your Honor, I am
11 not sure if the Solicitor's Office has a copy. If they
12 don't, can we obtain a copy or have them produce it under
13 subpoena?

14 I had subpoenaed that, and I want to make sure we
15 have one for the record, or to show there is not one.

16 MS. WHITE: Your Honor, I'm told it is possible it
17 could have been destroyed with the drugs. So I don't
18 know, unless . .

19 THE COURT: Go on with the testimony at this point.

20 BY MR. WILKES:

21 Q. Sergeant Hutchins, are you aware of there being a
22 chain now?

23 A. . .

24 Q. In other words, do you know whether those chain docu-
25 ments still exist?

M. HUTCHINS ON DIRECT

1 A. I do not know at this time.

2 Q. Okay, is it possible that they have been destroyed?

3 A. The drugs -- it's very possible they've been destroyed
4 and that is where the chain would have been.

5 I do not know whether they exist currently or not.

6 Q. Okay. Is there any place that a copy of the chain
7 of custody in any drug case would be located?

8 A. . .

9 Q. So that we can double-check for this one.

10 A. . .

11 Q. Is there any place . .

12 A. The only place I would know to look would be in the
13 Solicitor's Office which would still have the case file.
14 It could possibly be there.

15 Q. Very good. Now, as to the second incident wherein a
16 search warrant was executed and Mr. Chapman was arrested,
17 was Mr. Chapman also arrested on the warrants from that
18 first offense?

19 A. Yes, sir.

20 Q. And the search warrant was executed which was based
21 in part on the first offense?

22 A. The search warrant was executed at the time with the
23 arrest warrant. Yes, sir.

24 Q. And there were drugs found at the residence at that
25 time?

M. HUTCHINS ON DIRECT

1 A. Yes, sir.

2 Q. At the time of the search?

3 A. Yes, sir.

4 Q. Okay, what drugs were found as a result of the ar-
5 rest and the search?

6 A. Reading from the report referencing case number 2009
7 08 0125, suspect Anthony Chapman and Carl (inaudible)
8 Chapman, SLED item one, off-white rock substance cocaine
9 base, parenthesis crack found, one hundred eleven point
10 zero grams of schedule two controlled substance.

11 Item number two, white powder substance. Results,
12 cocaine found one point nine five grams, schedule two
13 controlled substance.

14 Q. Okay. Now, on that case do you have a copy of the
15 chain of custody?

16 A. No, and to go back, there is also a marijuana analy-
17 sis report on a second page.

18 Item one references 2009 08 0125, Anthony Chapman and
19 Carl Chapman, SLED item one, a large amount of green leaves
20 in paper bag, or said to have been removed from paper bag.
21 Results, marijuana found, schedule one controlled substance.

22 Actually, these are the chain of evidence or custody.

23 Q. And may I see those for just a second?

24 A. . .

25 (Brief pause)

M. HUTCHINS ON DIRECT

1 Q. So how is it you have a chain of custody for these
2 drugs but not the marijuana that started the case?

3 A. These were obtained from the Solicitor's Office files
4 and it had the chain attached to it.

5 Q. The Solicitor's Office file printout on the earlier
6 one did not? Do they have it or they do not?

7 A. What do . .

8 Q. Look at some of those documents. They are from the
9 Solicitor's Office, correct?

10 A. You're talking about where it's got a name and a num-
11 ber?

12 Q: Yes, sir.

13 A. Yes, sir.

14 Q. Okay. The chain documents have that or not?

15 A. They do.

16 Q. They do? Do all the documents you've shown me have
17 the Solicitor's Office -- which documents came from the
18 Solicitor's Office?

19 A. You remember seeing the marijuana report? Look at the
20 bottom where it's stamped.

21 Q. Very good. So they all have the Solicitor's stamp
22 on them? A marking of some sort?

23 A. . .

24 Q. But you are familiar with it, so it would be logical
25 to assume that if all things work well the Solicitor should

M. HUTCHINS ON DIRECT

1 have a chain of custody?

2 A. They may have. I'm not sure about that.

3 Q. And you've testified that you've seen the video so
4 you would be able to look at the video the Solicitor has
5 and identify it as the right video so we can look at it
6 again?

7 Is that true?

8 A. Yes.

9 Q. Okay. No further questions of this witness.

10 THE COURT: You may cross examination.

11 MS. WHITE: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MS. WHITE:

14 Q. The search warrant was obtained based on two differ-
15 ent things. Is that right?

16 A. Yes.

17 Q. One being a buy of marijuana by the CI?

18 A. That's right.

19 Q. And also that you received additional information
20 from the CI concerning marijuana in the home?

21 A. Yes. The marijuana being grown in the home.

22 Q. And that information was provided in an affidavit as
23 well, is that right?

24 A. Yes, maam.

25 Q. Now, would you have had to -- based on the fact it

M. HUTCHINS ON CROSS

1 was a confidential reliable informant, would you have had
2 to have a buy to be able to get a search warrant for that?

3 A. No, maam. The confidential reliable informant observ-
4 ing the marijuana growing would have been enough to obtain
5 a search warrant.

6 Q. For you all to have a search warrant, isn't it true
7 -- once you all had the search warrant, isn't it true that
8 Mr. Chapman actually pointed out and showed you all where
9 the cocaine and crack were in the house?

10 A. Yes, maam.

11 Q. Or in the garage. Okay.

12 In addition to the buy that was done on six eighteen,
13 and you've referenced the video -- obviously Mr. Chapman
14 says it was an illegal video.

15 This was a video that was done in the process of the
16 CI's controlled buy. Is that right?

17 A. That's correct.

18 Q. In addition, the video also shows marijuana growing
19 in this home or in the backyard?

20 A. Yes, maam.

21 Q. You had that information on the video as well?

22 A. Yes, maam.

23 Q. And he pled guilty on the manufacturing marijuana,
24 trafficking in crack and possession with intent to distri-
25 bute cocaine? Is that right?

M. HUTCHINS ON CROSS

1 Do you recall that?

2 A. Yes, maam, that's correct.

3 Q. Which ultimately never -- he didn't plead guilty or
4 go to trial on the actual distribution of marijuana charge.
5 Right?

6 A. No, maam. That may have been a part of the plea ne-
7 gotiations but he did not ever go to trial for that.

8 Q. Okay. Nothing further.

9 THE COURT: Anything further?

10 MR. WILKES: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. WILKES:

13 Q. You indicated the video shows marijuana being grown
14 on the video?

15 A. The recorder was a covert recorder.

16 Q. And where did that covert recorder come from?

17 A. It was placed on the CI by us.

18 Q. Okay, so you all sent him there to go in and do
19 something in Mr. Chapman's residence?

20 A. To go in and do an undercover buy, yes.

21 Q. Okay, and if the video did not show what the CI had
22 told you -- like I say, when the CI came back and said I
23 did this and this and saw something growing, and if that
24 is not what the video shows, would that not impact your
25 determination of his credibility?

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.

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.

1 We considered this was going to be a trial, but then
2 an offer was made.

3 Q. So an offer was made and then there was a plea
4 entered?

5 A. Yes.

6 Q. And at the time you had a copy of the video that we
7 have talked about?

8 A. The video that was of the controlled buy.

9 Q. Yes. Now, is that rare to have in a drug case?

10 A. No, it's not.

11 Q. And to do an undercover controlled buy with recording
12 devices, what is the process that you go through?

13 A. That would be the Sheriff's Office, but to my know-
14 ledge there is no judicial process you go through.

15 Q. So to your knowledge, there is no warrant that has
16 to be gotten?

17 A. No, maam.

18 Q. Thank you. I have no further questions.

19 THE COURT: Anything further?

20 REDIRECT EXAMINATION

21 BY MR. WILKES:

22 Q. So as far as you know, in this case there was no ju-
23 dicial authorization?

24 A. Not that I'm aware of. It was during a buy.

25 Q. And is it routine to video a marijuana purchase?

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?

M. BROWN ON DIRECT

1 A. The latter half of 2009.

2 Q. So it was approximately a year prior to the plea?
3 Would that be accurate or fairly accurate?

4 A. Yes, maam.

5 Q. I'm going to ask you just a couple of questions spe-
6 cifically relating to Mr. Chapman's earlier testimony.

7 Mr. Chapman talked about originally that he met with
8 you once when he was out on bond that entire year prior
9 to the trial. Is that accurate according to your recol-
10 lection?

11 A. Yes. He said that.

12 Q. And he also testified briefly that he met with you
13 once the day before the trial but then also added that he
14 had met with you originally to retain you.

15 Do you recall having any other meetings other than
16 those two?

17 A. Uh, I probably met him more in my office, and some-
18 time out of the office. I know I met with him on Decem-
19 ber 18th of 2009 at 3:45, and in 2010 -- 7 4 at ten
20 thirty-six and then (inaudible).

21 Q. Okay. So at least three times or probably four you
22 met with him prior to this trial?

23 A. Yes, maam.

24 Q. And did he talk with you about all of the things he
25 has expressed with regards to the search warrant and the

M. BROWN ON DIRECT

1 buy that led to it?

2 A. He did. He mentioned oftentimes what he claimed was
3 false information or statements being given for the search
4 warrant, about them being in his home.

5 Q. And in your research in preparation for this, did you
6 think that you all had a good defense or a good chance of
7 obtaining positive results?

8 A. With the charges against him, the evidence of the
9 State, the interrogation of him himself, the information
10 that came out with regards to drugs spotted in the house,
11 the crack and cocaine along with the marijuana, it didn't
12 seem we would have a positive result at trial.

13 Q. Did you discuss with him -- obviously he talked about
14 having a Jackson v Deno hearing on the day -- did you
15 talk with him about what you -- what motions you would
16 file on his behalf to have hearings on prior to the trial?

17 A. I did. Mr. Chapman again was adamant about what he
18 told me, and we discussed all of it. (Portion inaudible)
19 He talked a lot about the affidavit that was taken by law
20 enforcement for the search warrant, and we talked about a
21 suppression hearing and everything else.

22 Q. Now, Mr. Chapman indicated that his Fourth Amendment
23 rights had been violated, and that there was a chance if
24 the drugs were suppressed; that he never would have pled
25 guilty but you thought he had no chance after the drugs

MR. BROWN ON DIRECT

1 were not suppressed.

2 Would you agree with that statement?

3 A. I wouldn't agree with that statement. We tried our
4 best to have that happen prior to the trial which is a
5 common practice but we were not able to do that.

6 So leading up to the trial, we went through all of
7 it again, and certainly it was something that was pursued.
8 I felt like things were against us if we went into trial,
9 and I certainly told him what I thought.

10 Q. In your conversation with him, you felt like he un-
11 derstood that you were -- that that was one of the op-
12 tions as well, to suppress the search warrant?

13 A. Yes. At the outset of the case I spoke with his pre-
14 vious counsel about Mr. Chapman's case and his position
15 going into a trial. We did challenge everything that we
16 could in the case but we did not want to aggravate the
17 prosecution unnecessarily.

18 We had many conversations with Mr. Chapman on all of
19 these points, as well as his right to appeal in the event
20 he did not have a favorable result.

21 Q. In regard to the actual pre-trial hearings, Mr.
22 Chapman testified that he believed it would have made a
23 difference to have had this video from the original CI
24 buy in June of 2009 -- had that been entered into evi-
25 dence and shown to the Court.

M. BROWN ON DIRECT

1 Was that something you considered?

2 A. It is not something I considered. Looking at the
3 video it was a matter that came up, and I did inform Mr.
4 Chapman of that. The video that eventually was shown or
5 the video Mr. Chapman and I saw was of the buy.

6 Of course, there was a video that was taken in the
7 home after those particular allegations were made of the
8 marijuana and what was found on the counter, some kind of
9 device associated with marijuana.

10 We had conversations about that but I wasn't famil-
11 iar at that time with the other video but at the time it
12 was what I had seen and based on what I know. That was
13 the way I felt at that point and he trusted me as his
14 attorney.

15 Q. And did you have any concerns about the video that he
16 has testified was where the CI had walked around the garage
17 and kind of looked around the house?

18 Was that anything that you thought would have been
19 helpful to him for it to have been seen?

20 A. The video showing the CI making a buy would not have
21 helped him in my opinion with a jury or the drugs shown.

22 Q. And so your recollection is the video contained vis-
23 ible marijuana?

24 A. It was clear there were drugs there.

25 Q. Okay. In regards to plea negotiations and after the

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

M. BROWN ON DIRECT

1 notice of appeal in his case?

2 A. No, I didn't.

3 Q. Did -- within ten days did Mr. Chapman file a no-
4 tice of appeal?

5 A. No.

6 Q. In this case, is this one that if the Defendant had
7 wanted to appeal you would think it was something that
8 possibly could have been reversed on appeal?

9 A. After the pre-trial hearings and what occurred, no,
10 and not after he accepted the negotiation and entered his
11 plea.

12 MS. WHITE: May I have a moment?

13 THE COURT: Yes, maam.

14 (Brief pause)

15 BY MS. WHITE:

16 Q. Mr. Brown, just in a general question now, in regards
17 to the chain of custody of the chemical analysis, was
18 there anything that called your attention to it or that
19 would make it more important than was raised at the hear-
20 ing?

21 A. No. Well, the chain was something at that time I
22 talked to the prosecutor about. I was just trying to feel
23 the prosecution out but I didn't feel it was important
24 to the case outside of the analysis. The issue involved
25 the drugs themselves, and there was no need to go at any

M. BROWN ON DIRECT

1 length into questions about it.

2 In this case, Mr. Chapman pled and didn't want to go
3 to trial.

4 Q. Okay. He also testified that he had never given
5 permission for the recording or for the CI to tape or
6 videotape the transaction. Audiotape or videotape.

7 To your knowledge, is that anything, him not giving
8 permission for the CI to video or audiotape -- is that
9 anything that would have helped the case?

10 A. No, it is not anything that is of any substance or
11 significance.

12 Q. I think that's all I have.

13 THE COURT: Your witness.

14 CROSS EXAMINATION

15 BY MR. WILKES:

16 Q. Mr. Brown, you indicated that you would not want to
17 aggravate the prosecution unnecessarily while you were
18 negotiating, and even to get better offers or maintain
19 that line of negotiation; at the time of the suppression
20 hearing it would have been all gloves off at that point.
21 Right?

22 A. Yes.

23 Q. And during the suppression hearing or at the time
24 of the suppression hearing you were bringing up issues
25 that might challenge the evidence. Correct?

M. BROWN ON CROSS

1 A. Yes. We were bringing up issues I had discussed
2 with Mr. Chapman that were very important to his case,
3 so I would say yes.

4 Q. And the chain document underlying the affidavit, the
5 search warrant itself, did you -- did the record show
6 that there was something wrong with the chain of custody
7 document?

8 A. No.

9 Q. Did you have at that time the chain of custody docu-
10 ment in the discovery?

11 A. No. No, the chain of custody document wasn't in
12 the discovery.

13 Q. And you received the discovery in the case?

14 A. Yes, sir.

15 Q. You received the drug analysis and chain documents
16 from the search warrant, didn't you?

17 A. Yes.

18 Q. But not on the underlying incident that was the
19 basis of the search warrant?

20 A. No, not that I recall. It is not in my file.

21 Q. You have looked in your file and it's not there?

22 A. No, sir.

23 Q. Okay. If there was a discrepancy in the chain of
24 custody, it obviously would have been something that could
25 have been brought out, had you been given it and been

M. BROWN ON CROSS

1 aware of it. Correct?

2 A. If there was a discrepancy.

3 Q. But without having it, there would be no way to know
4 if there was a discrepancy or not?

5 A. That's true.

6 Q. The discovery motion certainly would have covered
7 that, don't you think?

8 A. That is very clear, yes.

9 Q. Now, any reason in not at least cross examining the
10 witnesses as to the chain in the suppression motion, or
11 the absence of the chain document?

12 A. Again, at the time we were looking at a trial as a
13 bottom line, and the suppression was the last chance.

14 Q. So what you are saying is that going to trial was a
15 risk, so there wasn't a trial.

16 The video -- you had a copy or at least looked at a
17 copy of the video?

18 A. Yes.

19 Q. Have you recently read back over the transcript of
20 the suppression hearing?

21 A. No, not recently.

22 Q. Would you agree that it is possible that you may
23 have cross examined several officers on the facts?

24 A. They didn't see anything.

25 Q. In other words, the facts that should have been

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.

M. BROWN ON CROSS

1 Q. All right, and why was the video actually not just
2 shown?

3 A. True. It was requested but, again, I don't know the
4 specific discrepancies or the nature of whether they were
5 available to be seen. I think the overall conduct of the
6 officers was some concern to us.

7 Q. In particular, that is about the day the search war-
8 rant was executed, but I'm talking about in cross examin-
9 ing the officers about the truthfulness of that affidavit,
10 whether or not they knew they were putting in stuff that
11 was either false or in reckless disregard for truth.

12 You were examining them on those facts of the sale
13 but there is no evidence there was a sale on that video.
14 You referenced it but you never introduced it. Is there
15 any reason you would not introduce it to show the Judge
16 your point?

17 A. Well, because it was our motion and they would have
18 introduced it at trial, so I didn't introduce it.

19 Q. At trial?

20 A. . .

21 Q. And you didn't have anything to do with his motion,
22 post trial motion, or any of that?

23 A. No, sir.

24 Q. Okay. Very good. No further questions.

25 THE COURT: Anything further?

MR.. BROWN ON REDIRECT

1 MS. WHITE: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. WHITE:

4 Q. Mr. Brown, is it possible that the video of the ini-
5 tial controlled buy would have harmed your case, being it
6 showed or based on the fact it showed marijuana growing in
7 Mr. Chapman's house?

8 A. Yes, it could if our challenge didn't work.

9 Q. And you were talking about a second video where you
10 talk about the officers' conduct. That would go to the
11 voluntariness of the statement, is that right?

12 A. Yes.

13 Q. Okay, and you did cross examine both the officers
14 about that evidence, in addition to cross examining him,
15 or at least Officer Hutchins, about the funds that they
16 used for the buy by the confidential reliable informant,
17 and whether or not the affidavit contained completely
18 accurate informatoin?

19 A. Yes. The video itself didn't match up with some of
20 the stuff they had -- I think some of it was false also.

21 Q. Okay, and ultimately you made those arguments and
22 that motion was denied?

23 A. Yes.

24 Q. Thank you. That's all I have.

25 RECROSS EXAMINATION

M. BROWN ON RECROSS

1 BY MR. WILKES:

2 Q. You said in your answer that it doesn't help the case
3 or could possibly hurt the case to show that video. I'm
4 talking about -- you understood I was talking about the
5 suppression motion. Right?

6 A. Yes.

7 Q. So it doesn't hurt the case as far as the jury is con-
8 cerned?

9 A. As far as the jury was concerned, that's correct.

10 Q. Okay, no further questions.

11 THE COURT: You may step down, sir.

12 (Witness excused from stand)

13 THE COURT: Any other witnesses?

14 MS. WHITE: Your Honor, the State would rest.

15 THE COURT: All right. Mr. Wilkes, I'll be glad to
16 hear from you.

17 MR. WILKES: Thank you, Your Honor.

18 Your Honor, in this case we have offered the video
19 into evidence. My client has maintained early on, and the
20 reason for the suppression motion, that the affidavit un-
21 derlying the search warrant was and is evidence of the
22 falsity of the information.

23 Had the video been seen, it would have been seen not
24 only whether it was true, but whether it was at least in
25 reckless disregard.

1 In either case, it would invalidate the affidavit for
2 the search warrant. That being the case, all of this be-
3 comes then the fruit of the poisonous tree.

4 The other argument obviously is that in the initial
5 search they sent this person in and he, as indicated on
6 the video, began a search before entering or before see-
7 ing Mr. Chapman.

8 He was in the garage area, which is certain within
9 the protected area.

10 Later, even when let in, he proceeded to search the
11 areas outside of Mr. Chapman's presence, whether or not
12 it was expected of him.

13 Those would indicate an initial unlawful search and
14 under the Fourth Amendment he's got a reasonable expecta-
15 tion of privacy on his property, a protection against
16 police action even though they were sending in a CI.

17 It doesn't matter whether he was a police officer,
18 but the search began . .

19 THE COURT: Is there a case on that point?

20 MR. WILKES: Well, the -- I'll have to think for a
21 minute to cite the case.

22 He had an expectation of privacy which is based on
23 the Fourth Amendment. The search becomes the fruits -- I
24 don't know the name of the case, but the fruits of the
25 search were admissible if the person comes in and conducts

1 a search regardless of its legality. A non-police search
2 in this case, even if it's unlawful, would be admissible.
3 There's no question about that, but if the police had in-
4 stigated it and set it up and authorized the CI to do it
5 -- if they authorized the CI to do this -- if the CI en-
6 ters that house without any authority, which he did enter
7 the garage, that becomes the search and what my client has
8 maintained from the beginning is that this search came at
9 a point where he never knocked on the door.

10 He went in the garage area and was searching. He was
11 ultimately let in but if the video shows he was let in and
12 Mr. Chapman called out and said, I'll be right back and
13 went upstairs -- the video, according to Mr. Chapman, will
14 show that the man then did walk around and did further
15 searching.

16 So the point being . . .

17 THE COURT: If you let the person into your home and
18 walk in front of you, it would be lessen the dictates of
19 privacy at this point.

20 MR. WILKES: It may be lessened but it is still an
21 expectation of privacy, and the question is if you let
22 them in the front door and said, hold on one second; I'll
23 be right back, and they then kick in a door and do search
24 on the cabinets and do a search around while the person
25 had stepped away and then he comes back -- that is still

1 an unlawful search.

2 The expectation of privacy might not be as prime but
3 it is still protected.

4 But the big point is that if it is clear from the vi-
5 deo that he is searching -- the initial going in and the
6 searching without protected privilege before he's even
7 knocking on the door and before being let in, that would
8 be an unreasonable search.

9 He was lined up by the police to do the searching,
10 and so that is the basis to invalidate the search and it
11 all goes back to the video.

12 Of course, Mr. Chapman wanted the video to be viewed.
13 by the Court.

14 THE COURT: Let me ask you a question. This motion,
15 whatever it was, was it served?

16 MR. WILKES: Yes, sir.

17 THE COURT: So if it had been . .

18 MR. WILKES: Yes, sir, unfortunately, and therefore
19 technically -- that possibility is a part of our claim
20 that he is entitled to a belated appeal.

21 THE COURT: Oh, I don't know it applies to a belated
22 appeal. If that motion is still pending, what . .

23 MR. WILKES: That's true.

24 THE COURT: . . is the chronology in which an appeal
25 would take place?

1 MR. WILKES: That's true. That is exactly correct,
2 and that is . . .

3 THE COURT: I'm trying to find out what your position
4 is. Is it your position that the motion is still pending?

5 MR. WILKES: Yes, sir, it is.

6 THE COURT: And therefore a PCR would not be in order,
7 or is it your position that the PCR is in order and the
8 motion should -- I'm between the devil and the deep blue
9 sea here.

10 MR. WILKES: That is the correct analysis. It is a
11 conundrum. It is what it is, and we know it. As far as
12 we can tell from the evidence shown, there has never been
13 a ruling.

14 So the time for an appeal has not even come. Techni-
15 cally you are right. He is not entitled to a belated ap-
16 peal but he shouldn't even be filing a PCR given where he
17 is at.

18 But we are in a practical place to be able to decide
19 how to handle it. Either the Court -- and I can move to
20 merge this for a ruling on that . . .

21 THE COURT: That should have been ruled on by the
22 Trial Judge.

23 MR. WILKES: That's true. It should have been, and
24 let me say this to the Court. The record does show that
25 Mr. Chapman was diligent in trying to get it moved along.

1 THE COURT: Well, there is a little concern when the
2 Court of Appeals took its position after he said, well, I
3 have this motion pending and it was never heard.

4 MR. WILKES: That is true, but the question we're fac-
5 ing is how do we give him justice or give him some relief
6 by at least a ruling.

7 The problem is that nobody during this appeal process
8 -- there was never any vehicle for him really to say or
9 introduce evidence to say or to know what to do to say I
10 think there is still a motion pending.

11 THE COURT: It is concerning to me.

12 MR. WILKES: Well, we have to do something now, I
13 think, with the PCR.

14 THE COURT: I'm not sure what is the proper procedure
15 here.

16 MR. WILKES: Well, procedurally, what we see is obvi-
17 ously a ruling on it. He's been unsuccessful to this
18 point, and we are at the PCR process.

19 It is here . .

20 THE COURT: But I didn't see anything though that
21 would indicate it was brought to the attention of the
22 Trial Judge. The motion hadn't been made at the end of the
23 plea but it was filed with the Clerk's Office.

24 I can assure you that I check with the Clerk's Office
25 everyday to see if there is a post-trial motion that

1 needs to be heard.

2 MR. WILKES: And that brings up a different question,
3 but the dilemma is that he did repeatedly ask and was
4 even told they can't answer. That wasn't an answer but we
5 can't answer.

6 So we're here today. He filed for PCR and he tried
7 filing an appeal and tried filing PCR. I got in on the
8 PCR long after, you know, it was filed, but that is where
9 we are.

10 So either direct appeal or go back to the motion, but
11 whatever renders him justice on the issue we would ask
12 for, Your Honor.

13 THE COURT: Ms. White?

14 MS. WHITE: Thank you, Your Honor.

15 THE COURT: We've raised a couple of questions here.

16 MS. WHITE: Well, I believe the State's position with
17 regards to the motion for reconsideration is there are
18 rules about representation to prevent this exact sort of
19 conundrum as the Court phrased it.

20 He was represented according to the Clerk's Office at
21 that time by Mr. Brown. The motion for reconsideration
22 was signed by Anthony Chapman, so in that position, you
23 know, the Court . . .

24 THE COURT: I have researched that as far as the re-
25 sponsibility and I am not sure he has responsibility

1 except to give him information.

2 MS. WHITE: The standard, Your Honor, I believe is
3 under whether or not a belated review of a direct appeal
4 of a guilty plea is whether the attorney was asked by
5 their client to file an appeal or there is something that
6 in the case gives them substantial reason to believe that
7 client would want to appeal.

8 THE COURT: All right. Well, in this case I didn't
9 hear any communication from Mr. Brown so maybe his repre-
10 sentation had ended.

11 MS. WHITE: That is kind of where -- it is kind of a
12 strange situation because, you know, from all indications
13 Mr. Chapman indicated he wanted to withdraw his plea and
14 the motion doesn't necessarily say that. It was more
15 about I was prosecuted unfairly.

16 THE COURT: Is that motion in the back of the . .

17 MS. WHITE: Your Honor, I believe it is attached to
18 the back of the . . .

19 THE COURT: I'll get that.

20 MS. WHITE: I think we are in a position where -- ac-
21 cording to the Clerk's Office, he was represented by coun-
22 sel and had been represented by counsel.

23 If a notice of appeal had been filed within ten days
24 then jurisdiction would have been with the Court of Appeals.
25 This situation is kind of odd because he filed a pro se

1 notice which he was represented by counsel but then juris-
2 diction had not transferred so . .

3 THE COURT: It looks like he got that motion in within
4 the time period.

5 MS. WHITE: I believe he did get the motion for recon-
6 sideration in within ten days. Now, did he ask his at-
7 torney to do that or have the attorney file it on his
8 behalf after he pled guilty? It does not appear so, so
9 the State's position is that, you know, it was an improv-
10 erly filed motion.

11 The Court is pretty clear that they won't consider
12 substantial substantive motions other than a motion of
13 lead counsel.

14 So the State would argue that there was an improperly
15 filed motion because he filed pro se, and therefore it is
16 not still pending because it was not filed properly.

17 In regard to . .

18 THE COURT: There was no communication by anybody to
19 him that the motion was improperly filed or that he should
20 have representation.

21 I didn't see anything in the record to indicate he was
22 made aware of that.

23 MS. WHITE: And there is no indication also that any-
24 one else was copied on the motion.

25 THE COURT: Yes, and . .

1 MS. WHITE: From all appearances it was filed and no
2 one was copied on the motion, so how can you have a motion
3 for reconsideration heard or ruled on when it is just
4 filed as another document in the Clerk's Office.

5 Obviously, on PCR we are very familiar with that as
6 well.

7 THE COURT: It creates some issues.

8 MS. WHITE: Yes. So that would be our position that
9 it was improperly filed and, therefore, it was . . .

10 THE COURT: I think I would need to see -- if the at-
11 torney's obligation ended, I would like to have knowledge
12 of that. It is the attorney's obligation to file an ap-
13 peal if requested to do so.

14 But as far as a motion to reconsider the guilty plea,
15 if I know where the line was drawn with the attorney that
16 would have given some answer.

17 MS. WHITE: Your Honor, all we have to go on is the
18 Applicant's assertions, but I think we have case law that
19 defines ineffective. There has not been case law that
20 says someone is ineffective for not -- ineffective for not
21 filing a motion for reconsideration that I know of. I do
22 know that . . .

23 THE COURT: All right.

24 MS. WHITE: And, Your Honor, we would just argue that
25 there was a suppression hearing pre-trial and information

1 was raised about possible false statements in the affida-
2 vit. I think that was sufficient as well as the other in-
3 formation supplied to the Court that would have provided
4 probable cause.

5 THE COURT: If you have additional case law or in-
6 formation you would like to submit I will be happy to
7 get it.

8 MR. WILKES: Thank you, Your Honor.

9 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared to the best of my ability from the records of Pamela Faucette, having been heard in the Court of Common Pleas for Spartanburg County on January 21, 2014.

FURTHER, that I am neither of kin nor counsel to any party to this matter, nor do I have any interest in the same.

November 5, 2016



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Attachment C

Valerie Giovanoli

From: Harriet Bennett < >
Sent: Monday, April 10, 2017 6:17 PM
To: Valerie Giovanoli
Subject: Re: Anthony Chapman v. State 2011-CP-42-5457 (Jan 21, 2014)

I use the two periods to indicate an incomplete answer. Not that I can't hear it but it's not given. PLS call me at if you have questions. Lots of problems with her records.

On Apr 10, 2017 10:05 AM, "Valerie Giovanoli" <VGiovanoli@scag.gov> wrote:

Mrs. Bennett:

I received a motion from the Office of Appellate Defense requesting the Supreme Court to order a reconstruction hearing of a PCR hearing based on deficiencies in a transcript you transcribed. The original court reporter, Pamela Faucette, was no longer available and you were kind enough to transcribe it in her place. However, I am trying to respond to OAD's motion as to why a reconstruction hearing is not necessary and that this transcript is sufficient. So, I needed some clarification from you.

The motion basically says that there are too many portions missing to be of use in an appeal. The missing portions that indicate the words are inaudible are self-explanatory. But, many missing portions have two periods, like, ". ." My question is simply what do those periods mean? They are not technically ellipses because there are only two periods, so I was wondering if maybe you used them to indicate a pause or a non-responsive noise. I assumed that since you actually noted inaudible portions of the discs, the two periods meant something else. In your general practice, what do you use ". ." for when transcribing?

Thanks for your help!



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