

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Fairfield County

John C. Hayes, III, Circuit Court Judge

RECEIVED
JAN 03 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL E. CHAPPELL,

APPELLANT

MOTION FOR A RECONSTRUCTION HEARING OR FOR THE
GRANTING OF A NEW TRIAL IF THE RECORD CANNOT BE
RECONSTRUCTED

Appellate Case No: 2018-001649

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, undersigned counsel requests an order requiring the parties to reconstruct the record of appellant's trial transcript. In the alternative, appellant requests an order setting aside his conviction and ordering a new trial. Appellant was tried on March 19, 2004, in Fairfield County, before the Honorable Kenneth Goode. Carol Tolen was appellant's trial counsel. Shirley Broom was the court reporter.

In accordance with Rule 240(c), SCACR, undersigned counsel submits the following documents to support her motion: indictment (Exhibit #1); August 30, 2018 transcript of sentencing hearing (Exhibit #2); sentence sheets (Exhibit #3); letter from court reporter Shirley Broom (Exhibit #4); affidavit of sentencing counsel Robert FitzSimons (Exhibit #5).

A Fairfield County Grand Jury indicted appellant on October 14, 2003 for distribution of crack cocaine, an event alleged to have occurred on September 2, 2003. Exhibit #1.

Appellant was tried in his absence before the Honorable Kenneth Goode and a sentence was sealed by the court on March 19, 2004. Exhibit #2. Carol Tolen was appellant's defense counsel and Christine Olle Sloane represented the State. Exhibit #5. Appellant was convicted. Exhibit #2.

On August 30, 2018, appellant appeared before the Honorable John C. Hayes, III, for sentencing and was represented by Robert FitzSimons. Exhibit #2. The court unsealed the trial judge's sentence of twenty years imprisonment but reduced the sentence to fifteen years imprisonment. Exhibit #3.

Upon receipt of the appointment to represent appellant, this office requested the trial transcript. However, the court reporter was unable to provide the transcript. Exhibit #4. Appellant is serving a fifteen-year sentence and a transcript of his trial is necessary for appellate counsel to represent him and for this Court to give meaningful appellate review.

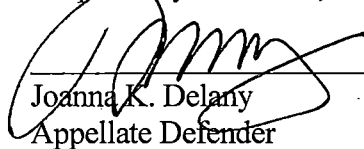
When a trial transcript has been lost or destroyed, the Court may remand to have the record reconstructed. Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968); Koon v. State, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004); Dolive v. J.E.E. Developers, Inc., 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct. App. 1992); State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 273-274 (Ct. App. 2007). Appellant's trial transcript is no longer available. See Exhibit #4. Therefore, meaningful review of the record below is not possible. Appellant seeks reconstruction of the record to permit meaningful appellate review of his trial.

The late Honorable Kenneth Goode, who was the trial judge, has passed away. Therefore, appellant respectfully requests this Court appoint a judge to preside over the reconstruction hearing.

In Deaton v. Leath, 279 S.C. 82, 84, 302 S.E.2d 335, 336 (1983), the defendant's convictions were set aside and a new trial had where the court reporter's equipment malfunctioned and there was no transcript of the trial court proceedings in the case from which to base an appeal. Appellant respectfully requests that the order of this Court also mandate that if the circuit court is unable to reconstruct the record of this trial that he or she order a new trial for appellant.

WHEREFORE, the undersigned counsel requests an order for the reconstruction of appellant's trial transcript in order to perfect appellant's direct appeal in the case. Appellant respectfully requests this Court to appoint a judge to preside over the reconstruction since Judge Goode has passed away. Further, appellant respectfully requests that the order also mandate that if the circuit court is unable to reconstruct the record of this trial that he or she must order a new trial for appellant. While this motion is pending, appellant asks this Court to hold the timelines for filing his initial brief and designations in abeyance.

Respectfully submitted,



Joanna K. Delany
Appellate Defender

January 3, 2019

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Fairfield County

John C. Hayes, III, Circuit Court Judge

RECEIVED
JAN 03 2019
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL E. CHAPPELL,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies the motion for reconstruction hearing or for granting a new trial if the record cannot be reconstructed in the above referenced case has been served upon J. Benjamin Aplin, Esquire, Senior Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 3rd day of January, 2019.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of January, 2019.

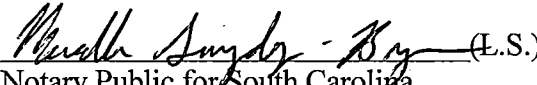
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 7/26/2028

Exhibit 1

Carol Tolson

DOCKET NO. 2003-GS-20411

WITNESSES

Lee Haney-FSD

Bread Douglas

The State of South Carolina

County of Fairfield

COURT OF GENERAL SESSIONS

OCTOBER TERM 2003

ARREST WARRANT NUMBER/DOA

G819610 (DOA-09-08-03)

THE STATE

vs.

Michael Edward Chappell

See also, Oswald Kelly 03-453

ACTION OF GRAND JURY

TRUE BILL 10-14-03

Nancy M. Williams

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Jammy Roberson

3-19-04

Foreperson of Petit Jury

Date:

BW 10.21.03
ETA

Indictment for

Distribution of Crack Cocaine

SC Code: § 44-53-375(B)

CDR Code: 0112

Class: Felony, D

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

INDICTMENT

At a Court of General Sessions, convened on October 14, 2003, the Grand Jurors of
Fairfield County present upon their oath:

DISTRIBUTION OF CRACK COCAINE

That Michael Edward Chappell did in Fairfield County on or about September 2,
2003, distribute, dispense, or deliver crack cocaine, in violation of § 44-53-375(B), *Code
of Laws of South Carolina, (1976), as amended.*

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



John R. Justice, SOLICITOR

Exhibit 2

STATE OF SOUTH CAROLINA
COUNTY OF FAIRFIELD

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 MICHAEL EDWARD CHAPPELL,)
)
 DEFENDANT.)
 _____)

2003-GS-20-00411

TRANSCRIPT OF RECORD

AUGUST 30, 2018
WINNSBORO, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN C. HAYES

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

RILEY MAXWELL
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

ROBERT FITZSIMONS, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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WITNESS

PAGE NO.

CERTIFICATE OF REPORTER

16

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No Exhibits Were Presented During This Hearing)

1 **MR. MAXWELL:** Your Honor, this is Michael Chappell.
2 Mr. Chappell was charged with distribution of crack, third,
3 on indictment number 2003-GS-20-411. It appears on March
4 19th of 2004 he was found guilty of distribution of crack,
5 third. I think it was called crack and not cocaine base at
6 the time.

7 Mr. Chappell was tried in his absence. I believe Judge
8 Goode was the presiding judge over the trial. A bench
9 warrant was issued back in 2003 or 4. I think it is noted
10 in the case file.

11 Recently law enforcement could not locate that initial
12 bench warrant. So Judge Gibbons, being the administrative
13 judge, issued a new bench warrant, maybe in the past two
14 months or so.

15 Mr. Chappell was located in Anderson County last week,
16 it's my understanding, by the SLED Fugitive Task Force Team.
17 And I believe my understanding is he has been living under a
18 different name, at least for some extended period of time or
19 at least since 2003.

20 There is a sealed sentence. We're here for the
21 unveiling of that sentence, unsealing of that sentence.

22 **THE COURT:** Mr. FitzSimons, anything before I open the
23 sentence?

24 **MR. FITZSIMONS:** No, not beforehand. Thank you, Your
25 Honor.

1 **THE COURT:** All right. And you are Michael Chappell?

2 **MR. CHAPPELL:** Yes, sir, I am.

3 **THE COURT:** But you've been going by a different name
4 in Anderson? What name was that?

5 **MR. CHAPPELL:** Jamal Kennedy.

6 **THE COURT:** All right. Well, I'm opening a sentence
7 that was sealed by, looks like ...

8 **MR. FITZSIMONS:** Judge Goode, Your Honor.

9 **THE COURT:** Yeah. These initials don't look like Judge
10 Goode's, but it was sealed on 3/19/04 presumably by Judge
11 Goode. I don't recognize his signature, but -- or initials.

12 **MADAME CLERK:** That's the former Clerk of Court, Betty
13 Jo Beckham.

14 **THE COURT:** All right. By the former Clerk of Court.
15 All right. Mr. Chappell, you were found guilty of
16 distribution of crack cocaine on March 19th, 2004. Judge
17 Goode sentenced you to twenty years imprisonment under
18 indictment 03-GS-20-411 for this offense. You understand
19 that?

20 **MR. CHAPPELL:** Yes, sir.

21 **THE COURT:** All right. Tell me, does he have any prior
22 -- what other record or has he gotten in any trouble while
23 he's been out under ---

24 **MR. MAXWELL:** Your Honor, in 1993 he was convicted of
25 forgery as well as malicious injury to personal property.

1 In 2000 and, no excuse me, 1994 looks like his probation was
2 revoked. 1996 he was convicted of possession of crack
3 cocaine. That probation was revoked in 1998.

4 In 2000 he was convicted of possession of cocaine,
5 second offense, and criminal domestic violence. Also in
6 2000 he was convicted of defrauding a hotel or restaurant.
7 In 2000 he was convicted of two counts of simple assault and
8 battery. He was also convicted in the same year of simple
9 possession of marijuana.

10 2002 he was convicted of simple assault. And also,
11 Your Honor, in 2014 he was stopped in New Mexico and charged
12 with driving under the influence and suspended license.

13 My understanding is he used the false name. And by the
14 time the fingerprints went through to determine who he
15 actually was, I think he'd already been released on bond.
16 And I don't know if there was actually a conviction -- I
17 don't see a disposition on that charge.

18 **THE COURT:** All right. Mr. FitzSimons.

19 **MR. FITZSIMONS:** Thank you, Your Honor. Your Honor,
20 it's only as Mr. Maxwell was reading that record that I
21 recalled in that in 2000 -- the law has changed, Your Honor.
22 And in 2004 I believe the law still was a possession of
23 marijuana counted as a prior drug offense for a distribution
24 of crack cocaine. And I'd ask the Court to go back through
25 Mr. Chappell's record.

1 The other thing is Mr. Chappell tells me there's more
2 than one person by the name of Michael Chappell appearing in
3 our court records. He tells me that that initial charge of
4 forgery ---

5 **MR. CHAPPELL:** No.

6 **MR. FITZSIMONS:** --- is not him.

7 **MR. CHAPPELL:** I'm sorry.

8 **MR. FITZSIMONS:** That's someone else. He admits to the
9 other parts of the record recited by the solicitor, but the
10 forgery was not -- he's saying is not him.

11 **MR. CHAPPELL:** And the simple assault charge is like I
12 just got into an argument and cursed somebody out. I never
13 put my hands on him. I've never been -- I've never been
14 violent in my whole life. Never. I've never been to jail
15 for fighting, violent or anything.

16 **THE COURT:** Why didn't you come -- I don't mean to cut
17 you off before ---

18 **MR. FITZSIMONS:** No, sir, Your Honor. As I said, I
19 wanted to make sure that the -- with reference to cocaine
20 base or crack cocaine that this is -- does not sound to be
21 actually a third offense.

22 **MR. MAXWELL:** He was convicted of cocaine or crack
23 cocaine charges both in 1996 and again in 2000. So this was
24 properly a third. That's not relying on a marijuana
25 conviction.

1 **MR. FITZSIMONS:** I apologize, Your Honor. Judge, I
2 would just point out Mr. Chappell was 33 at the time of his
3 trial. He has lived and worked 14 years.

4 As far as I can tell, the only thing -- time he's run
5 afoul of the law is this charge that's not been adjudicated
6 in New Mexico. And granted he was way up there in Anderson,
7 but, Your Honor, if he had done anything egregious, I'm
8 pretty sure that Court Administration and the criminal
9 justice system would have found him and you would have been
10 seeing Mr. Chappell much earlier if he had continued a life
11 of crime.

12 Now, I recognize he still has to be punished for what
13 he did in the past because he has not yet been punished for
14 that. On the other hand, we hear all the time about how
15 people convicted of crimes promise that they'll do better,
16 and here's a man who's done that, Your Honor.

17 **THE COURT:** Well, he didn't promise he'd do better, he
18 didn't come to court.

19 **MR. FITZSIMONS:** No, sir, but he did better just the
20 same. And I would ask the Court to amend this sentence. I
21 know you're not going to send him home, and I'm not asking
22 you to do that. But I think, Your Honor, something on the
23 order of one to five years is a much more appropriate
24 sentence.

25 Our attitudes towards drugs have changed. Our attitude

1 toward crack cocaine specifically has changed, legislatively
2 and societal. And I think, Your Honor, it doesn't make
3 sense for the State of South Carolina to incarcerate this
4 man for twenty years based on the law that has changed and
5 based on something he did almost 15 years ago. I'd ask you
6 to hear directly from him.

7 **THE COURT:** All right. I'll hear from him in just a
8 minute. Mr. Maxwell, what does a third carry now?

9 **MR. MAXWELL:** I think it carries a minimum of ten to
10 30, if I'm not mistaken.

11 (Pause)

12 **MR. MAXWELL:** Yeah, and I'd have to -- I didn't go back
13 and look at the subsequent priors ---

14 **THE COURT:** Right.

15 **MR. MAXWELL:** I think it was a little more stricter
16 back in 2003/2004. I think it changed in 2010. Mr. Hunter
17 has pointed out in the Strickler book, which came out in
18 2011 that if the priors are for possession, which in this
19 case they are, then the minimum sentence does not apply.
20 I'm not sure that was the law back in 2003 or 4, though.

21 **THE COURT:** Okay.

22 **MR. FITZSIMONS:** And, Your Honor, Mr. Frick just
23 reminded me of that. And, furthermore, if you will note on
24 his sentence sheet that his prior convictions were for
25 possession and not for distribution, it will also affect the

1 way time is calculated by the Department of Corrections.

2 **THE COURT:** Say that last thing again.

3 **MR. FITZSIMONS:** The Department of Corrections
4 calculates credit based on whether or not he's previously
5 been convicted of distribution. And since these charges,
6 both of these prior charges were for possession, it's
7 important to note that on his sentence sheet, please, sir.

8 **THE COURT:** All right. Mr. Chappell, anything you want
9 to say?

10 **MR. CHAPPELL:** I know what I done was wrong 15 years
11 ago when I left. And I do apologize. And I ask you today
12 to show some leniency on me.

13 But I have been working doing -- been an electrician
14 for 14 years. I haven't been in any trouble besides the
15 DUI. Matter of fact, when I caught that DUI I was in New
16 Mexico working as an electrician when I caught the DUI.
17 That's the only trouble I've ever been in since I left.

18 I obtained three electrical licenses since I've been
19 gone. I have an electrical license out of West Virginia,
20 apprenticeship license, electrical license out of Minnesota,
21 one out of Iowa. And I also obtained my electrical Nccer
22 card for places like V.C. Summer, big nuclear power plants,
23 stuff like that.

24 And I also -- I rehabilitated myself. I mean, I know
25 what I've done. Like I say, I've apologized. But it didn't

1 take me going to jail, it didn't take me going to a rehab.
2 I just knew I couldn't get in trouble no more. So I knew I
3 was done with drugs.

4 And also, I've been with my girl, my fiancé 11 years
5 with her and her kids. And we obtained, you know, just
6 bought some property and bought a house that we remodeled.

7 I ain't the same guy I was in 2003. I done changed one
8 hundred percent. And I ask you today, please, to have mercy
9 upon me. And if I can, I would like to have my family to
10 come up beside me to say a few words, if you don't mind.

11 **THE COURT:** I'll be glad to in just a minute. Is this
12 an 85 percent or was it an 85 percent?

13 **MR. MAXWELL:** I believe it was and still is an 85
14 percent.

15 **THE COURT:** Okay. All right. I'll be glad, Mr.
16 FitzSimons to hear ---

17 **MR. FITZSIMONS:** Your Honor, ---

18 **THE COURT:** --- a couple of his family members.

19 **MR. FITZSIMONS:** --- Mr. Chappell's aunt is here, Your
20 Honor.

21 **MS. KENNEDY:** My name is Jennifer Kenney, ---

22 **THE COURT:** Mr. FitzSimons, move Mr. Chappell over a
23 little bit.

24 **MS. KENNEDY:** --- Michael Chappell's aunt. And so I
25 think that was the first time that I've seen and spoke to my

1 nephew in almost 18 years. He was missing. He missed his
2 mother's funeral. He missed his father passing, his aunt
3 passing and all that.

4 When my nephew committed this crime, he was young. He
5 was young and he was just trying to make a way. But as he
6 spoke of, he's learnt. He rehabilitated himself, he's made
7 a better life.

8 As we was talking to him the first time last Friday he
9 explained to me, auntie, I made a mistake. And I'm asking
10 you to -- I know he have to pay for his crime, but forgive
11 him -- asking the Court to forgive him for his mistake.

12 He has children that he hasn't seen, you know. And I
13 just believe that my nephew has changed. He has changed his
14 whole life around.

15 **THE COURT:** All right. Thank you. Yes, ma'am, your
16 name?

17 **MS. NIX:** My name is Janice Nix. I've been living with
18 Mr. Chappell or we've been living together for 11 years. We
19 have a family together. He took my children on as his own
20 and helped raise them when their sorry dad would not. He
21 was on drugs.

22 We now have a grandbaby on the way, our first grandbaby
23 by our daughter. And I do ask for leniency as to our whole
24 family who has been torn apart with this matter.

25 **THE COURT:** All right. Thank you. Anything else, Mr.

1 FitzSimons?

2 **MR. FITZSIMONS:** No. Thank you, Your Honor.

3 **THE COURT:** Anything else, Mr. Chappell?

4 **MR. CHAPPELL:** Well, I do have a son here in Winnsboro
5 who needs help real bad. And I've been trying to get him
6 help to get him out of the streets, to get him out of
7 Winnsboro. I just ask that I don't spend the rest of my
8 life in prison where maybe I can get out and get a chance to
9 help him cross. If not, he's going to be here in front of
10 you, and it probably won't be long.

11 **THE COURT:** All right. Anything else, Mr. Maxwell?

12 **MR. MAXWELL:** Your Honor, Captain Brad Douglas, Major
13 Brad Douglas from the sheriff's department, I think he was
14 in narcotics at the time. He's over narcotics now. I think
15 he was the officer that worked on the case. You want to say
16 anything?

17 **MR. DOUGLAS:** Judge, just from a law enforcement
18 standpoint, it's nothing personal against Mr. Chappell, but
19 the fact of the matter is, he had his opportunity to be here
20 for court that day, he didn't. He split. He's been gone
21 for a while.

22 You know, the judge sentenced him at that time based on
23 what was happening then. If the sentence is reduced, what
24 does that tell other offenders we have? That it's okay,
25 hey, if I just don't show up, duck and dodge for years,

1 maybe the drug laws, you know, people will become more
2 accepting, the drug laws, the penalties will lessen. You
3 know, I think that's just opening up an avenue for us to be
4 looking for more people who will be ducking and dodging us.

5 **THE COURT:** Yeah, I ---

6 **MR. DOUGLAS:** I'm sorry.

7 **THE COURT:** No, go ahead.

8 **MR. DOUGLAS:** No, I just said I just think that, you
9 know, he had his choice then. He went, you know.

10 And, yeah, I know he's -- he's lived a lot cleaner
11 life. And that's because he doesn't want to interact with
12 law enforcement, and that's why he's doing that, but he had
13 his choice back then, and he made that decision. And the
14 judge at that time handed down his decision.

15 **THE COURT:** I ---

16 **MR. DOUGLAS:** And we feel that that's an appropriate
17 sentence for him.

18 **THE COURT:** I understand. Thank you. Anything else,
19 Mr. FitzSimons?

20 **MR. FITZSIMONS:** No. Thank you, Your Honor.

21 **THE COURT:** Well, I'll reduce it to fifteen years.
22 Give him credit for any time he's served. Prepare a
23 sentencing sheet. Thank you.

24 **MR. FITZSIMONS:** Thank you, Your Honor.

25 **MR. CHAPPELL:** Thank you, sir.

1

(Hearing Ended at 10:43 am)

2

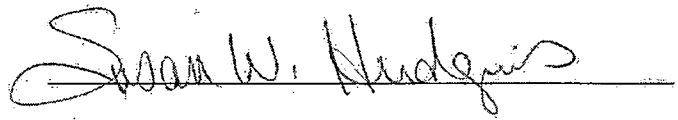
(End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Sixth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Fairfield County, South Carolina, on the 30th day of August 2018.

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

October 29, 2018

A handwritten signature in cursive script that reads "Susan W. Hudgins". The signature is written in dark ink and is positioned above a horizontal line.

Circuit Court Reporter

Exhibit 3

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Fairfield)
STATE VS.)

Michael Chappell)
AKA:)
Race: B Sex: M Age:)
DOB: 02-19-71 SS#: 248-255847)
Address:)
City, State, Zip:)
DL# SID#)

INDICTMENT/CASE#: 03 -GS- 20 - 411
AW#: 6819610
Date of Offense: 9-2-03
S.C. Code §: 44-53-375(B)
CDR Code #: 0 1 1 1 1 2
 CASE RESTORED
SENTENCE
 PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Dist. Crack Coc.
in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 2
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions
of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied
by the State Department of Corrections.

SPECIAL CONDITIONS:

RESTITUTION: Heard, Waived, Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms:
 set by SCDPPPS _____
Recipient: _____
*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Surcharge) \$ 100.00
§14-1-211(A)(2) (Surcharge) \$ _____
§56-5-2995 (DUI Assessment) \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$ 25.00
§33.7, 1B TP (Drug Court Surcharge) \$ 100.00
§50-21-114(BUI Breath Test Fee) \$ _____
§56-5-2942(J) (Vehicle Assessment) \$ _____
3% to County (if paid in installments) \$ 6.75
TOTAL \$ 231.75

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

[Signature]
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE [Signature]
Judge Code: 0 1 1 1 2 1 0
Sentence Date: 3.19.04

Court Reporter: [Signature]
White - Clerk Green - Corrections Canary - Probation

Pink - Defendant SCCA/217 (6/2003)

AMENDED SENTENCING SHEET
 convicted after trial in absence
 sentenced 8/30/18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Fairfield
 STATE VS.
Michael Edward Chappell
 AKA:
 Race: Sex: M Age: 47
 DOB: 02-19-1971 SS#: 248-25-5847
 Address: 610 CALHOUN STREET
 City, State, Zip: WINNSBORO, SC 29180
 DL#: 99999999 SID#:

INDICTMENT/CASE#: 2003GS2000411
 A/W#: G819610
 Date of Offense: 9/8/2003
 S.C. Code §: 44-53-0375(a)
 CDR Code #: 3039 (formerly 0114)

PRIOR CONVICTIONS SENTENCE SHEET
 10/22/1996 - Possession Crack Cocaine 1st offense
 6/13/2000 - Possession Cocaine 2nd offense

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Drugs / Manufacture, distribution, etc., ice, crack, crack cocaine - 3rd or sub. offense

CONVICTED OF or PLEADS

in violation of § 44-53-0375(a) of the S.C. Code of Laws, bearing CDR Code # 3039 (formerly 0114)
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
 (CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:
RJ Maxwell 74878 SC Bar# 74878 Defendant
Robert C. ... 7844 SC Bar# 7844 Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 45 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDOC.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso: (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 8.25

TOTAL \$ 283.25
 Clerk of Court/ Deputy Clerk Judy M Bonds
 Court Reporter: Susan Higgins
 SCCA/217 (04/2018)

_____ days/hours Public Service Employment
 Obtain GED:
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning: _____
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund.
 Other: _____

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.
 Presiding Judge John C. Haynes
 Judge Code: 2079
 Sentence Date: 8/30/18

Exhibit 4

SHIRLEY G. BROOM
16TH CIRCUIT COURT REPORTER
502 UNITY STREET
FORT MILL, SC 29715
(803) 230-6190

December 18, 2018

Ms. Joanna Delany
South Carolina Commission on
Indigent Defense
P.O. Box 11433
Columbia, SC 29211

Re: State of South Carolina vs. Michael Chappell
Before: Honorable Kenneth Goode
Date of Hearing: March, 2004
2003-GS-20-00411

Ms. Delany:

This is to inform you that the records regarding the above referenced matter have been destroyed. We are only required to retain our records for five years.

I apologize for any inconvenience this may cause in this matter.

Please forward all correspondence to the address referenced above.

Thank you for your understanding in this matter.

Shirley G. Broom
Official Court Reporter

Exhibit 5

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE SOUTH CAROLINA COURT OF APPEALS
APPELLATE CASE NO: 2018-001649

STATE OF SOUTH CAROLINA,)

Respondent,)

v.)

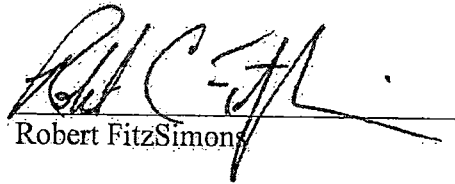
MICHAEL E. CHAPPELL)

Appellant.)

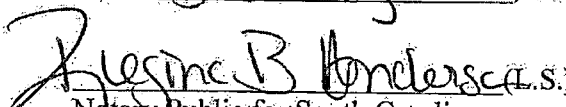
AFFIDAVIT OF ROBERT FITZSIMONS

PERSONALLY appeared before me, Robert FitzSimons, Esq., who being duly sworn, deposes and says:

1. I represented Michael E. Chappell, the appellant in the above captioned case, when his sentence was unsealed and imposed on August 30, 2018.
2. Michael E. Chappell was represented at his March 2004 trial by Carol S. Tolen and the State was represented by Christine Olle Sloane.


Robert FitzSimons

SWORN TO before me this 2nd
day of January, 2018.


Regine B. Bondersca, s.)
Notary Public for South Carolina
My Commission Expires: March 09, 2028



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

January 3, 2019

RECEIVED
JAN 03 2019
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Michael E. Chappell

Dear Ms. Kitchings,

Enclosed please find the original and six copies of the motion for reconstruction hearing or for granting a new trial if the record cannot be reconstructed in the above case.

If you have any questions concerning this matter, please contact me.

Sincerely,

Joanna K. Delany
Appellate Defender

JKD/csb

Enclosures